

February 16, 2005

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## CITATION

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

## PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located in the basement of the Pritchard Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 786-6697.

## REPUBLICATION OF OFFICIAL DOCUMENTS

All documents appearing in the Washington State Register are prepared and printed at public expense. There are no restrictions on the republication of official documents appearing in the Washington State Register. All news services are especially encouraged to give wide publicity to all documents printed in the Washington State Register.

## CERTIFICATE

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

DENNIS W. COOPER  
Code Reviser

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## STATE MAXIMUM INTEREST RATE

(Computed and filed by the State Treasurer under RCW 19.52.025)

The maximum allowable interest rate applicable for the month of February 2005 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%) per annum.

The interest rate required by RCW 4.56.110(3) and 4.56.115 for the month of February 2005 is 4.630%.

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

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## WASHINGTON STATE REGISTER

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The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

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# STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

## 1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following eight sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Inquiry that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (c) **EXPEDITED RULE MAKING**-includes the full text of the rule being proposed using the expedited rule-making process. Expedited rule makings are not consistently filed and may not appear in every issue of the register.
- (d) **PERMANENT**-includes the full text of permanently adopted rules.
- (e) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (f) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (g) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (h) **INDEX**-includes a cumulative index of Register Issues 01 through 24.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. Each filing is listed under the agency name and then describes the subject matter, type of filing and the WSR number. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

## 2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.05.395 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

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

## 3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

Material contained in the Register other than rule-making actions taken under the APA (chapter 34.05 RCW) does not necessarily conform to the style and format conventions described above. The headings of these other types of material have been edited for uniformity of style; otherwise the items are shown as nearly as possible in the form submitted to the code reviser's office.

## 4. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

## 5. EDITORIAL CORRECTIONS

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

2004-2005

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates <sup>1</sup>			Distribution Date	First Agency Hearing Date <sup>3</sup>	Expedited Rule Making <sup>4</sup>
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS <sup>2</sup> or 10 p. max. Non-OTS	Count 20 days from -	For hearing on or after	First Agency Adoption Date
For Inclusion in -	File no later than 12:00 noon -					
04 - 15	Jun 23, 04	Jul 7, 04	Jul 21, 04	Aug 4, 04	Aug 24, 04	Sep 21, 04
04 - 16	Jul 7, 04	Jul 21, 04	Aug 4, 04	Aug 18, 04	Sep 7, 04	Oct 5, 04
04 - 17	Jul 21, 04	Aug 4, 04	Aug 18, 04	Sep 1, 04	Sep 21, 04	Oct 19, 04
04 - 18	Aug 4, 04	Aug 18, 04	Sep 1, 04	Sep 15, 04	Oct 5, 04	Nov 2, 04
04 - 19	Aug 25, 04	Sep 8, 04	Sep 22, 04	Oct 6, 04	Oct 26, 04	Nov 23, 04
04 - 20	Sep 8, 04	Sep 22, 04	Oct 6, 04	Oct 20, 04	Nov 9, 04	Dec 7, 04
04 - 21	Sep 22, 04	Oct 6, 04	Oct 20, 04	Nov 3, 04	Nov 23, 04	Dec 21, 04
04 - 22	Oct 6, 04	Oct 20, 04	Nov 3, 04	Nov 17, 04	Dec 7, 04	Jan 4, 05
04 - 23	Oct 20, 04	Nov 3, 04	Nov 17, 04	Dec 1, 04	Dec 21, 04	Jan 19, 05
04 - 24	Nov 3, 04	Nov 17, 04	Dec 1, 04	Dec 15, 04	Jan 4, 05	Feb 1, 05
05 - 01	Nov 24, 04	Dec 8, 04	Dec 22, 04	Jan 5, 05	Jan 25, 05	Feb 23, 05
05 - 02	Dec 8, 04	Dec 22, 04	Jan 5, 05	Jan 19, 05	Feb 8, 05	Mar 8, 05
05 - 03	Dec 22, 04	Jan 5, 05	Jan 19, 05	Feb 2, 05	Feb 22, 05	Mar 22, 05
05 - 04	Jan 5, 05	Jan 19, 05	Feb 2, 05	Feb 16, 05	Mar 8, 05	Apr 5, 05
05 - 05	Jan 19, 05	Feb 2, 05	Feb 16, 05	Mar 2, 05	Mar 22, 05	Apr 19, 05
05 - 06	Feb 2, 05	Feb 16, 05	Mar 2, 05	Mar 16, 05	Apr 5, 05	May 3, 05
05 - 07	Feb 23, 05	Mar 9, 05	Mar 23, 05	Apr 6, 05	Apr 26, 05	May 24, 05
05 - 08	Mar 9, 05	Mar 23, 05	Apr 6, 05	Apr 20, 05	May 10, 05	Jun 7, 05
05 - 09	Mar 23, 05	Apr 6, 05	Apr 20, 05	May 4, 05	May 24, 05	Jun 21, 05
05 - 10	Apr 6, 05	Apr 20, 05	May 4, 05	May 18, 05	Jun 7, 05	Jul 6, 05
05 - 11	Apr 20, 05	May 4, 05	May 18, 05	Jun 1, 05	Jun 21, 05	Jul 19, 05
05 - 12	May 4, 05	May 18, 05	Jun 1, 05	Jun 15, 05	Jul 5, 05	Aug 2, 05
05 - 13	May 25, 05	Jun 8, 05	Jun 22, 05	Jul 6, 05	Jul 26, 05	Aug 23, 05
05 - 14	Jun 8, 05	Jun 22, 05	Jul 6, 05	Jul 20, 05	Aug 9, 05	Sep 7, 05
05 - 15	Jun 22, 05	Jul 6, 05	Jul 20, 05	Aug 3, 05	Aug 23, 05	Sep 20, 05
05 - 16	Jul 6, 05	Jul 20, 05	Aug 3, 05	Aug 17, 05	Sep 6, 05	Oct 4, 05
05 - 17	Jul 27, 05	Aug 10, 05	Aug 24, 05	Sep 7, 05	Sep 27, 05	Oct 25, 05
05 - 18	Aug 10, 05	Aug 24, 05	Sep 7, 05	Sep 21, 05	Oct 11, 05	Nov 8, 05
05 - 19	Aug 24, 05	Sep 7, 05	Sep 21, 05	Oct 5, 05	Oct 25, 05	Nov 22, 05
05 - 20	Sep 7, 05	Sep 21, 05	Oct 5, 05	Oct 19, 05	Nov 8, 05	Dec 6, 05
05 - 21	Sep 21, 05	Oct 5, 05	Oct 19, 05	Nov 2, 05	Nov 22, 05	Dec 20, 05
05 - 22	Oct 5, 05	Oct 19, 05	Nov 2, 05	Nov 16, 05	Dec 6, 05	Jan 3, 06
05 - 23	Oct 26, 05	Nov 9, 05	Nov 23, 05	Dec 7, 05	Dec 27, 05	Jan 24, 06
05 - 24	Nov 9, 05	Nov 23, 05	Dec 7, 05	Dec 21, 05	Jan 10, 06	Feb 7, 06

<sup>1</sup> All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

<sup>2</sup> A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

<sup>3</sup> At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

<sup>4</sup> A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited rule making and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230 and 1.12.040.

## **REGULATORY FAIRNESS ACT**

The Regulatory Fairness Act, chapter 19.85 RCW, was enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

### **Small Business Economic Impact Statements (SBEIS)**

A small business economic impact statement (SBEIS) must be prepared by state agencies when a proposed rule meets the above criteria. Chapter 19.85 RCW requires the Washington State Business Assistance Center (BAC) to develop guidelines for agencies to use in determining whether the impact of a rule is more than minor and to provide technical assistance to agencies in developing a SBEIS. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, must be reviewed to determine if the requirements of the Regulatory Fairness Act apply; if an SBEIS is required it must be completed before permanent rules are filed with the Office of the Code Reviser.

### **Mitigation**

In addition to completing the economic impact analysis for proposed rules, state agencies must take reasonable, legal, and feasible steps to reduce or mitigate the impact of rules on small businesses when there is a disproportionate impact on small versus large business. State agencies are encouraged to reduce the economic impact of rules on small businesses when possible and when such steps are in keeping with the stated intent of the statute(s) being implemented by proposed rules. Since 1994, small business economic impact statements must contain a list of the mitigation steps taken, or reasonable justification for not taking steps to reduce the impact of rules on small businesses.

### **When is an SBEIS Required?**

When:

The proposed rule has more than a minor (as defined by the BAC) economic impact on businesses in more than twenty percent of all industries or more than ten percent of any one industry.

### **When is an SBEIS Not Required?**

When:

The rule is proposed only to comply or conform with a federal law or regulation, and the state has no discretion in how the rule is implemented;

There is less than minor economic impact on business;

The rule REDUCES costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

The rule is adopted as an emergency rule, although an SBEIS may be required when an emergency rule is proposed for adoption as a permanent rule; or

The rule is pure restatement of state statute.



**WSR 05-04-011****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed January 24, 2005, 9:33 a.m.]

Subject of Possible Rule Making: WAC 415-111-310 Defined contribution account distribution (withdrawal), and possibly other related WACs and/or new sections. The subject of possible rule making is the purchase of annuities by Plan 3 members.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050(5) and 41.50.088.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department plans to adopt rules to clarify the types of annuities that Plan 3 members may purchase at the time of retirement and the requirements and process for purchasing such annuities.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The department will work with the Washington State Investment Board and the Office of the State Actuary to develop these rules.

Process for Developing New Rule: The Department of Retirement Systems (DRS) will develop the draft rule(s) with the assistance of the Attorney General's Office. The public is invited and encouraged to participate, as described below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making. The notice will include the time and date of a public rules hearing. DRS will send a copy of the notice and the proposed rule(s) to everyone currently on the mailing list and anyone else who requests a copy. To request a copy or for more information on how to participate, please contact Leslie Saeger, Rules and Contracts Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, fax (360) 753-3166, e-mail [leslies@drs.wa.gov](mailto:leslies@drs.wa.gov).

January 21, 2005

Leslie Saeger  
Rules Coordinator**WSR 05-04-037****PREPROPOSAL STATEMENT OF INQUIRY  
PUBLIC DISCLOSURE COMMISSION**

[Filed January 27, 2005, 1:28 p.m.]

Subject of Possible Rule Making: Title 390 WAC, rules relating to affiliated entities and contribution limits.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.370.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Public Disclosure Commission will consider amending WAC 390-16-309 and 390-17-302 to conform to Washington Supreme Court's interpre-

tation of RCW 42.17.660 contained in *Edelman v. State ex rel. Public Disclosure Comm'n*, #74152-2 filed October 21, 2004.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: At its meeting on February 22, 2005, the commission is expected to discuss and possibly adopt proposed amendatory language to this rule. Public comment will be welcome at this meeting. Interested persons are invited to submit written comments by February 18, 2005, to Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908. Written comments received by Monday, February 14, 2005, will be provided to commissioners in advance of the meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Doug Ellis, Director of Public Outreach, P.O. Box 40908, Olympia, WA 98504-0908, (360) 664-2735, toll-free 1-877-601-2828, [dellis@pdc.wa.gov](mailto:dellis@pdc.wa.gov).

January 26, 2005

Vicki Rippie  
Executive Director**WSR 05-04-044****PREPROPOSAL STATEMENT OF INQUIRY  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed January 27, 2005, 3:39 p.m.]

Subject of Possible Rule Making: Chapter 392-139 WAC, Finance—Maintenance and operation levies.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Revisions to rules are required to (1) update the existing language to incorporate the provisions of the 2003-05 supplemental budget; (2) update rules for new revenue codes; and (3) include district generated federal revenues paid directly to the ESD via a cooperative or consortium agreement.

Process for Developing New Rule: Solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendation in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Calvin W. Brodie, (360) 725-6300, [cbrodie@ospi.wednet.edu](mailto:cbrodie@ospi.wednet.edu).

January 20, 2005

Marty Daybell  
for Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**WSR 05-04-073****PREPROPOSAL STATEMENT OF INQUIRY  
HOP COMMODITY BOARD**

[Filed February 1, 2005, 10:55 a.m.]

Subject of Possible Rule Making: The purpose of this rule making is to add definitions and amend the board's promotional hosting rules in chapter 16-532 WAC. Proposed additions and amendments will include:

1. Adding "promotional hosting" and "hosting" definitions.
2. Updating and moving the promotional hosting rules from the marketing order to the board's rules section of the chapter.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 15.65 RCW, specifically RCW 15.65.305, and chapter 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Promotional hosting rules should be included within the rule of Washington State Hop Commodity Board pursuant to RCW 15.65.305. A new section is being added to define "promotional hosting" and "hosting." The current promotional hosting rule is being updated and added as a rule of the Hop Commodity Board. WAC 16-532-065 will be repealed.

Process for Developing New Rule: The draft rule amendments have been developed as a result of a collaborative effort between the Washington State Hop Commission and the Washington State Department of Agriculture. Once the draft amendments are finalized, notices will be published and mailed to all producers and handlers within the affected area who may be directly affected by these rule changes. Interested parties can submit comments during the public comment period and can also participate during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. See above for participation opportunities or contact Ann George, Administrator, Washington Hop Commission, 301 West Prospect Place, Moxee, WA 98936, phone (509) 453-4749, fax (509) 457-8561, e-mail ann@wahops.org.

January 20, 2005

Ann E. George, Administrator  
Washington Hop Commission**WSR 05-04-074****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF AGRICULTURE**

[Filed February 1, 2005, 10:57 a.m.]

Subject of Possible Rule Making: The purpose of this rule making is to adopt and amend sections within the rules of the Washington State Hop Commodity Board. Proposed additions and amendments will establish provisions for producer reporting and update rule language.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 15.65 RCW, specifically RCW 15.65.047 and 15.65.280, and chapter 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Clarifying provisions for producer reporting are being added to aid producers in understanding the necessary reporting procedures and the rule language updates will improve the readability and clarity of the affected section.

Process for Developing New Rule: The draft rule amendments have been developed as a result of a collaborative effort between the Washington State Hop Commission and the department. Once the draft amendments are finalized, notices will be published and mailed to all producers and handlers within the affected area who may be directly affected by these rule changes. Interested parties can submit comments during the public comment period and can also participate during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. See above for participation opportunities or contact Lynn Briscoe, Commodity Commission Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, phone (360) 902-2043, fax (360) 902-2092, e-mail lbriscoe@agr.wa.gov; or Ann George, Administrator, Washington Hop Commission, 301 West Prospect Place, Moxee, WA 98936, phone (509) 453-4749, fax (509) 457-8561, e-mail ann@wahops.org.

February 1, 2005

Lynn M. Briscoe

Commodity Commission Coordinator

**WSR 05-04-077****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF AGRICULTURE**

[Filed February 1, 2005, 3:34 p.m.]

Subject of Possible Rule Making: The Washington State Department of Agriculture's (WSDA) fruit and vegetable inspection program is proposing to amend chapter 16-390 WAC, WSDA fruit and vegetable inspection districts, inspection fees and other charges. The proposed amendments will increase the following fees in excess of the Office of Financial Management fiscal growth rate factor:

- All cwt. fees.
- The minimum charge for a certificate of compliance (WAC 16-390-150 (4)(a)).
- The field or orchard per acre inspection fee (WAC 16-390-220(1)).

The department is also proposing a volume discount for apples and pears that are inspected and certified on-line for domestic shipment, controlled atmosphere certification, etc.

Note: The department's current hourly rates (regular and overtime), phytosanitary certification, minimum certification and customer assisted inspection program (CAIP) fees will not change.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 15.17 RCW, Standards of grades and packs; chapter 34.05 RCW, Administrative Procedure Act; and section 309(2), chapter 25, Laws of 2003 1st sp.s.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The fruit and vegetable inspection program is supported entirely by fees generated by the services it provides. RCW 15.17.150 gives the WSDA director the authority to adopt rules establishing fees necessary "to recover the costs of providing inspection and/or certification or other requested services." The proposed fee increases are necessary to offset the increases in the fruit and vegetable inspection program operating expenses caused by inflation.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The fruit and vegetable program staff is developing the proposed fee amendments based upon program needs and recommendations from the Fruit and Vegetable Advisory Committee.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jim Quigley, Fruit and Vegetable Program Manager, Commodity Inspection Division, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1833, fax (360) 902-2085, e-mail jquigley@agr.wa.gov.

You may contact the fruit and vegetable program manager. Also, you may submit comments during the public comment period and participate in the public hearing process.

February 1, 2005

Robert W. Gore  
Assistant Director

### WSR 05-04-078

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed February 1, 2005, 3:36 p.m.]

Subject of Possible Rule Making: The department proposes to repeal chapter 16-239 WAC, WSDA grain inspection program—Definitions, standards, fees and charges, and replace it with chapter 16-240 WAC, WSDA grain inspection program—Definitions, standards, and fees, which will be written in a clear and readable style and format. The proposed new chapter will:

- Simplify grain inspection fees by deleting many minor fee categories.
- Change the calculation of inspection fees assessed by the ton from a short-ton fee basis (2000 pounds) to a metric-ton fee basis (2204.6 pounds).
- Increase some line item fees in excess of the fiscal growth factor.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Section 309(2), chapter 25, Laws of 2003 1st sp.s; chapters 22.09 and 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The grain inspection program is supported entirely by the fees it generates from the services it provides. RCW 22.09.790 Inspection or grading

of commodities—Fees and charges, authorizes the department to:

- Set the fees for inspection, grading, and weighing of the commodities included under the provisions of chapter 22.09 RCW and mandates that these fees must be sufficient to cover the cost of the services provided.
- Make any tests relating to grade or quality of commodities covered by this chapter; inspect and approve facilities and vessels to be used in transporting such commodities; provide any other necessary services; and set reasonable fees for such services.
- Adjust the fees collected under chapter 22.09 RCW in order to meet the expenses necessary to carry out the provisions of the chapter, and allows the department to prescribe a different scale of fees for different localities.
- If necessary, establish a reasonable charge, in addition to the regular grain inspection program fees, for service performed at places other than terminal warehouses in order to avoid rendering the services at a loss to the state.

The proposed fee increases are necessary to offset inflationary increases in grain inspection program operating expenses.

Finally, the department proposes to write the new fee schedule to take advantage of automation efficiencies. To that end, the department proposes to remove many minor fees.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service (USDA, GIPSA, FGIS) must approve changes in the WSDA grain inspection program's fee schedule.

Process for Developing New Rule: Grain inspection program staff will develop the proposed fee increases based upon program needs and recommendations from the Grain Inspection Program Advisory Committee.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Randall R. Deike, Grain Inspection Program Manager, Commodity Inspection Division, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1829, fax (360) 902-2085, TDD (360) 902-1996, e-mail rdeike@agr.wa.gov. You may contact the grain inspection program manager and/or the Grain Inspection Program Advisory Committee. Also, you may submit comments during the public comment period and participate in the public hearing process.

February 1, 2005

Robert W. Gore  
Assistant Director

**PREPROPOSAL**

**WSR 05-04-082**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)  
[Filed February 1, 2005, 4:26 p.m.]

Subject of Possible Rule Making: Chapter 388-538 WAC, Managed care.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.522.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Various sections of the managed care chapter have been revised or added over the last several years. The Medical Assistance Administration (MAA) is opening the entire chapter to allow for a complete review of all sections simultaneously to assure that all sections are consistent with each other and with other MAA rules. During the course of this review, MAA may identify additional changes that are required in order to improve clarity or to update policy.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The federal Centers for Medicare and Medicaid Services (CMS) regulates Medicaid managed care programs. DSHS staff work closely with CMS staff via document review to ensure our rule is in compliance with federal regulation.

Process for Developing New Rule: The department invites the interested public to review and comment on draft material. For information about how to participate, contact the person listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Wendy L. Boedigheimer, Rules Program Manager, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1306, fax (360) 586-9727, TTY 1-800-848-5429, e-mail boediwl@dshs.wa.gov.

January 31, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-04-094**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**  
[Filed February 2, 2005, 9:20 a.m.]

Subject of Possible Rule Making: Marine pilot licensing qualifications and procedures, chapter 363-116 WAC, Pilotage rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 88.16 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: New administrative rules are being considered in anticipation of legislation being enacted that would modify pilot licensing qualifications and procedures. If new laws are passed in this regard, it would be necessary to adopt new or repeal/revise existing rules in order to

develop pilot qualification criteria, comprehensive pilot training program procedures and evaluation criteria, and pilot examination preparation and administration procedures consistent with the anticipated legislation. Consideration will also be given to other aspects of the pilotage rules such as determining the appropriate number of pilots in each district, vessel simulator evaluation criteria, stipend payments for pilot trainees, issuance of training licenses, and the appropriate assessment of related license fees.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The board will begin considering written and oral comments from persons who may be interested in the development of new rules as described above. A committee will be established and public workshops held for those interested in participating in the formulation of the proposed rules. Stakeholder comments are welcome. Public hearings will then be scheduled to consider the proposed new rules pursuant to notice requirements for formal rule making.

The latest version of both the RCW and WAC can be found at <http://access.wa.gov>.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Peggy Larson, Administrator, [larsonp@wsdot.wa.gov](mailto:larsonp@wsdot.wa.gov), (206) 615-3904 [515-3904] or Judy Bell, Administrative Assistant, [belljud@wsdot.wa.gov](mailto:belljud@wsdot.wa.gov), (206) 515-3647, Board of Pilotage Commissioners, 2911 Second Avenue, Seattle, WA 98121, fax (206) 515-3906. Please contact one of the above persons if you want to participate in or be notified of the activities of this project.

January 13, 2005

Peggy Larson  
Administrator

**WSR 05-04-097**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**GAMBLING COMMISSION**  
[Filed February 2, 2005, 9:25 a.m.]

Subject of Possible Rule Making: Temporary licenses.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Currently, the agency director may authorize temporary licenses, except for manufacturer and house-banked card room (HBCR) licenses. The proposed amendment would provide the director the authority to also issue temporary licenses for manufacturers and HBCRs. Each month, staff are pressured by internal and external sources to get applicants on the commission meeting agenda, so their license can be approved and they can begin operations (most typically, this is a house-banked card room applicant). The deadline to be included on a commission agenda is three weeks prior to the meeting. Significant money and time is spent trying to meet this deadline and if it is not met, the applicant must wait until the next commission

meeting for approval. Recently, an applicant missed the November 2004 commission meeting cut-off. The next scheduled meeting was January 2005. A special commission meeting was held December 1 so a permanent license could be issued so operations could begin. If a special meeting was not held, the applicant, who had already shown they are ready to operate, would have had to wait nearly two months to start operations. This can cause significant financial losses for an applicant. If the director had the authority to issue a temporary license, the special meeting would not have been needed.

Temporary licenses would allow staff to work through the prelicense process without artificial deadlines. When an investigation is complete, and all documents are in order, a license is issued on a timely basis. The applicant is then placed on the list for the next commission meeting and there nominated for a "permanent" license. This procedure is used for all other licenses and works well for staff, and applicants.

**Process for Developing New Rule:** Rule change developed by agency staff. Interested parties can participate in the discussion of this proposed change by attending a commission meeting, or contacting the agency rules coordinator at the contact information below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov).

[Meeting Locations]: On March 11, 2005, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220; on April 15, 2005, at the Red Lion - Vancouver at the Quay, 100 Columbia Street, Vancouver, WA 98660, (360) 694-8341; and on May 13, 2005, at the Red Lion Hotel at the Park, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000.

February 2, 2005  
Susan Arland  
Rules Coordinator

#### WSR 05-04-098

#### PREPROPOSAL STATEMENT OF INQUIRY GAMBLING COMMISSION

[Filed February 2, 2005, 9:26 a.m.]

**Subject of Possible Rule Making:** Special approvals for raffle games.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 9.46.070 and 9.46.0277.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** Currently, staff review requests for variations to raffle games, such as creative ways to randomly select winning raffle tickets. For example, winners are selected by a duck race, wherein plastic ducks are numbered to identify them to raffle tickets. The ducks are then placed in a stream and float downstream and the first

duck to make it across the finish line is the winner. The person with the corresponding raffle ticket is the winner.

Staff are exploring ways to streamline processes to reduce staff time used for these reviews and approvals. One way to do this, may be to list authorized schemes in rules.

The goal of this rule change is to reduce staff time spent on these reviews and approvals so that staff time can be dedicated to other regulatory work.

**Process for Developing New Rule:** Rule change developed by agency staff. Interested parties can participate in the discussion of this proposed change by attending a commission meeting, or contacting the agency rules coordinator at the contact information below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov).

[Meeting Locations]: On March 11, 2005, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220; on April 15, 2005, at the Red Lion - Vancouver at the Quay, 100 Columbia Street, Vancouver, WA 98660, (360) 694-8341; and on May 13, 2005, at the Red Lion Hotel at the Park, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000.

February 2, 2005  
Susan Arland  
Rules Coordinator

#### WSR 05-04-099

#### PREPROPOSAL STATEMENT OF INQUIRY GAMBLING COMMISSION

[Filed February 2, 2005, 9:27 a.m.]

**Subject of Possible Rule Making:** Special approvals for card games.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 9.46.070 and 9.46.0282.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** Currently, staff review requests for new card games and layouts for card tables.

Staff are exploring ways to streamline processes to reduce staff time used for these reviews and approvals. One way to do this, may be to list authorized card games and schemes in our rules.

The goal of this rule change is to reduce staff time spent on these reviews and approvals so that staff time can be dedicated to other regulatory work.

**Process for Developing New Rule:** Rule change developed by agency staff. Interested parties can participate in the discussion of this proposed change by attending a commission meeting, or contacting the agency rules coordinator at the contact information below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before pub-

lication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov).

[Meeting Locations]: On March 11, 2005, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220; on April 15, 2005, at the Red Lion - Vancouver at the Quay, 100 Columbia Street, Vancouver, WA 98660, (360) 694-8341; and on May 13, 2005, at the Red Lion Hotel at the Park, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000.

February 2, 2005  
Susan Arland  
Rules Coordinator

**WSR 05-04-100**

**PREPROPOSAL STATEMENT OF INQUIRY  
GAMBLING COMMISSION**

[Filed February 2, 2005, 9:28 a.m.]

Subject of Possible Rule Making: Nonsufficient funds checks.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The costs related to recovering NSF checks submitted for licenses and other services has increased. This change would increase the processing charge for NSF checks from \$15 to \$30.

Process for Developing New Rule: Rule change developed by agency staff. Interested parties can participate in the discussion of this proposed change by attending a commission meeting, or contacting the agency rules coordinator at the contact information below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov).

[Meeting Locations]: On March 11, 2005, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220; on April 15, 2005, at the Red Lion - Vancouver at the Quay, 100 Columbia Street, Vancouver, WA 98660, (360) 694-8341; and on May 13, 2005, at the Red Lion Hotel at the Park, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000.

February 2, 2005  
Susan Arland  
Rules Coordinator

**WSR 05-04-101**

**PREPROPOSAL STATEMENT OF INQUIRY  
GAMBLING COMMISSION**

[Filed February 2, 2005, 9:29 a.m.]

Subject of Possible Rule Making: Card room employees and card room operators.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Currently, the agency requires card room employees to notify the commission each time they change employers or begin working at a second location. Staff are exploring ways to streamline agency processes and modifying this process will be reviewed for possible changes.

Process for Developing New Rule: Rule change developed by agency staff. Interested parties can participate in the discussion of this proposed change by attending a commission meeting, or contacting the agency rules coordinator at the contact information below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov).

[Meeting Locations]: On March 11, 2005, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220; on April 15, 2005, at the Red Lion - Vancouver at the Quay, 100 Columbia Street, Vancouver, WA 98660, (360) 694-8341; and on May 13, 2005, at the Red Lion Hotel at the Park, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000.

February 2, 2005  
Susan Arland  
Rules Coordinator

**WSR 05-04-102**

**PREPROPOSAL STATEMENT OF INQUIRY  
GAMBLING COMMISSION**

[Filed February 2, 2005, 9:30 a.m.]

Subject of Possible Rule Making: Promotions related to gambling.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Currently, staff review requests for variations to promotions related to gambling activities. The goal of this rule change is to reduce staff time spent on these reviews and approvals so that staff time can be dedicated to other regulatory work.

Process for Developing New Rule: Rule change developed by agency staff. Interested parties can participate in the discussion of this proposed change by attending a commis-

sion meeting, or contacting the agency rules coordinator at the contact information below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov).

[Meeting Locations]: On March 11, 2005, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220; on April 15, 2005, at the Red Lion - Vancouver at the Quay, 100 Columbia Street, Vancouver, WA 98660, (360) 694-8341; and on May 13, 2005, at the Red Lion Hotel at the Park, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000.

February 2, 2005

Susan Arland  
Rules Coordinator

#### WSR 05-04-103

##### PREPROPOSAL STATEMENT OF INQUIRY GAMBLING COMMISSION

[Filed February 2, 2005, 9:31 a.m.]

Subject of Possible Rule Making: Activity reporting for all licensees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Due to recent budget cuts, staff are exploring ways to streamline agency processes.

Currently, a majority of our licensees report their gambling activity (gross receipts, prizes paid, etc.) on a quarterly basis. The process includes sending blank reports to licensees to complete, staff calling licensees to follow-up on reports that are not submitted, data entry, auditing, complication and creation of statistical booklets that are used by staff, the legislature, stakeholders, and various industry groups, to track trends and provide an overview of gambling in Washington state.

Staff are exploring ways to streamline agency processes and one way may be to reduce how often licensees report their gambling activity to the commission.

Process for Developing New Rule: Rule change developed by agency staff. Interested parties can participate in the discussion of this proposed change by attending a commission meeting, or contacting the agency rules coordinator at the contact information below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov).

[Meeting Locations]: On March 11, 2005, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220; on April 15, 2005, at the Red Lion - Vancouver at the Quay, 100 Columbia Street, Vancouver, WA 98660, (360) 694-8341; and on May 13, 2005, at the Red Lion Hotel at the Park, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000.

February 2, 2005

Susan Arland  
Rules Coordinator

#### WSR 05-04-106

##### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

[Filed February 2, 2005, 9:55 a.m.]

Subject of Possible Rule Making: Funeral directors and embalmers, amending WAC 308-48-810, 308-48-820, and 308-48-830, brief adjudicative proceedings.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.39.175 and chapter 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Amendments are needed concerning when brief adjudicative proceedings can be used, objections to proceedings, and conversion to formal adjudicative proceedings.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Study by the Board of Funeral Directors and Embalmers.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jeanne Todd, Department of Licensing, Funerals, P.O. Box 9012, Olympia, WA 98507, (360) 664-1555, [Funerals@dol.wa.gov](mailto:Funerals@dol.wa.gov).

February 2, 2005

Jon Donnellan  
Administrator

#### WSR 05-04-107

##### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

[Filed February 2, 2005, 9:56 a.m.]

Subject of Possible Rule Making: Cemeteries, Title 98 WAC, new sections: Brief adjudicative proceedings, when they can be used, objections to proceedings and conversion to formal adjudicative proceedings.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 68.05.105 and chapter 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: New sections establish the process for using brief adjudicative proceedings (BAP) for addressing and resolving specific regulatory actions on license applications and/or licenses. BAPs are adjudicative

proceedings under the Administrative Procedure Act, chapter 34.05 RCW that are brief in form, that should take less time, and expedite a decision for an applicant or licensee. This would result in reduced administrative cost to the department while ensuring independent review and expedience for the licensee.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Attorney General's Office.

Process for Developing New Rule: Study by the Cemetery Board.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jeanne Todd, Department of Licensing, Funerals, P.O. Box 9012, Olympia, WA 98507, (360) 664-1555, Funerals@dol.wa.gov.

February 2, 2005  
Jon Donnellan  
Administrator

**WSR 05-02-059**  
**PROPOSED RULES**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**  
[Filed January 4, 2005, 9:50 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Land use ordinance.

Hearing Location(s): Troutdale Conference Center, 223 Buxton, Troutdale, OR, on March 8, 2005, at 9:00 a.m. (Note this is the beginning of the commission's regular meeting. The actual hearing time may be later.)

Date of Intended Adoption: March 8, 2005.

Submit Written Comments to: Martha J. Bennett, Executive Director, P.O. Box 730, White Salmon, WA 98672, e-mail crgc@gorge.net, fax (509) 493-2229, by March 1, 2005.

Assistance for Persons with Disabilities: Contact Nancy Andring by March 1, 2005, (509) 493-3323.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to implement the management plan for the Columbia River Gorge National scenic area that the gorge commission adopted revisions to on April 27, 2004. The land use ordinance will be effective in any gorge county that does not have an effective land use ordinance implementing the management plan. The substantive standards are identical to the substantive standards in the management plan as revised. The procedural requirements for issuing land use decisions are similar to those contained in the current land use ordinance (Commission Rule 350-80). This rule will replace Commission Rule 350-80 in its entirety.

Reasons Supporting Proposal: The land use ordinance is necessary to implement the management plan in gorge counties that do not have a land use ordinance that implements the management plan. The gorge commission is required to implement a land use ordinance for these counties pursuant to sections 7(c) and 8(l) the Columbia River Gorge National Scenic Area Act (16 U.S.C. 544e(c) and 544f(l)) and the Columbia River Gorge Compact (RCW 43.97.015 and ORS 196.150).

Statutory Authority for Adoption: RCW 43.97.015; ORS 196.150 and 16 U.S.C. 544e(c) and 544f(l).

Statute Being Implemented: RCW 43.97.015; ORS 196.150 and 16 U.S.C. 544e(c) and 544f(l).

Rule is necessary because of federal law, [see above].

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The gorge commission authorized filing this notice of proposed rule making on December 14, 2004, after reviewing the outline for the rule, the text of the proposed procedures section, and a staff report stating that the substantive requirements would be identical to the management plan as revised. The gorge commission is especially interested in comments on the procedures and ensuring consistency between the substantive provisions of this rule and the management plan as revised. Implementation and enforcement of this rule is anticipated to be substantially similar to imple-

mentation of the current gorge commission land use ordinance (Commission Rule 350-80).

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Martha J. Bennett, Executive Director, P.O. Box 730, White Salmon, WA 98672, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is procedural in nature implementing substantive rules that are already adopted.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt from this requirement pursuant to RCW 34.05.328(5). The gorge commission is not applying this section voluntarily.

January 3, 2005  
Nancy A. Andring  
Rules Coordinator

Scenic Area Land Use Ordinance for Klickitat County  
(Commission Rule 350-81)

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PROPOSED

## Columbia River Gorge Commission

Chapter 350  
Division 81

## Land Use Ordinance

\_\_\_\_\_, 2005

## Purposes and Applicability

**350-81-010. Purposes and Applicability**

The purpose of this Land Use Ordinance is to implement the Management Plan for the Columbia River Gorge National Scenic Area with revisions adopted on April 27, 2004 and concurred with on August 3, 2004, and as subsequently amended.

**350-81-012. Affected Area**

Commission Rule 350-81 shall apply to all lands within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act, for which a county does not implement a land use ordinance consistent with the Management Plan.

Commission Rule 350-81 becomes effective on June 15, 2005.

Those portions of Commission Rule 350-81 pertaining to the General Management Area shall no longer be effective in a county that has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission.

Those portions of Commission Rule 350-81 pertaining to the Special Management Area shall no longer be effective in a county that has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission and concurred with by the Secretary of Agriculture.

**350-81-014. Maps**

The Land Use Designation, Landscape Settings, and Recreation Intensity Classes maps adopted by the Columbia River Gorge Commission as part of the Management Plan for the Columbia River Gorge National Scenic Area are hereby incorporated by reference into this land use ordinance.

**350-81-016. Review and Approval Required**

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in the Columbia River Gorge National Scenic Area except for the uses listed in Commission Rule 350-81, when considered under the applicable procedural and substantive guidelines of this Rule.

**350-81-018. Uniform Application of Management Plan**

(1) The Management Plan shall be applied consistent with and in the spirit of the National Scenic Area Act.

(2) The Gorge Commission, Forest Service, and counties should strive to apply Management Plan provisions uniformly throughout the National Scenic Area, except when a county has adopted a more restrictive provision.

(3) In applying provisions of the Management Plan, the Gorge Commission and Forest Service may consider, but shall not be constrained by, county interpretations, state interpretation and application of state law and administrative regulations, or judicial decisions that do not directly involve the Management Plan.

## Definitions

**350-81-020. Definitions**

As used in Commission Rule 350-81, unless otherwise noted, the following words and their derivations shall have the following meanings:

(1) **Accepted agricultural practice:** A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) **Accessory structure/building:** A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.

(3) **Active wildlife site:** A wildlife site that has been used within the past 5 years by a sensitive wildlife species.

(4) **Addition:** An extension or increase in the area or height of an existing building.

(5) **Agency official:** The federal, state, or local agency head or designee who has authority over a proposed project.

(6) **Agricultural specialist (SMA):** A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.

(7) **Agricultural structure/building:** A structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.

(8) **Agricultural use:** The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

(a) The operation or use of farmland subject to any agriculture-related government program.

(b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.

(c) Land planted in orchards or other perennials prior to maturity.

(d) Land under buildings supporting accepted agricultural practices.

Agricultural use does not include livestock feedlots.

(9) **Anadromous fish:** Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).

(10) **Anaerobic:** A condition in which molecular oxygen is absent (or effectively so) from the environment.

(11) **Aquaculture:** The cultivation, maintenance, and harvesting of aquatic species.

(12) **Aquatic area:** The water area of a stream, pond, or lake measured at the ordinary high water mark.

(13) **Archaeological resources:** See cultural resource.

(14) **Archival research:** Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.

(15) **Bed and breakfast inn:** An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.

(16) **Best management practices:** Conservation techniques and management measures that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; (2) minimize adverse affects to groundwater and surface-water flow and circulation patterns; and (3) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

(17) **Biodiversity (SMA):** A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.

(18) **Boat landing:** Cleared area or developed structure used to facilitate launching or retrieving watercraft.

(19) **Buffer zone:** An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.

(20) **Building:** Any structure used or intended for supporting or sheltering any use or occupancy. Buildings have a roof supported by columns or walls. They include, but are not limited to, dwellings, garages, barns, sheds and shop buildings.

(21) **Camping or recreational vehicle:** A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.

(22) **Campsite:** Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.

(23) **Capability:** The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.

(24) **Canopy closure (SMA):** For forest practices, the percentage measuring the degree to which one layer of a tree canopy blocks sunlight or obscures the sky as measured from below.

(25) **Cascadian architecture (SMA):** Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(26) **Catastrophic situations (SMA):** Forces such as fire, insect and disease infestations, and earth movements.

(27) **Childcare center:** A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(28) **Columbia River Gorge National Scenic Area Graphic Signing System:** Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

(29) **Commercial development/use:** Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(30) **Commercial forest products:** These include timber for lumber, pulp, and firewood for commercial purposes.

(31) **Commercial recreation:** Any private (non-governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(32) **Community facility:** Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.

(33) **Consulting parties (cultural resources):** Organizations or individuals who submit substantive written comments to a local government in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(34) **Contiguous land:** Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

(35) **Counties:** The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(36) **Created opening (SMA):** A created forest opening with less than 40 percent average canopy closure of overstory trees and less than 60 percent average canopy closure of understory trees averaging less than 5 inches diameter at breast height for coniferous forests and less than 25 percent total canopy cover for oak woodlands. This definition does not include agricultural fields.

(37) **Creation (wetlands):** A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(38) **Cultivation:** Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(39) **Cultural resource:** Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

- Archaeological resources. Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old.

Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material byproducts from tool and utensil-making activities; and graves, human remains, and associated artifacts.

- Historic buildings and structures. Standing or above-ground buildings and structures that are at least 50 years old.

Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

- Traditional cultural properties. Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community.

Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

(40) **Cumulative effects:** The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result

from individually minor but collectively significant actions taking place over a period of time.

(41) **Cut:** An area where soil or earth is excavated or removed in conjunction with development activities.

(42) **Dedicated site:** An area actively devoted to the current use and as delineated on the site plan.

(43) **Deer and elk winter range:** Areas normally used, or capable of being used, by deer and elk from December through April.

(44) **Destruction of wetlands:** Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(45) **Developed recreation:** Recreational opportunities characterized by high-density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(46) **Developed road prism (SMA):** The area of the ground associated with a particular road and containing the road surface, ditch, shoulder, retaining walls, or other developed features. Does not include the natural appearing portions of cut and fill slopes.

(47) **Development:** Any land division or structure, including but not limited to new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(48) **Diameter at breast height (dbh):** The diameter of a tree as measured at breast height.

(49) **Duplex:** A building containing two dwelling units and designed for occupancy by two families.

(50) **Dwelling, single-family:** A detached building containing one dwelling unit and designed for occupancy by one family only.

(51) **Dwelling unit:** A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(52) **Earth materials:** Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

(53) **Effect on treaty rights:** To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(54) **Emergency/disaster:** A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

(55) **Emergency/disaster response:** Actions involving any development (such as new structures, grading, or excavation) or vegetation removal that must be taken immediately in response to an emergency/disaster event (as defined above). Emergency/disaster response actions not involving any structural development or ground-disturbance (such as use of

emergency transport vehicles, communications activities or traffic control measures) are not included in this definition and are not affected by these provisions.

(56) **Endemic:** Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(57) **Enhancement (natural resources):** A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(58) **Ephemeral streams (SMA):** streams that contain flowing water only during, and for a short duration after, precipitation events.

(59) **Ethnography:** The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(60) **Existing use or structure:** Any use or structure that was legally established. "Legally established" means: (1) the landowner or developer obtained applicable land use and building permits and complied with land use regulations and other laws that were in effect at the time the use or structure was established, or that were in effect at the time the landowner or developer corrected an improperly established use or structure; (2) the use or structure was initially operated or constructed according to those applicable permits, land use regulations and other laws, or has been operated or constructed according to permits obtained to correct an improperly established use or structure; and (3) any changes to the original use or structure must comply with all applicable permit requirements, land use regulations and other laws that were in effect at the time the change was established.

(61) **Exploration, development (extraction and excavation), and production of mineral resources:** Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(62) **Fill:** The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(63) **Finished grade:** The final elevation of the ground level of a property after construction is completed.

(64) **Fire break:** A break in ground cover fuels, adjacent to and surrounding buildings.

(65) **Footprint:** The area that falls directly beneath and shares the same perimeter as a structure.

(66) **Forbs:** Broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

(67) **Foreground (SMA):** One-half mile on either side of a traveled road or trail.

(68) **Forest health (SMA):** A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience.

(69) **Forest practice (SMA):** Any activity conducted on or directly pertaining to forested land and relating to forest ecosystem management including but not limited to growing, thinning, or removing live or dead forest tree or shrub species, road and trail construction, reforestation, fertilizing, brush control, prevention of wildfire, and suppression of diseases and insects. The removal of hazardous trees is excluded. Uses that include establishment, management or harvest of Christmas trees, nursery stock, or fiber producing tree species requiring intensive cultivation (irrigation, fertilization, etc.) and a harvest rotation of 12 years or less are considered agricultural uses.

(70) **Forest practice (GMA):** Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(71) **Forest products:** Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(72) **Forest stand structure (SMA):** The number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.

(73) **Forest use:** The growing, propagation, and harvesting of forest tree species and other forest products.

(74) **Fully screened:** A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(75) **Grade (ground level):** The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(76) **Grading:** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(77) **Hazard tree (SMA):** A tree with a structural defect that will predictably result in whole or partial failure within 1.5 tree lengths of a road or maintained development. A defective tree is hazardous only when its failure could result in danger to people or damage to structures, vehicles, or other property.

(78) **Height of building:** The greatest vertical distance between the point of lowest finished grade adjoining any exterior wall of a building and the highest point of the roof, such as the highest coping or parapet of a flat roof, the highest deck line of a mansard roof, or the highest ridge of a hip, gable, gambrel, shed or other pitched roof.

(79) **Herbaceous:** A plant with no persistent woody stem above the ground, with characteristics of an herb.

(80) **Herbs:** Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and nonwoody vines. (Note: Seedlings of woody plants that are less

than 3 feet tall shall be considered part of the herbaceous layer.)

(81) **Historic buildings and structures:** See cultural resource.

(82) **Historic survey:** Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(83) **Horses, boarding of:** The stabling, feeding, and grooming for a fee, or the renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks.

(84) **Hydric soil:** A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(85) **In-lieu sites:** Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100-581, Section 401. Additional in-lieu sites will be provided for.

(86) **Indian tribal government:** The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakama Indian Nation (Tribal Council).

(87) **Indian tribes:** The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(88) **Industrial uses:** Any use of land or water primarily involved in:

(a) Assembly or manufacture of goods or products,

(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit,

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service, or

(d) Production of electric power for commercial purposes.

(89) **Interpretive displays:** Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(90) **Key components:** The attributes that are essential to maintain the long-term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(91) **Key viewing areas:** Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include:

Historic Columbia River Highway

Crown Point

Highway I-84, including rest stops

Multnomah Falls

Washington State Route 14

Beacon Rock

Panorama Point Park

Cape Horn

Dog Mountain Trail

Cook-Underwood Road

Rowena Plateau and Nature Conservancy Viewpoint

Portland Women's Forum State Park

Bridal Veil State Park

Larch Mountain

Rooster Rock State Park

Bonneville Dam Visitor Centers

Columbia River

Washington State Route 141

Washington State Route 142

Oregon Highway 35

Sandy River

Pacific Crest Trail

SMA only:

Old Washington State Route 14 (County Road 1230)

Wyeth Bench Road

Larch Mountain Road

Sherrard Point on Larch Mountain

(92) **Land division:** The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

(93) **Landscape setting:** The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(94) **Livestock feedlot:** Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.

(95) **Lot line adjustment:** Relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels.

(96) **Maintenance:** Ordinary upkeep or preservation of a serviceable structure affected by wear or natural elements. Maintenance does not change the original size, scope, configuration or design of a structure.

Maintenance includes, but is not limited to, painting and refinishing, regrouting masonry, patching roofs, grading gravel roads and road shoulders, cleaning and armoring ditches and culverts, filling potholes, controlling vegetation within rights-of-way, removing trees and other roadside hazards within rights-of-way, and testing and treating utility poles.

(97) **Mitigation:** The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(98) **Mosaic (SMA):** The dispersal of overstory and understory leave trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped created forest opening.

(99) **Multifamily dwelling:** A dwelling constructed or modified into two or more single-family units.

(100) **Native species:** Species that naturally inhabit an area.

(101) **Natural grade:** The undisturbed elevation of the ground level of a property before any excavation or construction operations.

(102) **Natural resources:** Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(103) **Natural resource specialist:** A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(104) **Natural resource-based recreation (SMA):** Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource-based; golf courses, tennis courts, and rental cabins are not.

(105) **Nonprofit organization:** An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

(106) **Not visually evident (SMA):** A visual quality standard that provides for development or uses that are not visually noticeable to the casual visitor. Developments or uses shall only repeat form, line, color, and texture that are frequently found in the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be noticeable.

(107) **Old growth (SMA):** A forest stand usually at least 180-220 years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large overstory trees; high incidence of large trees, some with broken tops and other indications of old and decaying wood (decadence); numerous large snags, and heavy accumulations of wood, including large logs on the ground.

(108) **Operational (SMA):** For new agricultural use, an agricultural use shall be deemed operational when the improvements and investments described in the Stewardship Plan are in place on the parcel.

(109) **Ordinary high water mark:** The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(110) **Other related major structure (SMA):** A structure related to a dwelling on a parcel in the SMA that is less than 40 acres in size, which is not incidental and subordinate to the main use of the property. A building or structure that satisfies the definition of "accessory building" is not an "other related major structure" or a "major development action."

(111) **Overstory (SMA):** For forest practices, the tall or mature trees that rise above the shorter or immature understory trees.

(112) **Parcel:**

(a) Any unit of land legally created by a short division, partition, or subdivision-that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:

(A) Is a unit of land solely created to establish a separate tax account;

(B) Lies in different counties;

(C) Lies in different sections or government lots;

(D) Lies in different land use or zoning designations; or

(E) Is dissected by a public or private road.

(113) **Practicable:** Able to be done, considering technology and cost.

(114) **Preexisting:** Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(115) **Previously disturbed:** An area of land where the natural surface has been graded, excavated, paved and/or graveled.

(116) **Project area:** The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

(117) **Public use facility:** Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(118) **Rare plant species:** Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(119) **Recreation facility:** A cluster or grouping of recreational developments or improvements located in relatively

close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(120) **Reconnaissance survey:** Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, sub-surface testing, and ethnographic research.

(121) **Recreation opportunity spectrum (ROS):** A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

- **Primitive:** Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.
- **Semiprimitive:** Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.  
Roaded Natural: Roaded areas with moderately frequent human encounters and with resource modifications evident.
- **Rural:** Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.
- **Suburban:** Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.
- **Urban:** Highly accessible, roaded areas dominated by human encounters and human-related structures.

(122) **Recreation resources:** Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semiprimitive areas with few facilities and developed sites.

(123) **Regularly maintained:** An area of land that has been previously disturbed and where periodic acts have been taken to (1) keep the area clear of vegetation (e.g., shoulders, utility yards), (2) limit the height and type of vegetation (e.g., utility rights-of-way), and/or (3) establish and retain non-native vegetation (e.g., landscaped medians, rest area grounds).

(124) **Rehabilitation (natural resources):** A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(125) **Remnant old forest (SMA):** Large trees in the overstory that are well into the mature growth state (older than 180 years).

(126) **Repair:** Replacement or reconstruction of a part of a serviceable structure after damage, decay or wear. A repair returns a structure to its original and previously authorized and undamaged condition. It does not change the original size, scope, configuration or design of a structure, nor does it excavate beyond the depth of the original structure.

Repair includes, but is not limited to, reroofing a building, replacing damaged guardrails, reconstructing a rotten deck or porch, replacing a broken window or door, replacing

a utility pole and associated anchors, replacing a section of broken water or sewer line, replacing a damaged or defective utility line, reconstructing a portion of a building damaged by fire or a natural event, and replacing railroad ties or rails.

(127) **Resource-based recreation:** Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(128) **Restoration (wetlands):** A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(129) **Review uses:** Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(130) **Riparian area:** The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(131) **Road:** The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways, or alleys.

(b) Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures.

(c) Structures that provide for continuity of the right-of-way, such as bridges.

(132) **Scenic Area:** The Columbia River Gorge National Scenic Area.

(133) **Scenic travel corridor:** Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(134) **Secretary:** The Secretary of Agriculture.

(135) **Sensitive plant species:** Plant species that are (1) endemic to the Columbia River Gorge and vicinity, (2) listed as endangered or threatened pursuant to federal or state endangered species acts, or (3) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program.

In the SMA, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(136) **Sensitive wildlife species:** Animal species that are (1) listed as endangered or threatened pursuant to federal or state endangered species acts, (2) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission, (3) listed as sensitive by the Oregon Fish

and Wildlife Commission, or (4) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon.

In the SMA, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(137) **Service station:** A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(138) **Serviceable:** Presently useable.

(139) **Shall:** Action is mandatory.

(140) **Should:** Action is encouraged.

(141) **Shrub:** A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(142) **Sign:** Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(143) **Significant cultural resource (SMA):** A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)

(144) **Skyline:** The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(145) **Soil capability class:** A classification system developed by the U.S. Department of Agriculture Soil Conservation Service to group soils as to their capability for agricultural use.

(146) **Special habitat area:** Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(147) **Special streams:** Streams that are primary water supplies for fish hatcheries and rearing ponds.

(148) **Stand:** A group of trees possessing uniformity in regard to type, age, vigor, or size.

(149) **Story:** A single floor level of a structure, as defined by the Uniform Building Code.

(150) **Streams:** Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs and defined-channel swales. The channel or bed does not have to contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses.

For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year-round during years of normal precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

(151) **Structure:** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(152) **Submit:** To deliver a document (e.g., land use application, written comment) to a reviewing agency's office by personal delivery, commercial delivery, mail, fax, or E-mail. When a document must be submitted within a specified period, it must arrive at the reviewing agency's office by the close of business on the last day of the specified period.

(153) **Subsurface testing:** Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(154) **Suitability:** The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(155) **Thinning (SMA):** A forest practice intended to create favorable conditions for the continued growth of trees within an existing stand of trees. A thinning becomes a forest opening in coniferous forests when the average canopy closure of the overstory layer is zero or less than 40 percent and the understory layer is less than 60 percent average canopy closure of trees averaging less than 5 inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than 25 percent.

(156) **Total canopy closure (SMA):** For forest practices, the percentage measuring the degree to which all layers of the tree canopy combine together to block sunlight or obscure the sky as measured from below.

(157) **Travelers accommodations:** Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(158) **Treatment (SMA):** For forest practices, a site-specific operation that carries out the forest management objectives for an area.

(159) **Treaty rights or other rights:** Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(160) **Tributary fish habitat:** Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(161) **Understory (SMA):** For forest practices, the shorter or immature trees below the tall or mature overstory trees.

(162) **Undertaking:** Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements [36 CFR 800.2(o)].

(163) **Unimproved lands:** Lands that generally do not have developments such as buildings or structures.

(164) **Upland:** Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(165) **Uses allowed outright:** New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(166) **Utility facility:** Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

(167) **Vested right:** The right to develop or continue to develop a use, development or structure that was reviewed and approved pursuant to this Management Plan.

(168) **Viewshed:** A landscape unit seen from a key viewing area.

(169) **Visual quality objective (VQO):** A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention and partial retention, and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(170) **Visually subordinate:** A description of the relative visibility of a structure or use where that structure or use does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings. Visually subordinate forest practices in the SMA shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

(171) **Water-dependent:** Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water-dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water-dependent.

(172) **Water-related:** Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water-related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(173) **Wetlands:** Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(174) **Wetlands functions:** The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(175) **Winery:** An agricultural facility used for processing grapes into wine, including laboratories, processing areas, offices, and storage areas. A winery is distinct from a wine sales/tasting room; each of these uses must be explicitly reviewed and approved.

(176) **Wine sales/tasting room:** A facility that is accessory to a winery and used for tasting and retail sales of wine, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda). A wine sales/tasting room shall not be used for preparing or serving meals or hosting weddings, receptions or other commercial events, unless allowed, reviewed and approved under the "Commercial Events" provisions in 350-81-108. A wine sales/tasting room is distinct from a winery; each of these uses must be explicitly reviewed and approved.

(177) **Woody plant:** A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

## Applications and Procedures

### 350-81-030. Standards for Applications

Complete Application Required: Any proposed use, development or structure shall be reviewed according to the standards in effect on the date an applicant submitted a complete land use application. A complete application is one that the Executive Director determines meets this Land Use Ordinance's requirements for: (1) a complete application form; (2) a complete site plan; and (3) all applicable information

specified in the various sections of this land use ordinance. Incomplete applications shall not be reviewed.

### **350-81-032. Application for Review and Approval**

(1) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-032.

(2) The Executive Director shall accept and review the application pursuant to 350-81-030 through 350-81-046 for consistency with the appropriate guidelines of this rule.

(3) The Commission may charge a fee for review of applications. The Executive Director shall set the fee, which shall not exceed the average cost to the Commission of reviewing applications.

(4) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices and the Forest Service.

(5) Applications for the review and approval of a proposed use or development shall provide the following information:

(a) The applicant's name, address and telephone number;  
(b) The land owner's name, address and telephone number (if different from applicant's);

(c) The county in which the proposed use or development would be located;

(d) The section, quarter section, township and range in which the proposed development would be located;

(e) The street address of the proposed use or development;

(f) The tax lot number(s) and size in acres of the parcel(s) involved;

(g) A description of the current land use for the parcel(s) involved and adjoining lands;

(h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures.

(i) A list of Key Viewing Areas from which the proposed use would be visible.

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Executive Director to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel. Rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:

(A) North arrow.

(B) Map scale.

(C) Boundaries, dimensions, and size of the subject parcel.

(D) Significant terrain features or landforms.

(E) Groupings and species of trees or other vegetation on the parcel.

(F) Location and species of vegetation that would be removed or planted.

(G) Bodies of water and watercourses.

(H) Location and width of existing and proposed roads, driveways, and trails.

(I) Location and size of existing and proposed structures.

(J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting.

(K) Location and depth of all proposed grading and ditching.

(k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale.

(l) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-81-630.

(m) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans.

(n) The signature of the applicant and property owner or a statement from the property owner indicating that he is aware of the application being made on his property.

(o) The signature of the property owner on a statement that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application.

(6) Applications for the following uses or developments shall include additional information as required by the appropriate guidelines in Commission Rule 350-81 or by the Executive Director:

(a) In the General Management Area, for all buildings visible from key viewing areas, pursuant to 350-81-520 (2)(n).

(b) In the General Management Area, production and/or development of mineral resources and expansion of existing quarries pursuant to 350-81-520 (1)(f), (2)(o), and (2)(bb).

(c) A grading plan that complies with the requirements of 350-81-520 (a)(aa) is required for the following:

(A) In the General Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes between 10 and 30 percent shall include a grading plan;

(B) All proposed structural development on sites visible from key viewing areas and involving more than 200 cubic yards of grading, regardless of slope; and

(C) In the Special Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes greater than 10 percent (except trails) shall include a grading plan.

(d) In the General Management Area, vegetation management projects in public rights of way along Scenic Travel Corridors, pursuant to 350-81-520 (4)(d).

(e) Large-scale uses as defined by guideline 350-81-540 (1)(c)(C) shall include reconnaissance survey reports, pursuant to 350-81-540 (1)(c)(F), and (G).

(f) Proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings that are 50 years old or older, pursuant to 350-81-540 (1)(c)(H)(iii).

(g) In the General Management Area, new uses located in, or providing recreational access to the Columbia River or its fishbearing tributaries, pursuant to 350-81-084 (1)(a)(A).

(h) In the General Management Area, any review use in a wetland or within a wetland buffer zone, pursuant to 350-81-560 (1)(b).

(i) In the General Management Area, any review use in a stream, pond, lake, or within their buffer zones, pursuant to 350-81-570 (1)(b).

(j) In the General Management Area, any review use within 1000 feet of a sensitive wildlife area or site, pursuant to 350-81-580 (1)(b). Large-scale uses as defined by 350-81-580(2) shall also include field survey information, pursuant to 350-81-580 (2)(e).

(k) In the General Management Area, any review use within 1000 feet of a sensitive plant, pursuant to 350-81-590 (1)(b). Large-scale uses as defined by 350-81-590(2) shall also include field survey information, pursuant to Commission Rule 350-81-590 (2)(e).

(l) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, pursuant to 350-81-190 (1)(h), and if applicable, 350-81-190 (1)(i).

(m) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling not in conjunction with agricultural use, pursuant to Commission Rule 350-81-190 (1)(q).

(n) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative, pursuant to Commission Rule 350-81-190 (1)(k).

(o) In the General Management Area, on lands designated Large-Woodland, a single-family dwelling, pursuant to 350-81-270 (1)(a).

(p) In the Special Management Area, on lands designated Forest, a single-family dwelling, pursuant to 350-81-270 (2)(j).

(q) In the Special Management Area, on lands designated Forest, clearing trees for new agricultural use, pursuant to 350-81-270 (2)(x).

(r) In the Special Management Area, on lands designated Forest, forest practices, pursuant to 350-81-270 (2)(y).

(s) In the Special Management Area, on lands designated Open Space, any new use or development, pursuant to 350-81-340(4).

(t) In the General Management Area, on lands designated Agriculture-Special, a single-family dwelling pursuant to 350-81-232 (1)(g).

(u) In the Special Management Area, on lands designated Agriculture, a single-family dwelling necessary and accessory to agricultural use, pursuant to 350-81-190 (2)(c).

(v) In the Special Management Area, on lands designated Agriculture, farm labor housing and agricultural buildings, pursuant to 350-81-190 (2)(d).

(w) In the General Management Area, on lands designated Small Woodland, a single-family dwelling pursuant to 350-81-270 (1)(b).

(x) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Wood-

land, a single-family dwelling in conjunction with agricultural use pursuant to 350-81-270 (1)(c).

(y) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, agricultural labor housing, pursuant to 350-81-270 (1)(o).

(z) In the General Management Area, on lands designated Agriculture-Special, new livestock grazing, new fences, livestock watering facilities, and corrals; or soil, water, and vegetation conservation activities, pursuant to 350-81-240.

(aa) In the General Management Area and Special Management Area, agricultural buildings, pursuant to 350-81-090(2).

(bb) Other uses as deemed necessary by the Executive Director.

(7) Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission.

### **350-81-034. Pre-Application Conference.**

An applicant may request a pre-application conference prior to submitting an application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of Commission Rule 350-81, to discuss the principle elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action.

### **350-81-036. Acceptance of Application**

Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness. The Executive Director shall accept a complete application within 14 days of receipt of the application.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application.

(2) No application for a proposed use, which is explicitly prohibited by this ordinance, shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Executive Director, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.

### **350-81-038. Notice of Development Review**

(1) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(a) The name of the applicant;

(b) The general and specific location of the subject property;

(c) A brief description of the proposed action;

(d) The deadline for rendering a decision; and

(e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(3) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(4) The notice shall be mailed to:

(a) The Forest Service, the applicable state, the four Indian tribal governments, and the applicable county and/or city; and

(b) Owners of property within a radius of the subject parcel(s) as determined by 350-81-630; and

(c) Other agencies and interested parties which request a notice or which the Executive Director determines should be notified.

(5) The notice shall be posted at the Commission and shall be sent to the Forest Service offices, and the applicable county or city planning office(s) and libraries.

(6) For all development, notice shall be published in a newspaper of general circulation nearest to the site of the proposed action.

(7) A copy of the notice shall be filed in the records of the Commission.

#### **350-81-040. Comment Period**

Interested persons shall have 21 days from the date which the notice is sent to submit written comments to the Executive Director relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-81:

(1) Based on comments received and other applicable information, the Executive Director shall determine if a wild-life management plan pursuant to 350-81-580(5), or a rare plant protection and rehabilitation plan pursuant to Commission Rule 350-81-590(5) is required.

(2) For proposed uses or developments where a cultural resources survey (reconnaissance or historic) is required and where the Commission is performing the survey, the survey shall be completed by the close of the comment period. Upon receipt of the completed survey, the Executive Director shall forward the survey to the applicable State Historic Preservation Officer, and the four Indian tribal governments pursuant to 350-81-540 (1)(b) and (2)(b)(A).

(3) The State Historic Preservation Officers and the four Indian tribal governments shall have 30 days to submit comments on the cultural resources survey. Based on the survey results, comments received, and other applicable information, the Executive Director shall determine if an evaluation of significance pursuant to 350-81-540(3) is required.

#### **350-81-042. Decision of the Executive Director**

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-81-040; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-80.

(b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81 within 72 days after acceptance of the application except in one or more of the following situations:

(a) The applicant consents to an extension of time.

(b) The Executive Director determines that additional information is required pursuant to Commission Rule 350-81-040.

(c) The Executive Director determines that additional information is necessary to evaluate land use issues and the impacts of the proposed use to scenic, cultural, natural, and recreation resources.

(d) Unforeseen circumstances including, but not limited to, weather, illness, etc.

(4) The Executive Director shall mail a copy of the decision to the applicant, the Commission, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-81-040. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

#### **350-81-044. Expiration of Approvals**

(1) Notice Not Required: Expiration of any land use approval issued pursuant to this Management Plan shall be automatic. Failure to give notice of expiration shall not affect the expiration of a land use approval.

(2) Land Use Approvals without Structures: Any land use approval issued pursuant to this Management Plan for a use or development that does not include a structure shall expire two years after the date the land use approval was granted, unless the use or development was established according to all specifications and conditions of approval in the land use approval. For land divisions, "established" means the final deed or plat has been recorded with the county recorder or auditor.

(3) Land Use Approvals with Structures: Any land use approval issued pursuant to this Management Plan for a use or development that includes a structure shall expire as follows:

(a) When construction has not commenced within two years of the date the land use approval was granted, or

(b) When the structure has not been completed within two years of the date of commencement of construction.

(4) Commencement of Construction: As used in subsection 3(a) above, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.

(5) Completion of Structure: As used in subsection 3(b) above, completion of the structure shall mean (1) completion of the exterior surface(s) of the structure and (2) compliance with all conditions of approval in the land use approval.

(6) Extension of Validity of Land Use Approvals: A request for extension of the time frames in subsections 2, 3(a) or 3(b), above, shall be submitted in writing before the applicable expiration date.

(a) A reviewing agency may grant one 12-month extension to the validity of a land use approval if it determines that events beyond the control of the applicant prevented commencement of the use or development (applicable to section 2 above) or commencement of construction (applicable to subsection 3(a) above) within the original two-year time frame.

(b) An agency may also grant one 12-month extension if it determines that events beyond the control of the applicant prevented completion of the structure (applicable to subsection 3(b) above) within the original two-year time frame.

(c) A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.

(d) Approval or denial of a request for extension shall be considered an administrative decision.

(7) Vested Rights: The laws of the states of Oregon and Washington concerning vested rights shall not apply in the National Scenic Area. A person has a vested right for as long as the land use approval does not expire.

### **350-81-046. Changes or Alterations to an Approved Action**

Any change to a development action approved by the Executive Director pursuant to this rule shall be processed as new action, except that the Executive Director may approve minor changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-81 and the findings and conclusions for the original action. If the Executive Director approves a minor change, the Director shall notify all of the parties that would have standing to appeal the change, including the applicant, the Forest Service, the four Indian tribal governments, the county planning department, and anyone who sub-

mitted comments during the comment period on the original land use application. The change itself (not the original decision) would be subject to appeal under the same time frames applicable to the original decision.

### **Expedited Development Review Process**

#### **350-81-050. Development Eligible for Expedited Review**

(1) The following developments may be reviewed using the expedited development review process, provided they comply with the resource protection and procedural guidelines contained in this section.

(a) Except in Open Space, accessory structures between 60 and 200 square feet in area and 10 feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.

(b) Additions and covered decks for existing buildings, provided the existing building is at least 500 square feet in area and the addition or covered deck is no larger than 200 square feet in area and no taller than the height of the existing building. Only one addition and one covered deck per parcel may be allowed under this guideline, regardless of whether the parcel already includes an addition or covered deck.

(c) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length.

(d) Wire-strand fences other than those allowed outright, provided the fence complies with 350-81-580(6) if it is inside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency.

(e) In the General Management Area, woven-wire fences for agricultural use that would enclose 80 acres or less.

(f) Decks that are: (1) uncovered; (2) attached and accessory to existing dwellings; and (3) 500 square feet or less in area and 30 inches or less in height above existing grade.

(g) Road closure gates.

(h) Signs, other than those allowed outright.

(i) Outdoor lights.

(j) Air, weather, water and other similar research and monitoring facilities, provided the facilities are attached to existing structures or are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(k) Lot line adjustments in the General Management Area that would not result in the potential to create additional parcels through subsequent land divisions, subject to 350-81-126, except all lot line adjustments for parcels designated Open Space, Public Recreation, or Commercial Recreation shall be reviewed through the full development review process.

(l) Lot line adjustments in the Special Management Area.

(m) Demolition of structures that are less than 50 years old, including wells, septic tanks and fuel tanks.

(n) Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.

(o) Trail reconstruction involving up to 1,000 feet of trail re-route.

(p) The following transportation facilities, provided they are not a part of larger construction or reconstruction projects (which shall be reviewed as a whole):

(A) New guardrails and guardrail ends, other than those allowed outright, and new wire-strand and woven-wire access control fences. This category does not include jersey barriers.

(B) New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to 120 square feet in size and less than or equal to 12 feet in height. This category does not include signs.

(C) Pave existing dirt and gravel roads, provided the activity does not increase the width of the road or disturb the toe of adjacent embankments, slopes or cut banks.

(D) New weather, air, traffic or other monitoring equipment attached to existing structures or that are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(q) The following underground utility facilities:

(A) New underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no ditch for linear facilities would be more than 36 inches wide and (2) no excavation for non-linear facilities would exceed 20 cubic yards.

(r) The following aboveground and overhead utility facilities:

(A) Modify existing aboveground and overhead utility facilities or develop new aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the development would be less than or equal to 120 square feet in area and less than or equal to 12 feet in height.

(B) Replace existing aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the replacement facilities would be in the same location as and no more than 15 percent larger than the physical size of the existing facilities.

(C) New antennas and associated support structures necessary for public service on existing wireless communication poles and towers other than those allowed outright, provided the size is the minimum necessary to provide the service.

(s) Replace an existing mobile home in a mobile home space within a mobile home park, provided: (1) the mobile home to be replaced, the mobile home space and the mobile home park shall be existing, lawful uses according to the definition of *existing use or structure* and 350-81-082 (1) through (4); (2) the replacement mobile home shall be in the same location as the mobile home to be replaced; (3) the height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced, and (4) the mass and footprint of the replacement mobile home shall be no more than 100 percent greater than a single-wide mobile home to be replaced or no more than 25 percent greater than a double-wide mobile home to be replaced.

(t) Retaining walls accessory to existing dwellings less than or equal to 2 feet in height and less than or equal to 100 feet in length.

(u) In the Special Management Area, wind machines for frost control in conjunction with agricultural use.

### **350-81-052. Resource and Treaty Rights Protections Guidelines**

(1) Proposed developments reviewed using the expedited review process shall comply with the following resource protection guidelines:

(a) Scenic

(A) In the General Management Area, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.

(B) The colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. This guideline shall not apply to additions, which may match the color of existing buildings.

(C) Structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.

(D) Outdoor lights shall be directed downward and sited, hooded, and shielded such that they are not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(E) Signs shall comply with 350-81-112.

(F) Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and/or designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).

(b) Cultural

(A) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey, pursuant to 350-81-540 (1)(c)(A)(ii) or historic survey, pursuant to 350-81-540 (1)(c)(B).

(B) The GMA guidelines that protect cultural resources and human remains discovered during construction [350-81-540 (6) and (7)] shall be applied as conditions of approval for all development approved under the expedited development review process.

(c) Recreation

(A) The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

(d) Natural

(A) Wetlands, Streams, Rivers, Ponds, and Lakes

(i) The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

(B) Sensitive Wildlife and Sensitive Plants

(i) The development meets one of the following:

(I) The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic

species, deer winter range, and turkey habitat) and known sensitive plants; or

(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained; or

(III) For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines (1) the sensitive wildlife area or site is not active or (2) the proposed development would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.

(ii) Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or sensitive plants.

(2) Proposed developments reviewed using the expedited review process shall comply with the following treaty rights protection guidelines:

(a) Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.

(b) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

(c) Except as provided in 2.b above, the GMA and SMA treaty rights and consultation goals, policies and guidelines in Chapter 3, Section IV of the Management Plan shall not apply to proposed developments reviewed under the expedited review process.

### **350-81-054. Procedures for Expedited Review Process**

#### (1) Applications

(a) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-054.

(b) The Executive Director shall accept and review the application pursuant to 350-81-054 for consistency with the appropriate guidelines of this rule.

(c) The Commission may charge a fee for review of applications. The Executive Director shall set the fee, which shall not exceed the average cost to the Commission of reviewing applications.

(d) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices for which this ordinance is effective and the Forest Service.

(e) Applications for uses eligible for expedited review shall include the information required for review uses listed in 350-81-032(5). They shall also include elevation drawings

if the proposed development would be visible from a key viewing area. The drawing shall show natural grade and finished grade.

#### (2) Acceptance of Application

(a) Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness. The Executive Director shall accept a complete application within 14 days of receipt of the application.

(b) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application.

#### (3) Notice of Development Review

(a) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(A) The name of the applicant;

(B) The general and specific location of the subject property;

(C) A brief description of the proposed action;

(D) The deadline for rendering a decision; and

(E) The deadline for filing comments on the proposed action.

(b) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(c) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(d) The notice shall be mailed to the Forest Service, the four Indian tribal governments, applicable county or city planning office(s), libraries and other agencies and interested parties that request a notice or that the Executive Director determines should be notified.

(e) A copy of the notice shall be filed in the records of the Commission.

(4) Comment Period: Any interested person or party shall submit written comments within 10 days from the date a notice is sent.

#### (5) Written Decision

(a) In making a decision on a proposed use or development the Executive Director shall:

(A) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(B) Consider information submitted by the applicant and all other relevant information available;

(C) Consider all comments submitted pursuant to 350-81-032(3); and

(D) Solicit and consider the comments of the Forest Service.

(b) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(A) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(B) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(c) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81 within 30 days after acceptance of the application.

(d) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) Notice of Decision and Opportunity to Appeal

(a) The Executive Director shall send a copy of a decision issued under the expedited review process to the four Indian tribal governments, the Forest Service, and landowners within 200 feet of the perimeter of the subject parcel.

(b) Any person shall be allowed to appeal a decision issued under the expedited review process in accordance with Commission Rule 350-70.

(7) Expiration of Approvals. Approvals issued under the expedited review process shall expire in accordance with the standards for expiration of approvals for review uses (Commission Rule 350-81-044, above).

(8) Changes or Alterations to an Approved Action. Changes or alterations to an approval issued under the expedited review process shall be made in accordance with the standards for changes or alterations to approved actions for review uses (Commission Rule 350-81-046, above).

### Emergency/Disaster Response Actions

#### **350-81-060. Emergency/Disaster Response Actions**

(1) General Guidelines

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-81-020(54), are allowed in all GMA/SMA land use designations, subject to the notification requirements in "Notification Requirements" (subsection 2, below).

(b) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

(c) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life property, public services or the environment, an extension of no more than two years may be granted by the Executive Director or the Forest Service for federal agency actions.

(d) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

(e) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

(2) Notification Requirements

(a) Actions taken in response to an emergency/disaster event, as defined, are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

(A) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.

(B) Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.

(C) Notification shall be furnished to the Executive Director or the Forest Service for federal agency actions.

(D) At a minimum, the following information shall be required at the time of notification:

(i) Nature of emergency/disaster event.

(ii) Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).

(iii) Location of emergency/disaster response activities.

(E) Estimated start and duration of emergency/disaster response activities.

(i) Contact person and phone number for the parties conducting emergency/disaster response actions.

(F) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

(b) Upon notification of an emergency/disaster response action, the Executive Director, or Forest Service shall, as soon as possible:

(A) Review its natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;

(B) Notify the Oregon or Washington Department of Fish and Wildlife of all noticed emergency/disaster response

actions, to provide that agency an opportunity to consult with responding agencies during the event, and;

(C) Notify the Forest Service, the Oregon Historic Preservation Office or the Office of Washington Office of Archeology and Historic Preservation, and the tribal governments of all emergency/disaster response activities. The Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

(c) Upon notification of a response action, the Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide on-site advice to minimize impacts to resources from emergency/disaster response actions.

(3) Post-Emergency/Disaster Response Development Review Application Requirements

(a) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Executive Director, or Forest Service for federal agency actions. In the case of an event with multiple responding parties, the party providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and not more than two (2) extensions shall be granted.

(b) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. The terms "development activities" and "development" include the disposal of any spoil materials associated with an emergency/disaster response action. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an application for those actions.

(c) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).

(d) Applications shall include the following information:

(A) Applicant's name and address.

(B) Location of emergency/disaster response.

(C) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.

(D) A map of the project area drawn to scale, at a scale of 1 inch = 200 feet or a scale providing greater detail. The map shall include:

(i) North arrow and scale.

(ii) Boundaries, dimensions and size of subject parcel(s).

(iii) Bodies of water, watercourses, and significant landforms.

(iv) Existing roads and structures.

(v) New structures placed and any vegetation removal, excavation or grading resulting from the response actions.

(E) An exception to the scale requirements in subsection (3)(d)(D) above may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1 inch = 200 feet or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

(e) Emergency/disaster response review uses may be allowed pursuant to a process that provides at minimum the following:

(A) Notice of the application to landowners within 200 feet of the perimeter of the subject parcel, the Forest Service, Gorge Commission, four tribal governments and interested parties.

(B) A written decision with findings of fact and conclusions of law.

(C) An opportunity to request a hearing.

(4) Post-Emergency/Disaster Response Development Review

Actions taken in all land use designations within the GMA/SMA that are in response to an emergency/disaster event, as defined, shall be reviewed for compliance with the following guidelines.

(a) Scenic Resources

(A) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. Such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in areas exempted from visual subordination requirements in 350-81-520 (3)(k).

(B) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

(C) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species, or species commonly found within the applicable landscape setting, to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one-year requirement may be granted upon demonstration of just cause, with an extension up to one year.

(D) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.

(E) Additions to existing structures, resulting from an emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in

their landscape setting as seen from key viewing areas to the greatest extent practicable.

(F) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA,

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance, or

(III) (Re)contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

(ii) The Executive Director shall decide whether an applicant removes the spoil materials [350-81-060 (4)(a)(F)(i)(I)], deposits the spoil materials [subsection (4)(a)(F)(i)(II)], or (re)contours the spoils materials [subsection (4)(a)(F)(i)(III)]. The applicant does not make this decision.

(iii) The Executive Director shall select the action in 350-81-060 (4)(a)(F)(i) that, to the greatest extent practicable, best complies with the policies and guidelines in the Management Plan that protect scenic, cultural, recreation, and natural resources.

(iv) Disposal sites created according to 350-81-060 (4)(a)(F)(i)(III) shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

(G) In the Special Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA, or

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance within two years of the emergency.

(ii) After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.

(iii) All grading (i.e., recontouring) shall be completed within 30 days after the spoils materials are removed.

(iv) Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(v) All revegetation shall take place within one (1) year of the date an applicant completes the grading. This provision shall take effect two years after the date of Management Plan concurrence by the U.S. Secretary of Agriculture, or approval of a disposal site, whichever comes first.

(b) Cultural Resources and Treaty Rights

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect tribal treaty rights.

(B) The USDA Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Executive Director.

(i) Reconnaissance surveys shall be conducted by the USDA Forest Service and comply with the standards in 350-81-540 (1)(D). Reconnaissance survey reports shall comply with the standards in 350-81-540 (1)(E).

(ii) Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.

(C) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the tribal governments shall be notified by the Executive Director when (1) a reconnaissance survey is required or (2) cultural resources exist in the project area. Notices shall include a site plan. Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them.

(D) When written comments are submitted in compliance with 350-81-060 (4)(b)(C) above, the project applicant shall offer to meet within five calendar days with the interested persons. The five day consultation period may be extended upon agreement between the project applicant and the interested persons. A report shall be prepared by the Executive Director following the consultation meeting. Consultation meetings and reports shall comply with the standards in 350-81-540 (2)(a), and 084 (1)(a) and (b).

(E) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources. The survey and evaluation shall be documented in a report that generally follows the standards in 350-81-540 (1)(a)(G) and 350-81-540 (3)(a).

(F) A mitigation plan shall be prepared by the project applicant if the affected cultural resources are significant. The mitigation plan shall be prepared according to the information, consultation, and report guidelines in 350-81-540(5).

(G) The Executive Director shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the final decision.

(H) The Executive Director shall make a final decision on whether the emergency/disaster response actions are consistent with the applicable cultural resource goals, policies, and guidelines. If the final decision contradicts the comments submitted by the SHPO, or those submitted by a tribal

government regarding treaty rights, the Executive Director shall justify how the opposing conclusion was reached.

(I) The cultural resource protection process may conclude when it has been determined that tribal treaty rights have not been affected and one of the following conditions exists:

(i) The emergency/disaster response action does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.

(ii) The emergency/disaster response action avoided cultural resources that exist in the project area.

(iii) Adequate mitigation measures to affected cultural resources have been developed and will be implemented.

(iv) A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:

(I) The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(II) The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* [U.S. Department of the Interior 1990] and *The Secretary of the Interior's Standards for Historic Preservation Projects* [U.S. Department of the Interior 1983].

(c) Natural Resources

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.

(B) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in 350-81-560 through 600.

(C) Wetlands, Streams, Ponds, Lakes, Riparian Areas

(i) Emergency/disaster response actions occurring within a buffer zone of wetlands, streams, pond, lakes or riparian areas shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. These areas are also referred to in this section as aquatic areas. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these aquatic areas or their bigger zones. State biologists shall respond within 15 days of the date the application is mailed.

(ii) When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:

(I) All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing contours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes or riparian areas.

(II) Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.

(iii) Impacts to wetlands, streams, ponds, lakes and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service natural resource advisor (as available) in conclusion with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final order and the aquatic area protection process may conclude.

(v) Unless addressed through subsection (4)(c)(C)(iv) above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the standards in 350-81-570 (8)(a) and (b). Rehabilitation plans shall also satisfy the following:

(I) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.

(II) Planting plans shall be included that specify native plant species to be used, specimen quantities and plant locations.

(III) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

(D) Wildlife Habitat

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive wildlife area or site, shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. State wildlife biologists will help determine if emergency/disaster response actions have affected or have a potential to affect a sensitive wildlife area or site.

(ii) Site plans for emergency/disaster response sites shall be submitted by the Executive Director to the Oregon or Washington Department of Fish and Wildlife for review as prescribed in 350-81-580 (4)(a) and (b). The wildlife agency shall respond within 15 days of the date the application is mailed.

(iii) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines (1) the sensitive wildlife area or site was not active, or (2) the emergency/disaster response did not compromise the integrity of the wildlife area or site or occurred at a time when wildlife species are not sensitive to disturbance.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had minor effects on the wildlife area or

site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a Forest Service natural resource advisor (as available) in consultation with the state wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife protection process may conclude.

(v) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had adverse effect on a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management Plan. Wildlife Management Plans shall comply with standards in 350-81-580(5). Upon completion of the Wildlife Management Plan, the Executive Director shall:

(I) Submit a copy of the Wildlife Management Plan to the state wildlife agency for review. The state wildlife agency will have 15 days from the date that a plan is mailed to submit written comments to the Executive Director;

(II) Record any written comments submitted by the state wildlife agency in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

(III) Require the project applicant to revise the Wildlife Management Plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(E) Deer and Elk Winter Range

(i) Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall comply with the standards in 350-81-580(6).

(F) Rare Plants

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive plant, shall be reviewed by the Oregon or Washington Natural Heritage Program. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.

(ii) Site plans for emergency/disaster response sites shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. State natural heritage staff will, within 15 days from the date the application is mailed, identify the location of the affected plants and delineate a 200 foot buffer zone on the applicant's site plan.

(iii) The rare plant protection process may conclude if the Executive Director, in consultation with the state natural heritage program, determines that emergency/disaster response activities occurred outside of a rare plant buffer zone.

(iv) If the Executive Director, in consultation with the state natural heritage program, determines that the emergency/disaster response activities had minor effects on rare plants or the rare plant buffer zone, a letter shall be sent to the project applicant that describes the effects and measure that need to be taken to eliminate them. The state natural heritage

staff, or a Forest Service natural resources advisor (as available) in consultation with the state natural heritage staff, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision order and the rare plant protection process may conclude.

(v) If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse affects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan, that meets the standards in 350-81-590(5).

(vi) The Executive Director shall submit a copy of all protection and rehabilitation plans to the state heritage program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record any written comments submitted by the state natural heritage program in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the state natural heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(vii) The Executive Director shall require the project applicant to revise the protection and rehabilitation plan as necessary to ensure that the proposed use would not adversely affect a rare plant site.

(d) Recreational Resources

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.

(B) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

(5) Post-Emergency Construction

(a) The following review uses are allowed in all land use designations in accordance with 350-81-030 through 046, 350-81-070 through 126 (as applicable), and 350-81-520 through 630.

(A) Placement of structures necessary for continued public safety and the protection of private property and essential public services damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use applications shall be submitted within 12 months following an emergency/disaster event.

## General Policies and Guidelines

### 350-81-070. Exempt Land Uses and Activities

(1) These policies repeat and respond to direction in Section 17 of the Scenic Area Act that the Management Plan not affect certain uses that take place in the Scenic Area.

(a) The Gorge Commission and Forest Service shall, in the Management Plan and in the implementation actions, pro-

fect treaty and other rights of Indian tribes. Nothing plan may interfere with the exercise of those rights.

(b) Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu" fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the exemption shall commence upon selection by the U.S. Army Corps of Engineers.

(c) Rights to surface or ground water shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

(d) Water transportation activities on the Columbia River or its tributaries shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. The term "activities" includes those facilities necessary for navigation.

(e) The operation, maintenance, and modification of existing transmission facilities of the Bonneville Power Administration shall be exempt from regulation under the Management Plan or land use ordinances adopted by the counties or the Gorge Commission pursuant to the Scenic Area Act.

(f) Neither the Management Plan nor land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act may affect laws, rules, or regulations pertaining to hunting or fishing.

(g) Neither the Forest Service nor the Gorge Commission may establish any buffer zones or protective perimeters outside the boundaries of the Scenic Area.

(h) The operation, maintenance, and improvement of navigation facilities at Bonneville Dam pursuant to federal law, except for the offsite disposal of excavation material, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission under the Scenic Area Act.

(i) In the GMA, the rights and responsibilities of non-federal timber landowners under the Forest Practices Acts of Washington and Oregon, or under county regulations that supersede those acts, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

### **350-81-072. Prohibited Land Uses and Activities**

(1) The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

(a) Solid waste disposal sites or sanitary landfills within the Special Management Area.

(b) New industrial development in the Scenic Area outside of the Urban Areas.

### **350-81-074. Uses Allowed Outright**

(1) All Land Use Designations Except Open Space and Agriculture—Special

(a) The following uses may be allowed without review in all GMA and SMA land use designations, except GMA and SMA Open Space Agriculture—Special:

(A) In the General Management Area, agricultural uses except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation. For this guideline, cultivation and vegetation removal may be allowed in conjunction with a home garden.

(B) In the Special Management Area, agricultural uses within previously disturbed and regularly worked fields or areas.

(C) Forest practices in the General Management Area that do not violate conditions of approval for other approved uses and developments.

(D) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(E) Accessory structures 60 square feet or less in area and 10 feet or less in height, unless within the buffer zone of a wetland, stream, pond, lake or riparian area. This category does not include fences, outdoor lights, retaining walls, flagpoles, transportation facilities, or utility facilities.

(F) Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses less than or equal to 500 feet in length and less than or equal to 10 feet in height that are accessory to an existing dwelling, provided woven-wire fences are brown or black if visible from key viewing areas. Height is measured from the ground to the top wire.

(G) Wire-strand fences less than or equal to 48 inches in height that are outside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency. Height is measured from the ground to the top wire. This category does not include fences associated with transportation facilities or utility facilities.

(H) The following transportation facilities:

(i) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(ii) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are (1) the same location and size as the exist-

ing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(iii) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(iv) Permanent public regulatory, guide, and warning signs, except those excluded below, provided (1) the signs comply with the *Manual for Uniform Traffic Control Devices* and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(v) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(vi) New guardrails and guardrail ends, provided the structures are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors." This category does not include jersey barriers.

(vii) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(viii) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(ix) Resurface or overlay existing paved roads, provided the activity does not (1) increase the width of a road, (2) disturb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(x) Apply dust abatement products to non-paved road surfaces.

(xi) Grade and gravel existing road shoulders, provided the activity does not (1) increase the width of a road, (2) dis-

turb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(xii) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(I) The following underground utility facilities:

(i) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(ii) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no excavation would extend more than 12 inches beyond the depth and extent of the original excavation, (2) no ditch for linear facilities would be more than 24 inches wide, (3) no excavation for non-linear facilities would exceed 10 cubic yards, and (4) no recorded archaeological site is located within 500 feet of the development.

To comply with (4), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

J. The following aboveground and overhead utility facilities:

(i) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have (1) the same location and size as the existing facilities and (2) the same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(ii) Replace existing utility poles, provided the replacement poles are (1) located within 5 feet of the original poles, (2) no more than 5 feet taller and 6 inches wider than the original poles, and (3) constructed of natural wood, weathering steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iii) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar

equipment, provided all such structures are on existing utility poles or towers.

K. Flagpoles that are accessory to the principal building on a parcel, provided the height of the flagpole is less than or equal to the height of the highest ridgeline or parapet of the principal building.

L. The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet in the General Management Area and 2 square feet in the Special Management Area.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

M. In the General Management Area, wind machines for frost control in conjunction with agricultural use.

(2) GMA and SMA Open Space

(a) The following uses may be allowed without review in GMA and SMA Open Space:

(A) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(B) The following transportation facilities:

(i) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(ii) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are (1) the same location and size as the exist-

ing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(iii) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(iv) Permanent public regulatory, guide, and warning signs, except those excluded below, provided (1) the signs comply with the *Manual for Uniform Traffic Control Devices* and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(v) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(vi) New guardrails and guardrail ends, provided the structures are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors." This category does not include jersey barriers.

(vii) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(viii) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(ix) Resurface or overlay existing paved roads, provided the activity does not (1) increase the width of a road, (2) disturb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(x) Apply dust abatement products to non-paved road surfaces.

(xi) Grade and gravel existing road shoulders, provided the activity does not (1) increase the width of a road, (2) dis-

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turb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(xii) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(C) The following underground utility facilities:

(i) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(ii) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no excavation would extend more than 12 inches beyond the depth and extent of the original excavation, (2) no ditch for linear facilities would be more than 24 inches wide, (3) no excavation for non-linear facilities would exceed 10 cubic yards, and (4) no recorded archaeological site is located within 500 feet of the development.

To comply with (4), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(D) The following aboveground and overhead utility facilities:

(i) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have (1) the same location and size as the existing facilities and (2) the same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(ii) Replace existing utility poles, provided the replacement poles are (1) located within 5 feet of the original poles, (2) no more than 5 feet taller and 6 inches wider than the original poles, and (3) constructed of natural wood, weathering steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iii) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar

equipment, provided all such structures are on existing utility poles or towers.

(E) The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

**350-81-076. Agricultural Buffer Zones in the General Management Area**

(1) All new buildings in the GMA shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands that are designated Large-Scale or Small-Scale Agriculture and are currently used for or are suitable for agricultural use:

SETBACK GUIDELINES			
Type of Buffer (Size in Feet)			
Type of Agriculture	Open or Fenced	Natural or Created Vegetation Barrier	8-foot Berm or Terrain Barrier
Orchards	250	100	75
Row crops/Vegetables	300	100	75
Livestock grazing	100	15	20
Pasture, haying			
Grains	200	75	50
Berries, vineyards	150	50	30
Other	100	50	30

(2) Earth berms may be used to satisfy, in part, the setback guidelines. The berm shall be a minimum of 8 feet in height, and contoured at 3:1 slopes to look natural. Shrubs, trees, and/or grasses shall be employed on the berm to control erosion and achieve a finished height of 15 feet.

(3) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback guidelines. Trees shall be at least 6 feet high when planted and reach an ultimate height of at least 15 feet. The vegetation screen shall be

planted along the appropriate parcel line(s), and shall be continuous.

(4) The necessary berming and/or planting shall be completed during the first phase of development and maintained in good condition.

(5) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.

(6) A local government may grant a variance to the buffer guidelines upon a demonstration that the variance guidelines in 350-81-078 have been satisfied.

### **350-81-078. Variances from Setbacks and Buffers**

(1) In the GMA, when setbacks or buffers specified in the guidelines for the protection of scenic, cultural, natural, recreation, agricultural, or forestry resources overlap or conflict, the setbacks or buffers may be varied upon a demonstration that both of the following conditions exist:

(a) A setback or buffer specified in Commission Rule 350-81 to protect one resource would cause the proposed use to fall within a setback or buffer specified in the plan to protect another resource.

(b) Variation from the specified setbacks or buffer would, on balance, best achieve the protection of the affected resources.

(2) In the GMA, a setback or buffer specified in the guidelines for protection of scenic, cultural, natural, recreation, agricultural, or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that all of the following conditions exist:

(a) The land use designation otherwise authorizes a residence on the tract.

(b) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer.

(c) The variance from the specified setback or buffer is the minimum necessary to allow the residence.

(3) In the GMA, the Executive Director may grant a variance to the setback and buffer requirements contained in 350-81-610 upon a finding that all of the following conditions exist:

(a) The proposed project is a public-use, resource-based recreation facility providing or supporting either recreational access to the Columbia River and its tributaries, or recreational opportunities associated with a scenic travel corridor.

(b) All reasonable measures to redesign the proposed project to comply with required setbacks and buffers have been explored, and application of those setbacks and buffers would prohibit a viable recreation use of the site as proposed.

(c) Resource impacts have been mitigated to less than adverse levels through design provisions and mitigation measures.

(d) The variance is the minimum necessary to accommodate the use.

(4) In the GMA and SMA, the Executive Director may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that all of the following conditions exist:

(a) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high

and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from Scenic Area recreation demand studies shall be relied upon to meet this criterion in the absence of current applicable studies.

(b) The proposed use is dependent on resources present at the site.

(c) Reasonable alternative sites offering similar opportunities, including those in nearby Urban Areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(d) The proposed use is consistent with the goals, objectives, and policies in this chapter.

(e) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural, or cultural resources and adjacent land uses.

(f) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

### **350-81-080. Applying New Less-Stringent Regulations to Development Approved Under Prior Scenic Area Regulations**

(1) A landowner may submit a land use application to alter conditions of approval for an existing use or structure approved under prior Scenic Area regulations (e.g., *Columbia River Gorge National Scenic Area Final Interim Guidelines*, original *Management Plan*), subject to the following standards:

(a) The applicant shall apply for the same development that was reviewed in the original decision.

(b) The development shall remain in its current location.

(c) The agency that currently has jurisdiction over the applicant's property shall review the application and send notice of the application to agencies and other parties entitled to receive notice under the current rules.

(d) The agency shall review the entire development to ensure that it would fully comply with all the current guidelines (i.e., land use, treaty rights, scenic resources, cultural resources, recreation resources and natural resources).

(e) The agency shall issue a new decision that supersedes the original decision.

(f) The new decision may remove or revise original conditions of approval or add new conditions of approval to ensure full compliance with all the current guidelines.

### **350-81-082. Existing Uses and Discontinued Uses**

(1) Right to Continue Existing Uses and Structures

(a) Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.

(2) Replacement of Existing Structures Not Damaged or Destroyed by Disaster

(a) Except as provided in 350-81-082(3), an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original

structure was discontinued. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure.

(B) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.

(C) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

(D) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

### (3) Replacement of Existing Structures Damaged or Destroyed by Disaster

(a) An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure. An existing mobile home may be replaced with a framed residence.

(B) The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the following conditions exist:

(i) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.

(ii) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.

(iii) The new building site complies with the cultural resources, natural resources, and treaty rights protection guidelines.

(C) The replacement structure shall be the same size and height as the original structure, provided:

(i) The footprint of the replacement structure may be up to 10 percent larger than the footprint of the original structure.

(ii) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code.

(D) The replacement structure shall only be subject to the following scenic resources standards:

(i) The replacement structure shall comply with the scenic resources guidelines regarding color and reflectivity. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(ii) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(iii) In the General Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, provided:

(I) Except as provided in 350-81-082 (3)(a)(D)(iii)(II), the percent of the replacement structure screened by vegetation as seen from key viewing areas shall not exceed the percent of the original structure that was screened by vegetation as seen from key viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation and deciduous vegetation shall be replaced with deciduous vegetation unless the applicant chooses to use all coniferous vegetation.

(II) In situations where the original structure was approved under Scenic Area regulations (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement structure screened by vegetation shall comply with any conditions of approval that required a landowner to preserve existing vegetation and/or plant and maintain new vegetation to screen the original structure as seen from key viewing areas.

(III) To help determine how much vegetation may be required under 350-81-082 (3)(a)(D)(iii)(I) and (II), land use applications shall include all available documentation (photographic or otherwise) on the amount and type of vegetation that screened the original structure from key viewing areas. At a minimum, development review decisions shall include findings that address the following:

(1) The percent of original structure facing each key viewing area that was screened by coniferous vegetation, for each key viewing area from which the structure was visible.

(2) The percent of original structure facing each key viewing area that was screened by deciduous vegetation, for each key viewing area from which the structure was visible.

(3) Elevation drawings showing the replacement structure and the amount of coniferous and deciduous vegetation that would screen the structure from key viewing areas in 10 years.

(IV) The height of any new trees shall not be required to exceed 5 feet.

(V) The time frame for achieving visual subordination shall be 10 years or less from the commencement of construction.

(iv) In the Special Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(I) The Scenic Resources Implementation Handbook shall be utilized to determine approvable species and minimum approvable sizes of new trees planted (based on average growth rates expected for approvable species).

(II) The height of any new trees shall not be required to exceed 5 feet.

(III) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.

(E) The replacement structure shall be subject to 350-81-082 (2)(a)(A) and (C) if it would not comply with 350-81-082 (3)(a)(B) and (C).

(F) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the two year time frame.

(4) Changes to Existing Uses and Structures

(a) Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-81.

(A) Expansion of Existing Commercial and Multifamily Residential Uses: In the SMA, existing commercial and multifamily residential uses may expand as necessary for successful operation on the dedicated site, subject to guidelines to minimize adverse effects on scenic, cultural, natural, and recreation resources. Expansion beyond the dedicated site shall be prohibited.

(B) Expansion of Existing Industrial Uses in the GMA: Existing industrial uses in the GMA may expand as necessary for successful operation on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(C) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

(D) Existing Development or Production of Mineral Resources in the GMA: In the GMA, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural, or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to land use ordinances under the Management Plan if any of the following conditions exist:

(i) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain that was merely leveled or cleared of vegetation.

(ii) The site has not maintained a required state permit.

(iii) The site has not operated legally within 5 years before October 15, 1991.

(E) Existing Development or Production of Mineral Resources in the SMA: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMA may continue if both of the following conditions exist:

(i) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMA.

(ii) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.

(5) Discontinuance of Existing Uses and Structures

(a) Except as provided in 350-81-082 (3)(a) and (3)(a)(F), any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(A) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(B) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

(6) Discontinued Uses and Structures:

(a) Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

**350-81-084. Indian Tribal Treaty Rights and Consultation**

(1) Indian Tribal Treaty Rights and Consultation in the General Management Area

(a) Tribal Government Notice

(A) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:

(i) The site plan map shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.

(ii) The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:

(I) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.

(II) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.

(III) List tribal ceremonial fishing seasons in the project vicinity.

(IV) Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

(B) Notices shall include a treaty rights protection plan if new uses may affect Indian treaty rights. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

(C) Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the Executive Director. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

(b) Tribal Government Consultation

(A) When substantive written comments are submitted to the Executive Director in a timely manner, the project applicant shall offer to meet with the Executive Director and the Indian tribal government that submitted comments within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the Indian tribal government.

Consultation meetings should provide an opportunity for the project application and tribal representatives to identify potential conflicts and explore options to eliminate them. The project applicant must demonstrate that the proposed use would not affect or modify treaty or other rights of any Indian tribe.

(B) Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe.

(C) The Executive Director shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Executive Director.

(c) Conclusion of the Treaty Rights Protection Process

(A) The Executive Director shall decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.

The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments. If the final decision contradicts the comments, recommendations, or concerns of Indian tribal governments, the Executive Director must justify how it reached an opposing conclusion.

(B) The treaty rights protection process may conclude if the Executive Director determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.

(C) A finding by the Executive Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

(2) Indian Tribal Treaty Rights and Consultation in the Special Management Area

(a) For new development and uses in the Special Management Area, the Forest Service shall determine effects on treaty rights and shall notify the Executive Director of the determination.

## Uses and Structures Allowed in Various Land Use Designations

### 350-81-090. Agricultural Buildings

(1) The size of proposed agricultural buildings shall not exceed the size needed to serve the current agricultural use and, if applicable, the proposed agricultural use.

(2) To satisfy 350-81-090(1), applicants shall submit the following information with their land use application:

(a) A description of the size and characteristics of current agricultural use.

(b) An agricultural plan for any proposed agricultural use that specifies agricultural use (e.g., crops, livestock, products), agricultural areas and acreages (e.g., fields, pastures, enclosures), agricultural structures (e.g., irrigation systems, wind machines, storage bins) and schedules (e.g., plowing, planting, grazing).

(c) A floor plan showing intended uses of the agricultural building (e.g., space for equipment, supplies, agricultural products, livestock).

### 350-81-092. Temporary Use - Hardship Dwelling

(1) A permit for the temporary placement of a mobile home may be granted under the following circumstances:

(a) A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.

(b) The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.

(c) The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural, and recreation resources.

(2) A permit may be issued for a 2-year period, subject to annual review for compliance with the provisions of this section and any other conditions of approval.

(3) Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.

(4) A new permit may be granted upon a finding that a family hardship continues to exist.

### 350-81-094. Sewer and Water Services

(1) Sewer lines may be extended from an Urban Area into a rural area to serve:

(a) Areas with a documented health hazard.

(b) Recreation uses open to the public, only upon a demonstration by the local government that there is no practicable alternative to providing service to the area. In such cases, the lines shall be engineered and sized solely to serve the defined area or use. Such lines shall not be relied upon as the sole justification for revision to an Urban Area boundary.

(2) New uses authorized in Commission Rule 350-81 may hook up to existing sewer and water lines in rural areas.

**350-81-096. Docks and Boathouses**

(1) New, private docks and boathouses serving only one family and one property shall be allowed, up to 120 square feet in size.

(2) New, private docks and boathouses serving more than one family and property shall be allowed, up to 200 square feet in size.

(3) Public docks open and available for public use shall be allowed.

(4) Boathouses may be allowed under 350-81-096 (1) and (2) only when accessory to a dwelling and associated with a navigable river or lake.

**350-81-098. Home Occupations and Cottage Industries**

(1) Home occupations and cottage industries may be established as authorized in specified land use designations consistent with the following guidelines:

(a) A home occupation may employ only residents of the home.

(b) A cottage industry may employ up to three outside employees.

(c) No more than 25 percent of the total actual living space of the dwelling may be used for the home occupation or cottage industry.

(d) No more than 500 square feet of an accessory structure may be used for a home occupation or cottage industry.

(e) There shall be no outside, visible evidence of the home occupation or cottage industry, including outside storage.

(f) Exterior structural alterations to the residence for the home occupation or cottage industry shall not be permitted. New structures shall not be constructed for the primary purpose of housing a home occupation or cottage industry.

(g) No retail sales may occur on the premises, except incidental sales at lodging establishments authorized in this chapter.

(h) One non-animated, non-illuminated sign, not exceeding 2 square feet in area, may be permitted on the subject structure or within the yard containing the home occupation or cottage industry.

(i) Parking not associated with residential use shall be screened so it is not visible from key viewing areas.

(j) In the General Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-81-098 and 350-81-100.

(k) In the Special Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-81-098 and 350-81-100, except 350-81-100 (1)(d).

**350-81-100. Bed and Breakfast Inns**

(1) Bed and breakfast inns may be established as authorized in specified land use designations, consistent with the following conditions:

(a) Guests may not occupy a facility for more than 14 consecutive days.

(b) One non-animated, non-illuminated sign, not exceeding 4 square feet in area, may be permitted on the structure or within the yard containing the structure.

(c) Parking areas shall be screened so they are not visible from key viewing areas.

(d) In the SMA, bed and breakfast inns associated with residential use shall be allowed only in structures that are included in, or eligible for inclusion in, the National Register of Historic Places.

**350-81-102. Small-Scale Fishing Support and Fish Processing Operations**

(1) Small-scale fishing support and fish processing operations in conjunction with a family-based commercial fishing business may be allowed on parcels designated GMA Residential, GMA Small Woodland, or GMA Small-Scale Agriculture, subject to the following conditions:

(a) The operation shall comply with 350-81-084(1). In addition, if the operation will be located on land designated Small Woodland, then it shall also comply with 350-81-300, and 350-81-310.

(b) The following fishing support activities may be allowed: maintenance, repair, and storage of boats, nets, fish totes and other commercial fishing equipment that is used in the family-based commercial fishing business; and garaging of fish hauling trucks, trailers and all other related equipment that is used in the family-based commercial fishing business.

(c) The following fish processing activities may be allowed: cleaning, gutting, heading, and icing or freezing of fish that is caught by the family-based commercial fishing business. Other fish processing activities shall not be allowed, including, but not limited to, canning, smoking, salting or brining for wholesale or retail sale.

(d) The operation shall be located on a lawful parcel that is contiguous with and has direct access to the Columbia River.

(e) The subject parcel shall include a lawful dwelling, and the permanent resident of the dwelling shall participate in the fishing support and fish processing operation.

(f) The operation may only employ residents of the dwelling and up to three outside employees.

(g) No more than 25 percent of the total actual living space of the dwelling may be used for the fishing support and fish processing operation.

(h) The operation may take place in an existing or new lawful accessory building or an existing agricultural building on the subject parcel. A new building constructed for the purpose of housing a fishing support and fish processing operation shall be considered an accessory building. An existing agricultural building shall not be expanded and a new agricultural building shall not be constructed for the purpose of housing a fishing support and fish processing operation.

(i) An accessory building used in the fishing support and fish processing operation may be allowed up to 2,500 square feet.

(j) Docks may be allowed as follows:

(A) One dock serving a parcel with an approved fishing support and fish processing operation may be allowed up to 500 square feet in size.

(B) For multiple contiguous parcels each with approved fishing support and fish processing operation, the area of the docks authorized in 350-81-102 (1)(j)(A) above may be combined into one dock, provided the total size of the dock shall not exceed 2,000 square feet.

(k) There shall be no outside visible evidence of the fishing support and fish processing operation, including storage, other than boats and docks.

(l) No retail sales may occur on the parcel.

(m) The operation shall only support and process fish caught by residents of the dwelling and up to three outside employees.

(n) Before beginning the operation, applicants shall demonstrate that they have obtained and complied with federal, state and/or local water quality and wastewater permits.

### **350-81-104. Resource Enhancement Projects**

(1) Applications for resource enhancement projects must describe the goals and benefits of the proposed enhancement project. They must also thoroughly document the condition of the resource before and after the proposed enhancement project.

(2) In addition to other guidelines that protect scenic, cultural, recreation, and natural resources, quarry enhancement projects shall comply with the following guidelines:

(a) Application Requirements. In addition to other applicable requirements, land use applications for quarry enhancement projects shall include perspective drawings of the site as seen from key viewing areas as specified in 350-81-520 (2)(o) and a reclamation plan that provides all the applicable information specified in 350-81-520 (1)(f)(A) through (E), except: (1) the words "pre-reclamation" and "post-reclamation" should replace the words "pre-mining" and "post-mining," respectively, and (2) the appropriate state agency or local government does not have to approve the reclamation plan.

(b) Scenic Resource Standard. Quarry enhancement projects shall restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable.

(c) Natural Resource Standard. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(d) Time Frames. The following time frames shall apply to quarry enhancement projects:

(A) All grading (e.g., excavating, filling and re-contouring) shall be completed within one (1) year of the date an applicant begins on-the-ground work.

(B) All landscaping shall be planted within one (1) year of the date an applicant completes the grading.

(C) An applicant may request one one-year extension to the one year grading time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after grading has commenced and before the one year grading time frame has expired.

(D) An applicant may also request one six-month extension to the one (1) year landscaping time frame if a project is unexpectedly delayed by adverse weather or emergency/

disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after landscaping has commenced and before the one-year landscaping time frame has expired.

### **350-81-106. Disposal Sites for Spoil Materials from Public Road Maintenance Activities**

(1) Application Requirements. In addition to other applicable requirements, land use applications for disposal sites shall include the same information that applicants are required to submit for expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(a) A reclamation plan that provides all the applicable information specified in 350-81-520 (1)(f)(A) through (E), except: (1) the words "pre-disposal" and "post-disposal" should replace the words "pre-mining" and "post-mining" and (2) the appropriate state agency or local government does not have to approve the reclamation plan.

(b) Perspective drawings of the site as seen from key viewing areas as specified in 350-81-520 (2)(o).

(c) Cultural resource reconnaissance and historic surveys, as required by 350-81-540 (1)(c)(A) and (B), respectively. Disposal sites shall be considered a "large-scale use" according to 350-81-540 (1)(c)(C).

(d) Field surveys to identify sensitive wildlife areas or sites and sensitive plants as described in 350-81-580(2) and 350-81-590(2).

(2) Siting Standard. The proposed disposal site shall only be approved if the applicant demonstrates it is not practicable to locate the disposal site outside the Scenic Area or inside an Urban Area. At a minimum, the applicant shall submit a feasibility and suitability analysis that compares the proposed disposal site to existing or potential disposal sites located both outside the Scenic Area and inside an Urban Area.

(3) Scenic Resource Standards. Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(a) Sites more than 3 miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, according to 350-81-520 (2)(bb).

(A) An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the start of on-the-ground activities.

(b) Sites less than 3 miles from the nearest key viewing area shall be fully screened from any key viewing area, according to 350-81-520 (2)(cc).

(A) An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(c) Reclamation plans shall restore the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns to the maximum extent practicable.

### **350-81-108. Commercial Events**

(1) Commercial events include weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel.

(2) Commercial events may be allowed in the GMA except on lands designated Open Space or Commercial Forest, subject to compliance with the following conditions and the scenic, cultural, natural and recreation resources guidelines:

(a) The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast inn, commercial use, or dwelling listed in the National Register of Historic Places.

(b) The owner of the subject parcel shall live on the parcel and shall operate and manage the use.

(c) A single commercial event shall host no more than 100 guests.

(d) The use shall comply with the following parking requirements:

(A) A single commercial event shall include no more than 50 vehicles for guests.

(B) All parking shall occur on the subject parcel.

(C) At least 200 square feet of parking space shall be required for each vehicle.

(D) Parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other imperious materials shall be prohibited.

(E) All parking areas shall be fully screened from key viewing areas.

(e) The owner of the subject parcel may conduct 18 single events up to one day in length per year.

(f) The owner of the subject parcel shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject parcel of each planned event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Tents, canopies, portable restrooms and other similar temporary structures necessary for a commercial event may be allowed, provided all such structures are erected or placed on the subject parcel no more than two days before the event and removed no more than two days after the event. Alternatively, temporary structures may remain in place for up to 90 days if they are fully screened from key viewing areas.

(h) The use may be allowed upon demonstration that the following conditions exist to protect any nearby agricultural and forest operations:

(A) The use would not force a change in or increase the cost of accepted agricultural practices on surrounding lands. [350-81-190 (1)(q)(A)]

(B) The use would be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in 350-81-076 or designated Commercial Forest Land or Large or Small Woodland, as required in 350-81-310. [350-81-190 (1)(q)(CA)]

(C) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland. [350-81-190 (1)(q)(DA)]

(D) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision. [350-81-190 (1)(q)(E)]

(i) Counties may impose additional requirements to address potential impacts to surrounding neighbors. For example, they may limit noise, lighting and operating hours.

(j) Land use approvals for commercial events shall not be valid for more than two years. Landowners must reapply for the use after a land use approval expires.

### **350-81-110. Columbia River Bridge Replacement**

(1) Visual Quality

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall be visually unobtrusive and harmonious with the surrounding Gorge landscape and the Columbia River. A replacement bridge shall:

(A) Utilize recessive dark natural or earth-tone colors for steel components of the bridge, a thin and open structural design that allows views through it to the extent practicable, and consistent design character and ornamental elements;

(B) Employ lighting that provides a safe and pleasant atmosphere for bicycles and pedestrians while not casting glare directly into the sky or onto the river.

(2) Historic Design Elements

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall incorporate elements that reflect historic design features of Scenic Area roadways and bridges. The historic themes should be an integral component of the design of the bridge structure, incorporated from "shore to shore."

(b) A replacement bridge should include:

(A) Arches and/or other traditional structural forms in the bridge;

(B) Historic style benches, lighting, other pedestrian furnishings, and signage/graphic materials consistent with the USFS Graphic Signage System for the Scenic Area;

(C) Ornamental concrete or steel railings.

(3) Recreation and Pedestrian/Bicycle Access

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall encourage and promote pedestrian and bicycle use, for recreational enjoyment and to enhance multi-modal transportation connections between the Urban Areas it connects.

(b) The bridge shall include facilities for pedestrians and bicyclists that:

(A) Are permanent;

(B) Are wide enough to safely accommodate and encourage walking, bicycling, and other uses;

(C) Meet safety standards to prevent conflicts among automobiles, trucks, pedestrians, bicyclists, and other users;

(D) Provide multiple sitting and viewing areas with significant upstream and downstream views;

(E) Are safe to approach from both the north and south ends of the bridge and provide strong multi-modal connections, both east-west and to the nearby Urban Areas.

### **350-81-112. Signs**

#### **(1) GMA Sign Provisions**

(a) Except for signs allowed without review pursuant to 350-81-074, all new signs must meet the following guidelines unless these guidelines conflict with the *Manual for Uniform Traffic Control Devices* for public safety, traffic control or highway construction signs. In such cases, the standards in the *Manual for Uniform Traffic Control Devices* shall supersede these guidelines.

(A) The support structure shall be unobtrusive and have low visual impact.

(B) Lettering colors with sufficient contrast to provide clear message communication shall be allowed. Signs shall be colored to blend with their setting to the maximum extent practicable.

(C) Backs of all signs shall be unobtrusive, nonreflective, and blend in with the setting.

(D) Spotlighting of signs may be allowed where needed for night visibility. Backlighting is not permitted for signs.

(E) Except for signs along public highways necessary for public safety, traffic control, or road construction and consistent with the *Manual for Uniform Traffic Control Devices*, the following signs are prohibited:

(i) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays, and other signs that are internally illuminated, exclusive of seasonal holiday light displays.

(ii) New billboards.

(iii) Signs with moving elements.

(iv) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

(b) Any sign that does not conform with a provision of these guidelines and has existed before their adoption is subject to the following provisions:

(A) Alteration of existing nonconforming signs shall comply with these guidelines.

(B) Any nonconforming sign used by a business must be brought into conformance concurrent with any expansion or change in use that requires a development permit.

#### **(2) SMA Sign Provisions**

(a) New signs shall be allowed as specified in the applicable land use designation.

(b) No sign shall be erected or placed in such a manner that it may interfere with, be confused with, or obstruct the view of any traffic sign, signal, or device.

(c) Preexisting signs are allowed to continue, provided no changes occur in size, structure, color, or message.

(d) Except for signs allowed without review pursuant to 350-81-074, all new signs shall meet the following guidelines and be consistent with the *Manual for Uniform Traffic Control Devices*:

(A) Signs shall be maintained in a neat, clean, and attractive condition.

(B) The character and composition of sign materials shall be harmonious with the landscape and/or related to and compatible with the main structure upon which the sign is attached.

(C) Signs shall be placed flat on the outside walls of buildings, not on roofs or marquees.

(D) Signs shall be unobtrusive and have low contrast with the setting.

(E) The visual impact of the support structure shall be minimized.

(F) Outdoor sign lighting shall be used for purposes of illumination only, and shall not be designed for, or used as, an advertising display, except for road safety signs.

(G) The backs of all signs shall be visually unobtrusive, nonreflective, and blend in with the setting.

(H) Internal illumination or backlighting of signs shall not be permitted except for highway construction, warning, or safety.

(e) Public signs shall meet the following standards in addition to 350-81-114 (2)(a) through (d):

(A) The Columbia River Gorge National Scenic Area Graphic Signing System provides design standards for public signs in and adjacent to public road rights-of-way. All new and replacement public signs, except those transportation regulatory, guide, and warning signs allowed outright shall conform to the guidelines in this system. Types of signs addressed include recreation site entry, interpretive, specific service signs, destination and distance signs, variable message signs, or signs that bridge or are cantilevered over the road surface.

(B) Signs located outside public road rights-of-way are encouraged to be designed in a way that is consistent with similar-purpose signs described in the Graphic Signing System.

(C) Signs posted by governmental jurisdictions giving notice to the public shall be no larger than that required to convey the intended message.

(f) Signs for public and commercial recreation facilities, home occupations, cottage industries, and commercial uses shall meet the following guidelines in addition to 350-81-114 (2)(a) through (e) and 350-81-114 (2)(h):

(A) Any sign advertising or relating to a business that is discontinued for a period of 30 consecutive days shall be presumed to be abandoned and shall be removed within 30 days thereafter, unless permitted otherwise by the jurisdictional authority.

(B) Any signs relating to or advertising for a business shall be brought into conformance with these sign guidelines before any expansion or change in use that is subject to review by the counties.

(C) Offsite and onsite directional signs on approach roads to recreational facilities may be permitted. Name and interpretive signs may be permitted onsite, but should be kept to the minimum required to achieve the purpose(s) of the facilities.

(D) Commercial recreation businesses approved in conjunction with a recreational facility may have a name sign not exceeding 16 square feet.

(E) Recreation developments may have one on-premise name sign at each principal entrance. Such signs are encouraged to be of a low profile, monument type, and shall conform to the Graphic Signing System.

(g) The following signs are prohibited:

(A) Advertising billboards.

(B) Signs that move or give the appearance of moving, except signs used for highway construction, warning, or safety.

(C) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle, except for signs used for highway construction, warning, or safety.

(h) Sign clutter and other negative visual effects from excessive signs along all roads and highways, and at parking lots and recreation facilities, shall be reduced.

### Land Divisions and Lot Line Adjustments

#### **350-81-120. Consolidation of Lots**

(1) A unit of land shall be consolidated with adjacent lands in the same ownership if:

(a) In Oregon, the subdivision within which the unit of land is located is undeveloped pursuant to ORS Chapter 92; or

(b) In Washington, if the unit of land is smaller than the current minimum parcel size and is located within a final plat that is older than five years from the date of filing.

(2) No portion of a consolidated plat shall be considered a separate parcel solely because an existing parcel overlays, and possibly fragments, that consolidated subdivision.

(3) Section 1 shall not be applied to consolidate two or more units of land where each unit of land is developed with a dwelling that qualifies as an existing use. One or more undeveloped units of land shall be consolidated with one or more developed units of land.

(4) To carry out this section, counties shall develop their own procedures for consolidating units of land pursuant to this provision, including amending plats, vacating plats, replatting, or other similar legal action.

#### **350-81-124. Land Divisions and Cluster Development**

(1) New land divisions in the SMA are not allowed, unless the creation of a new parcel will facilitate land acquisition by the federal government to achieve the policies and guidelines in the Management Plan.

(2) Unless otherwise specified, creation of a parcel, regardless of size, or any division of land shall be subject to the guidelines in Commission Rule 350-81.

(3) At the time of creation of one or more new parcels, consolidation of access shall be considered in order to reduce adverse effects on scenic, cultural, natural and recreation resources.

(4) Where authorized in 350-81-170 through 350-81-510, a land division in the GMA may create parcels smaller than the designated minimum size and may include a bonus, as specified under 350-81-124(6) below, in order to cluster new dwellings. Approval of cluster development shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land. To

approve a cluster development, the local government must find that clustering new dwellings will provide a siting opportunity not available through conventional parcel-by-parcel development. These opportunities include siting the new dwellings to:

(a) Be located in areas with screening vegetation or other features that reduce visibility of development as seen from key viewing areas.

(b) Avoid significant landscape features.

(c) Protect the existing character of the landscape setting.

(d) Reduce interference with movement of deer or elk in winter range.

(e) Avoid areas of known cultural resources.

(f) Consolidate road access, septic drainfields, or other development features to reduce impacts associated with grading or ground disturbance.

(g) Reduce adverse effects to riparian areas, wetlands, natural areas, rare plants, sensitive wildlife sites, or other natural resources.

(h) Increase the likelihood of agricultural or forest management on the undeveloped land left by the cluster development.

(5) In the GMA, following cluster development, there may be no further division of any resulting parcel for residential purposes until the subject parcel is included within the boundary of an Urban Area. The local government shall ensure permanent protection for open areas created by cluster development. No parcel in a cluster development may be smaller than 1 acre in a 5-acre Residential or 10-acre Residential designation or 2 acres in a Small-Scale Agriculture or Small Woodland designation.

(6) In the GMA, cluster development may create up to 25 percent more parcels than otherwise allowed by the minimum parcel size on lands designated 5-acre Residential or 10-acre Residential and up to 50 percent more on lands designated Small-Scale Agriculture or Small Woodland. Any division in a cluster development under this guideline may create at least one additional parcel.

(7) In the GMA, at least 75 percent of land subject to a cluster development shall be permanently protected as undeveloped land.

(8) In the GMA, contiguous parcels in the same ownership or in separate ownership may be consolidated and redivided to take advantage of cluster development bonuses.

#### **350-81-126. Lot Line Adjustments**

(1) The following guidelines shall apply to lot line adjustments in the GMA.

(a) Lot line adjustments for parcels in all land use designations except Open Space, Commercial, Public Recreation, or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment shall not result in the creation of any new parcel(s).

(B) The lot line adjustment shall not result in the potential to create a new parcel(s) or residential development in excess of the minimum density allowed by the land use designation(s) for the affected parcels.

(C) The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum parcel size before the

lot line adjustment to become less than the minimum parcel size after the lot line adjustment, except to allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(D) The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to be reduced in size, except to accomplish one of the following purposes:

(i) Resolve boundary disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided (1) the parcel to be enlarged would not become eligible for a subsequent land division and (2) the amount of land transferred would be the minimum necessary to resolve the issue.

(ii) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(E) The lot line adjustment shall not allow the boundary of a parcel designated Large-Scale Agriculture, Commercial Forest Land, Large Woodland or Open Space to be extended into another land use designation for the purpose of establishing a dwelling under less stringent guidelines (e.g., extending a parcel designated GMA Large-Scale Agriculture into a parcel designated Rural Center or Residential).

(F) The lot line adjustment shall not allow previously approved parcels or developments to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(G) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

(b) Lot line adjustments for parcels designated Open Space shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources. (Note: There is no specified minimum parcel size for parcels designated Open Space.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(c) Lot line adjustments for parcels designated Commercial shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(d) Lot line adjustments for parcels designated Public Recreation or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate, enhance, or otherwise improve recreation uses on the parcel. (Note: There are no specified minimum parcel sizes for parcels designated Public Recreation or Commercial Recreation.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(2) The following guidelines shall apply to lot line adjustments in the SMA.

(a) The proposed lot line adjustment shall not result in the creation of any new parcel(s).

(b) A lot line adjustment shall not result in a parcel greater than or equal to 40 acres becoming less than 40 acres.

(c) A lot line adjustment shall not result in a parcel less than 40 acres becoming 40 acres or greater.

(d) A parcel that is smaller than 40 acres shall not be reduced in size, except to accomplish one of the following purposes:

(A) Resolve boundary line disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided (1) the parcel to be enlarged would not become 40 acres or greater and (2) the amount of land transferred would be the minimum necessary to resolve the issue.

(B) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes residential development.

(e) The lot line adjustment shall not cause previously approved parcels or development to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(f) The lot line adjustment shall not result in a parcel that cannot comply with existing resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

## Land Use Designations

### **350-81-170. Agricultural Land Designations**

Commission Rule 350-81-170 through 350-81-240 shall apply to those areas designated Large-Scale or Small-Scale Agriculture, SMA Agriculture, and Agriculture-Special on the Scenic Area Land Use Designation Map.

### **350-81-180. Uses Allowed Outright—Agricultural Land**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(1)] are allowed without review on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

### **350-81-182. Uses Allowed through the Expedited Development Review Process—Agricultural Land**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

**350-81-190. Review Uses—Agricultural Land**

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(b) Agricultural structures, except buildings, in conjunction with agricultural use.

(c) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(d) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(e) and (f) below.

(e) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(f) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(g) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(h) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:

(A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use where the day-to-day activities of one or more residents of the agricultural

dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy subsection (h)(C)(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its constituent parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula:

$$(A)(B)(C) = I$$

where:

- A = Average yield of the commodity per acre or unit of production  
 B = Average price of the commodity  
 C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch  
 I = Income capability

(i) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling that is included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria listed in 350-81-540 (1)(e).

(j) On lands designated Small-Scale Agriculture, a single-family dwelling on any legally existing parcel.

(k) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative provided that all of the following conditions exist:

(A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister.

(B) The dwelling would be located on the same parcel as the dwelling of the principal operator.

(C) The operation is a commercial enterprise, as determined by an evaluation of the factors described in 350-81-190 (1)(h)(C).

(l) Construction, reconstruction, or modifications of roads not in conjunction with agriculture.

(m) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(n) Structures associated with hunting and fishing operations.

(o) Towers and fire stations for forest fire protection.

(p) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops or livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(q) On lands designated Large-Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:

(A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location, and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be used in conjunction with other agricultural operations in the area.

(C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required by 350-81-076, or designated Commercial Forest Land or Large or Small Woodland, as required in "Siting of Dwellings on Forest Land" (350-81-310).

(D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, Large or Small Woodland.

(E) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(r) On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

(s) Life estates, subject to the guidelines in "Approval Criteria for Life Estates," (350-81-210).

(t) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(u) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(v) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(w) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(2) The following uses may be allowed on lands designated SMA Agriculture subject to review for compliance with the scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620). The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.

(a) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-81-270 (2)(x).

(b) Forest uses and practices, as allowed for in 350-81-270.

(c) A single-family dwelling necessary for and accessory to agricultural use upon a demonstration that all of the following conditions exist:

(A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots/parcels.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy C(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following criteria:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula, with periodic adjustments for inflation:

$$(A)(B)(C) = I$$

where:

A = Average yield of the commodity per acre or unit of production

- B = Average price of the commodity  
 C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch  
 I = Income capability

(D) Minimum parcel size of 40 contiguous acres.

(d) Farm labor housing on a parcel with an existing dwelling under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use, and the operation is a commercial agricultural enterprise as determined by 350-81-190 (2)(c) (C).

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary for the current agricultural use. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

(e) Agricultural structures, except buildings, in conjunction with agricultural use.

(f) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(g) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 2(h) or 2(i), below.

(h) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(i) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(j) Home occupations and cottage industries, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098). The use or development shall be compatible

with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(k) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(l) Fruit stands and produce stands, upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(m) Aquaculture.

(n) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the SMA.

(o) Utility facilities necessary for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Agriculture lands.

(B) The size is the minimum necessary to provide the service.

(p) Temporary asphalt/batch plant operations related to public road projects, not to exceed 6 months.

(q) Community facilities and nonprofit facilities related to agricultural resource management.

(r) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(s) Expansion of existing nonprofit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(t) Public recreation, commercial recreation, interpretive, and educational developments and uses, consistent with the guidelines in 350-81-620.

(u) Road and railroad construction and reconstruction.

(v) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.

(w) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(z) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(aa) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation

generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

**350-81-200. Review Uses with Additional Approval Criteria—Large-Scale or Small-Scale Agriculture**

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620) and the "Approval Criteria for Specified Review Uses," (350-81-220) below.

(a) Utility facilities and railroads necessary for public service upon a showing that (1) there is no practicable alternative location with less adverse effect on agricultural or forest lands, and (2) the size is the minimum necessary to provide the service.

(b) Home occupations or cottage industries in existing residential or accessory structures, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(d) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(e) Wine sales/tasting rooms, in conjunction with an on-site winery.

(f) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(g) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-81-520.

(h) Personal-use airstrips, including associated accessory structures such as a hangar. A personal-use airstrip is an airstrip restricted (except for aircraft emergencies) to use by the owner; invited guests on an infrequent and occasional basis; and commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airstrip other than those owned or controlled by the owner of the airstrip.

(i) Aquaculture.

(j) Recreation development, subject to the recreation intensity class provisions (350-81-610) and Recreation Development Plan (Management Plan, Part III, Chapter 1).

(k) Boarding of horses.

(l) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(m) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100) and provided that the residence:

(A) Is included in the National Register of Historic Places, or

(B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(n) Nonprofit, environmental learning or research facilities.

(o) Expansion of existing school or place of worship.

(p) On parcels designated Small-Scale Agriculture, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

(q) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

**350-81-210. Approval Criteria for Life Estates—Large-Scale or Small-Scale Agriculture Designations**

(1) A landowner who sells or otherwise transfers real property on lands designated Large-Scale or Small-Scale Agriculture may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in the Management Plan. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(a) The proposed dwelling is in conjunction with agricultural use, using Guideline 350-81-190 (1)(h).

(b) Upon termination of the life estate, the original or second dwelling shall be removed.

**350-81-220. Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture**

(1) The uses identified in 350-81-200, may be allowed only if they meet both of the following criteria:

(a) The use is compatible with agricultural uses and would not force a change in or significantly increase the cost of accepted agricultural practices on nearby lands devoted to agricultural use.

(b) The use will be sited to minimize the loss of land suitable for the production of crops or livestock.

**350-81-230. Uses Allowed Outright for Lands Designated Agriculture-Special**

(1) The following uses may be allowed on lands designated Agriculture-Special without review:

(a) Existing livestock grazing. A livestock operation ceases to be existing when the land on which it is conducted has lain idle for more than 5 years.

(b) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads, and utility facilities.

(c) Low-intensity recreation uses that occur with the knowledge and permission of the landowner, including hunting, fishing, trapping, native plant study, birdwatching, photography, horseback riding, and hiking.

(d) Temporary livestock facilities, such as portable livestock pens and corrals.

(e) New fences that exclude livestock from lands that are not part of an existing livestock operation.

### **350-81-232. Review Uses for Lands Designated Agriculture-Special**

(1) The following uses may be allowed on lands designated Agriculture-Special, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620) and "Approval Criteria for Review Uses on Lands Designated Agriculture-Special" (350-81-234).

(a) New livestock grazing. Any operation that would introduce livestock to land that has not been grazed, or has laid idle, for more than 5 years shall be considered new livestock grazing.

(b) New fences, livestock watering facilities, and corrals.

(c) Soil, water, and vegetation conservation uses.

(d) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.

(e) Fish and wildlife management uses, educational activities, and scientific research.

(f) Land divisions that facilitate livestock grazing or protect and enhance natural areas. No resulting parcel may be smaller than 160 acres, unless it would facilitate the protection of scenic, cultural, natural, or recreation resources.

(g) Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that (1) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and (2) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in 350-81-190 (1)(q). The buffer guidelines for non-agricultural dwellings (350-81-076) may be waived if they would prevent the optimum siting of a dwelling.

(h) Recreation uses, subject to the provisions for recreation intensity classes (350-81-610).

### **350-81-234. Approval Criteria for Review Uses on Lands Designated Agriculture-Special**

(1) A range conservation plan pursuant to 350-81-240 shall be prepared before new livestock grazing commences; new fences, livestock watering facilities, and corrals are constructed; or soil, water, and vegetation conservation activities are undertaken [350-81-232 (1)(a), (b) and (c)]. Range conservation plans are described under 350-81-240.

(2) The Executive Director shall submit all land use applications and range conservation plans to the Oregon or Washington Natural Heritage Program. The state heritage program will have 20 days from the date that an application and/or plan is mailed to submit written comments to the local government.

The Executive Director shall record and address any written comments submitted by the state heritage program in its development review order.

(3) Based on the comments from the state heritage program, the Executive Director shall make a final decision on whether the proposed use is consistent with the Agriculture—Special policies and guidelines. If the final decision contradicts the comments submitted by the state heritage program, the local government shall justify how it reached an opposing conclusion.

### **350-81-236. Uses Prohibited on Lands Designated Agriculture-Special**

(1) Except for uses allowed outright and review uses, new uses shall be prohibited on lands designated Agriculture-Special. Prohibited uses include, but are not limited to:

(a) Cultivation, including plowing, harrowing, leveling, tilling, or any activity that prepares land for raising crops by turning, breaking up, or loosening the soil.

(b) Removal or clearing of native grasses, shrubs, and trees.

(c) Single-family dwellings and accessory structures, other than non-agricultural dwellings allowed as a review use.

(d) Barns, silos, and other agricultural buildings.

(e) Irrigation systems.

(f) Exploration, development, and production of mineral resources.

(g) Utility facilities, public use facilities, and roads.

### **350-81-240. Range Conservation Plans**

(1) If a range conservation plan is required before a use is allowed, it shall be prepared by landowners in cooperation with range scientists from local conservation districts. Specialists from the Oregon or Washington Natural Heritage Program should be consulted while the plan is being prepared.

(2) Range conservation plans shall ensure that new uses do not adversely affect natural areas. They shall accomplish the following goals:

(a) Maintain native rangeland that is in excellent or good condition; enhance rangeland that is in fair or poor condition.

(b) Preserve native trees and shrubs.

(c) Reestablish native grasses in degraded areas that have been invaded by non-native plants and weeds.

(3) Range conservation plans shall include the following elements:

(a) Range inventory. This shall include existing composition, carrying capacity, and condition of rangeland; the location of rare plants and non-native weeds; and existing fences, watering ponds, and other range improvements.

(b) Rehabilitation plan. This shall include actions that will be taken to rehabilitate native rangeland that is in fair or poor condition, such as weed and soil erosion control, seeding, and prescribed burning.

(c) Livestock management plan. This shall include the grazing system that will be used, including number and size of pastures, expected livestock numbers, and grazing/deferment

periods and sequence. Management plans shall project live-stock movements for at least 3 years.

(d) Monitoring program. This shall track the annual progress of the conservation plan and condition of the range. Monitoring techniques shall be described, such as line transects or photographic plots.

### **350-81-250. Forest Land Designations**

Commission Rule 350-81-250 through 350-81-310 shall apply to those areas designated Commercial Forest Land, Large or Small Woodland and SMA Forest on the Scenic Area Land Use Designation Map.

### **350-81-260. Uses Allowed Outright—Forest Land**

(1) The uses listed in 350-81-074(1) are allowed without review on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA Forest.

### **350-81-262. Uses Allowed through the Expedited Development Review Process—Forest Land**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA Forest.

### **350-81-270. Review Uses—Forest Land**

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) On lands designated Large Woodland, a single-family dwelling upon a demonstration that all of the following conditions exist:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The principal purpose for locating a dwelling on lands designated Large Woodland is to enable the resident to conduct efficient and effective forest management. This requirement indicates a relationship between ongoing forest management and the location of a dwelling on the subject parcel. A dwelling may not always be required for forest management.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate local government. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor and expenses; and how the dwelling will contribute toward the successful completion of the operations.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forestry and that could be used as the principal forest dwelling.

(E) The dwelling complies with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(b) On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel's enrollment in the appropriate state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300). A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(c) One single-family dwelling if shown to be in conjunction with and substantially contributing to the current agricultural use of a farm. Guideline 350-81-190 (1)(h) shall be used to determine whether a dwelling is a farm dwelling. The siting of the dwelling shall comply with the "Approval Criteria for Fire Protection" in 350-81-300.

(d) Temporary onsite structures that are auxiliary to and used during the term of a particular forest operation. "Auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(e) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous land in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.

(f) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(g) Structures associated with hunting and fishing operations.

(h) Towers and fire stations for forest fire protection.

(i) Agricultural structures, except buildings, in conjunction with agricultural use, subject to the "Approval Criteria for Fire Protection" (350-81-300).

(j) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use

that a landowner would initiate within one year and complete within five years, subject to the "Approval Criteria for Fire Protection" (350-81-300) and the standards in "Agricultural Buildings" (350-81-090).

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(l) or (1)(m) below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092) and the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(o) A second single-family dwelling for a farm operator's relative, subject to 350-81-190 (1)(k) and the "Approval Criteria for Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(p) Private roads serving a residence, subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(q) Recreation development, subject to the guidelines established for the recreation intensity classes (350-81-610) and the Recreation Development Plan (Management Plan, Part III, Chapter 1).

(r) Construction or reconstruction of roads or modifications not in conjunction with forest use or practices.

(s) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(t) On lands designated Commercial Forest Land, a temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or to protect the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the mobile home is subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(u) On parcels in Small Woodland, a land division creating parcels smaller than the designated minimum parcel size, subject to guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40 or 80 acres, this provision will apply to parcels 80 acres or larger or 160 acres or larger, respectively.

(v) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(w) On lands designated Large or Small Woodland, life estates, subject to the guidelines in "Approval Criteria for Life Estates" (350-81-320).

(x) Land divisions in Small Woodland, subject to the minimum lot sizes designated on the Land Use Designation Map. Land divisions in Commercial Forest Land and Large Woodland, subject to the standards and minimum lot sizes in Policies 4 through 9 in the "Land Use Policies" in Part II, Chapter 2: Forest Land of the Management Plan.

(y) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(z) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(aa) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(bb) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(cc) Commercial events on lands designated Large Woodland or Small Woodland, subject to the guidelines in "Commercial Events" (350-81-108).

(2) The following uses may be allowed on lands designated SMA Forest subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-81-520 through 350-81-620). The use or development shall be sited to minimize the loss of land suitable for the production of forest products:

(a) All review uses allowed for in 350-81-190(2).

(b) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of subsection (2)(x), below.

(c) Railroad and road construction or reconstruction.

(d) Exploration, development, and production of sand, gravel, or crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products in the SMA.

(e) Silvicultural nurseries.

(f) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Forest Land.

(B) The size is the minimum necessary to provide the service.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recon-touring abandoned quarries).

(h) Fish hatcheries and aquaculture facilities.

(i) Public recreation, commercial recreation, interpretive and educational developments, and uses consistent with the provisions of 350-81-620.

(j) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved forest management plan demonstrates that such a dwelling is necessary for and accessory to forest uses. The forest management plan shall demonstrate the following:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of trees. The principal purpose for allowing a dwelling on forest lands is to enable the resident to conduct efficient and effective management. This requirement indicates a relationship between ongoing forest management and the need for a dwelling on the subject property.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate county. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor, and expenses; and how the dwelling will contribute toward the successful management of the property.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.

(E) The dwelling complies with county dwelling, siting, and state/county fire protection guidelines.

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property

are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(l) or (2)(m), below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) Home occupations and cottage industries, subject to the "Home Occupations and Cottage Industries" guidelines in 350-81-098.

(o) Temporary portable facilities for the processing of forest products.

(p) Towers and fire stations for forest fire protection.

(q) Community facilities and nonprofit facilities related to forest resource management.

(r) Expansion of existing nonprofit group camps, retreats, or conference or education centers, necessary for the successful operation of the facility on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(s) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(t) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(u) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(v) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(w) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compli-

ance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

(x) Clearing trees for new agricultural use with the following steps and subject to the following additional guidelines:

(A) A Stewardship Plan shall be submitted and deemed complete by the Executive Director and submitted to the Forest Service for review. (350-81-270 (2)(y)(C).

(B) Clearing trees for new agricultural use shall be limited to 15 acres.

(C) If the Stewardship Plan proves that the above guideline is detrimental to the proposed agricultural use, the final size of the clearing shall be determined by the application of 350-81-270 (2)(x)(D)(i-iv) below and subject to guideline 350-81-270 (2)(x)(I).

(D) After a 30-day public comment period, the Forest Service shall review the Stewardship Plan using the following criteria:

(i) Scenic Resource guidelines in 350-81-270 (2)(y)(D)(i) and (vii).

(ii) Applicable guidelines of 350-81-520 through 350-81-620.

(iii) The Natural Resource Conservation Service (NRCS) soil unit description shall indicate that soils are suitable for the proposed agricultural use. The woodland management tables shall be used as part of the analysis of suitability for both agricultural and forest uses.

(iv) The size, shape and pattern on the landscape of the clearing for the new agricultural use shall blend with the surrounding landscape pattern either because the existing pattern includes agricultural openings or because the new agricultural opening is designed to appear natural.

(E) The Forest Service shall send the review statement to the Executive Director. The Forest Service shall state whether or not the new agricultural use should proceed including any conditions that are recommended to be required by the Executive Director.

(F) The Executive Director will accept an application for new agricultural use on forested lands after receipt of a positive review statement from the Forest Service.

(G) The forest practice portion of the new agricultural use shall not be approved by the state forestry department or Executive Director until a decision on the new agricultural use is issued by the Executive Director.

(H) The new agricultural use shall be operational within two years of the time frame described in the approved Stewardship Plan.

(I) New agricultural uses with an approved Stewardship Plan requiring more than 15 acres shall attain the final approved size sequentially. After the first 15 cleared acres is operational, each subsequent clearing shall not occur until the previous clearing is operational.

(y) Forest practices in accordance with an approved forest practices application (see 350-81-032) and subject to the additional guidelines in 350-81-270.

(A) The following information, in addition to general site plan requirements (350-81-032) shall be required:

(i) Delineate the following on a recent aerial photo or detailed map:

(I) The size, shape, and exact location of the proposed treatment area including any clumps of leave trees to remain. If more than one silvicultural prescription is to be used, code each on the photo.

(II) Other important natural features of the subject parcel such as steep areas, streams, wetlands, rock outcrops, etc.

(III) Road and structure construction and/or reconstruction location.

(IV) Location of proposed rock or aggregate sources.

(V) Major skid trails, landings, and yarding corridors.

(VI) Commercial firewood cutting areas.

(VII) Protection measures for scenic, cultural, natural, and recreation resources, such as road closures.

(ii) Describe the existing forest in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(iii) Describe how the forest practice will fit into the existing landscape pattern and how it will meet scenic and natural resource standards in 350-81-270 (2)(y)(D) and 350-81-270 (2)(y)(E).

(iv) Written silvicultural prescriptions with projected post-treatment forest condition specified in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(v) Road and structure construction and/or reconstruction design.

(vi) Existing and proposed rock pit development plans.

(vii) A discussion of slash disposal methods.

(viii) A reforestation plan as reviewed by the appropriate state forest practices agency.

(B) As part of the application, flag, stake or mark buffers, any trees or downed wood to be retained or removed (whichever makes the most sense), and areas for placing fill or removing material in preparation for a field visit by the reviewer.

(C) Stewardship Plan Requirements: The following information, in addition to the applicable portions of the forest practice application requirements above and general site plan requirements (350-81-032) shall be provided:

(i) Outline the long term goals, proposed operations, and future sustainability of the subject parcel.

(ii) Describe the time frame and steps planned to reach the long term goals.

(iii) For Forest Practices, describe how the proposed activities fit into the long term goals and sustainability of the parcel and/or forest health. The following shall be addressed:

(I) Describe the range of natural conditions expected in the forest in terms of tree species, structure, and landscape pattern.

(II) Describe what the resulting tree species, structure, and landscape pattern will be after the proposed activities.

(III) Give a clear explanation how a deviation from the applicable guidelines may better achieve forest health objectives

(IV) Give a clear explanation how and why the proposed activities will lead the forest towards its range of natural variability and result in reaching sustainability, resiliency to disturbances.

(iv) For clearing trees for new agricultural use, the following shall be addressed in addition to 350-81-270 (2)(y)(C)(i) and (ii) above:

(I) Submit NRCS soil unit description and map for each soil unit affected by the proposed clearing or treatment.

(II) Based on the needs of the operation, give a clear explanation as to the exact size of the clearing needed and how it will meet the natural and scenic requirements set forth in 350-81-270 (2)(x)(D)(i-iv).

(III) Describe in sufficient detail for evaluation the proposed agricultural use, the improvements needed on the parcel, time line for its establishment, and its marketability.

(IV) Show evidence that an agricultural specialist, such as the county extension agent, has examined and found the proposed agricultural use reasonable and viable.

(D) For forest practices, the following scenic resource guidelines shall apply:

(i) Forest practices shall meet the design guidelines and scenic standards for the applicable landscape setting and zone (See Required SMA Scenic Standards table in 350-81-530-2)(c).

(ii) In the western portion (to White Salmon River) of the SMA Coniferous Woodland Landscape Setting, no more than 8% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service.

(iii) In the SMA Gorge Walls, Canyonlands and Wildlands Landscape Setting, no more than 4% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service.

(iv) For all other landscape settings, created forest openings visible at one time shall be within the desired range for the vegetation type as set forth in Natural Resources guidelines in 350-81-270 (2)(y)(E)(i) through (iii).

(v) Size, shape, and dispersal of created forest openings shall maintain the desired natural patterns in the landscape as set forth in Natural Resources guidelines in 350-81-270 (2)(y)(E)(i) through (iii).

(vi) The maximum size of any created forest opening is set forth by the "Desired" vegetation type in the Forest Structure and Pattern Table.

(I) If the treatment is proposed to go beyond the above guideline based on forest health or ecosystem function requirements, a Stewardship Plan shall be required.

(II) If the Stewardship Plan proves that the above guideline is detrimental to either forest health or ecosystem function, the size of the created forest opening shall be within the natural range for the vegetation type as listed in the Desired Forest Structure and Pattern Table for each vegetation type, shall not mimic catastrophic fires, and shall maintain scenic standards.

(vii) Created forest openings shall not create a break or opening in the vegetation in the skyline as viewed from a key viewing area.

(E) Forest practices shall maintain the following in addition to applicable natural resources guidelines in 350-81-600.

(i) Silvicultural prescriptions shall maintain the desired natural forest stand structures (tree species, spacing, layering, and mixture of sizes) based on forest health and ecosystem function requirements. Forest tree stand structure shall meet the requirements listed in the Desired Forest Structure and Pattern Table for each vegetation type. Forest tree stand structure is defined as the general structure of the forest in each vegetation type within which is found forest openings.

(ii) Created forest openings shall be designed as mosaics not to exceed the limits defined as Desired in the Desired Forest Structure and Pattern Table unless proposed as a deviation as allowed under the scenic resource guideline in 350-81-270 (2)(l)(vi).

(iii) Snag and down wood requirements shall be maintained or created as listed in the Desired Forest Structure and Pattern Table for each vegetation type.

(iv) If the treatment is proposed to deviate from the snag and down wood requirements based on forest health or ecosystem function requirements, a Stewardship Plan shall be required and shall show and prove why a deviation from the snag and down wood requirements is required.

PROPOSED

PROPOSED

DESIRED FOREST STRUCTURE AND PATTERN								
1	2	3		4		5	6	7
<u>Vegetation Type#</u>	<u>Forest Structure</u> (Average % total canopy closure (cc))*	<u>Typical Forest Openings Size</u> <u>Disturbance caused</u>		<u>Percent Openings at One Time</u>		<u>Leave Trees</u>  Includes all available remnant old forest	<u>Average Down Wood</u>  Pieces 30 ft long per acre (scattered)	<u>Average Snags</u>  (Conifers) No. per acre Snags are 20-40 ft in height
		<u>Historic (Natural)</u>	<u>Desired</u>	<u>Historic (Natural)</u>	<u>Desired</u>			
<u>West Conifer</u>	60-80% canopy closure  Understory layer variable (0-60% of total cc)	Variable sizes with mosaic pattern, irregular shapes  Mosaic fire 1-100 acres  Catastrophic fire over 100 acres	Retain forested character Allow openings up to 15 acres (up to 5 acres in the foreground of KVAs)  All openings 1 acre or less on National Forest land and all Open Space LUD  Openings retain 15 - 40% canopy closure	10% (mosaic fire) up to 55% (catastrophic fire)  Intense fire return interval is 300 yrs	Not to exceed 8% for West Coniferous Woodland Landscape Setting and not to exceed 4% for Gorge Walls, Canyonlands and Wildlands Landscape Setting  Widely dispersed, variable sized mosaic of irregular shapes blending with existing openings.	Leave 15% of existing trees per acre throughout opening and in clumps.  Include 3 trees per acre of the largest size trees available	18 - 25 pieces greater than 20" dbh	10 snags at 10" - 20" dbh, and 7 snags greater than 20" dbh
<u>East Conifer</u> (Ponderosa Pine/Douglas fir)	40-80% canopy closure  Understory layer less than 25% of total cc	Few Openings due to low intensity fires. 1/4 to 2 acres	Openings less than 1 acre  Openings have 0 - 40% canopy closure  Openings widely dispersed	1 - 10%	1 - 10%  (% by vegetation type)	No leave trees required	3 - 6 pieces greater than 20" dbh	5 snags at 10" - 20" dbh and 3 snags greater than 20" dbh
<u>Ponderosa Pine/Oregon Oak</u>	25-60% canopy closure  Understory layer greater than 25% of total cc.	Most natural openings due to poor soil.  Disturbance openings few	Openings less than 1 acre Openings have 0 - 25% canopy closure Openings widely dispersed	1 - 10%	1 - 10%  (% by vegetation type)	No leave trees required	1 - 3 pieces greater than 20" dbh	5 snags at 10" - 20" dbh and 3 snags greater than 20" dbh Oak snags can be counted if already dead or partially dead

# Map available at the Forest Service National Scenic Area Office

\*Does not apply to openings.

Dbh: Diameter at Breast Height

**350-81-280. Review Uses with Additional Approval Criteria—Commercial Forest Land, or Large or Small Woodland Designations**

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-

520 and 620) and the "Approval Criteria for Specified Review Uses" (350-81-290).

(a) Utility facilities and railroads necessary for public service upon a showing that (1) there is no practicable alternative location with less adverse effect on agricultural and forest lands and on scenic, cultural, natural and recreation resources and (2) the size is the minimum necessary to provide the service.

(b) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(d) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(e) Wine sales/tasting rooms, in conjunction with an on-site winery.

(f) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(g) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-81-520.

(h) Aquaculture.

(i) Boarding of horses.

(j) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(k) Expansion of existing nonprofit group camps, retreats, or conference centers.

(l) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100) and provided that the residence:

(A) Is included in the National Register of Historic Places, or

(B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(m) Nonprofit, environmental learning or research facilities.

(n) On parcels designated Small Woodland, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

(o) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

### **350-81-290. Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land or Large or Small Woodland**

(1) The uses identified under 350-81-280, may be allowed only if they meet all of the following criteria:

(a) The owners of land that is designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture and that lies within 500 feet of the perimeter of the subject parcel have been notified of the land

use application and have been given at least 10 days to comment prior to a final decision.

(b) The use will not seriously interfere with accepted forest or agricultural practices on nearby lands devoted to resource use.

(c) The use will be sited in a way that minimizes the loss of forest or agricultural land and minimizes the chance of interference with accepted forest or agricultural practices on nearby lands.

(d) The use will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel and will comply with the "Approval Criteria for Fire Protection" (350-81-300).

### **350-81-300. Approval Criteria for Fire Protection in Forest Designations**

(1) All uses, as specified, shall comply with the following fire safety guidelines:

(a) All buildings shall be surrounded by a maintained fuel break of 50 feet. Hazardous fuels shall be removed within the fuel break area. Irrigated or fire resistant vegetation may be planted within the fuel break. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees.

(b) Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structure(s).

(c) A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separate from the dwelling.

(d) Access drives shall be constructed to a minimum of 12 feet in width and not exceed a grade of 12 percent. Turn-outs shall be provided at a minimum of every 500 feet. Access drives shall be maintained to a level that is passable to fire equipment. Variances to road guidelines may be made only after consultation with the local rural fire district and the Washington Department of Natural Resources in Washington or the Oregon Department of Forestry in Oregon.

(e) Within 1 year of the occupancy of a dwelling, the local government shall conduct a review of the development to assure compliance with these guidelines.

(f) Telephone and power supply systems shall be underground whenever possible.

(g) Roofs of structures should be constructed of fire-resistant materials such as metal, fiberglass shingle or tile. Roof materials such as cedar shake and shingle should not be used.

(h) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be screened with no coarser than 1/4 inch mesh metal screen that is noncombustible and corrosion resistant and should be equipped with a spark arrester.

(i) All structural projections such as balconies, decks and roof gables should be built with fire resistant materials equivalent to that specified in the Uniform Building Code.

(j) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than 1/4-inch mesh metal screen that is noncombustible and corrosion resistant.

### **350-81-310. Approval Criteria for Siting of Dwellings on Forest Land**

(1) The approval of new dwellings and accessory structures on forest lands shall comply with the following guidelines:

(a) The dwelling and structures shall be sited on the parcel so that they will have the least impact on nearby or adjoining forest operations. Dwellings shall be set back at least 200 feet from adjacent properties. Clustering or locating proposed development closer to existing development on adjacent lands may minimize impacts on nearby or adjacent forest operations.

(b) The amount of forest land used to site dwellings, structures, access roads, and service corridors shall be minimized. This can include locating new dwellings and structures as close to existing public roads as possible, thereby minimizing the length of access roads and utility corridors; or locating the dwelling, access road, and service corridors on portions of the parcel that are least or poorly suited for forestry. Areas may not be suitable for forestry because of existing nonforest uses, adjacent dwellings, or land productivity.

(c) Dwellings shall be located to minimize the risks associated with wildfire. Dwellings should be located on gentle slopes and in any case not on slopes that exceed 40 percent. Narrow canyons and draws should be avoided. Dwellings should be located to minimize the difficulty of gaining access to the structure in the case of fire. Dwellings should be located to make the access roads as short and flat as possible.

(d) A local government may grant a variance to the siting guidelines contained within this section upon a demonstration that the guidelines in "Variances from Setbacks and Buffers" (350-81-078) have been satisfied.

### **350-81-320. Approval Criteria for Life Estates in Commercial Forest Land or Small or Large Woodland**

(1) A landowner who sells or otherwise transfers real property on lands designated Commercial Forest Land or Large or Small Woodland may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in the Management Plan. A second dwelling unit on lands designated Commercial Forest Land or Large or Small Woodland may be allowed, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(a) The proposed dwelling is in conjunction with agricultural use, using 350-81-190 (1)(h); or

(b) On lands designated Large Woodland, the dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The proposed dwelling shall comply with 350-81-270 (1)(a); or

(c) On lands designated Small Woodland, the proposed dwelling complies with 350-81-270 (1)(b); and

(d) Upon termination of the life estate, the original or second dwelling shall be removed.

### **350-81-330. Open Space Designations**

Commission Rule 350-80-330 through 350-80-340 shall apply to those areas designated GMA-Open Space and SMA-Open Space on the Scenic Area Land Use Designation Map.

### **350-81-335. Uses Allowed Outright—Open Space**

(1) The uses listed in "Uses Allowed Outright, GMA and SMA Open Space" [350-81-074(2)] are allowed without review on lands designated Open Space.

### **350-81-338. Uses Allowed through the Expedited Development Review Process—Open Space**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) may be allowed with review through the expedited development review process on lands designated Open Space.

### **350-81-340. Review Uses—Open Space**

(1) The following uses may be allowed on all lands designated GMA-Open Space subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610).

(b) Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.

(c) Repair, maintenance, operation, and improvement of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities.

(d) Removal of timber, rocks or other materials for purposes of public safety and placement of structures for public safety.

(e) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(f) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(g) Lot line adjustments, subject to compliance with the guidelines in "Lot Line Adjustments" (350-81-126).

### **(2) Review Uses—Specific Lands Designated Open Space**

(a) The following uses may be allowed on lands designated GMA-Open Space for Gorge Walls and Canyonlands subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Livestock grazing.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a county conservation district.

(D) Harvesting of wild crops.

(E) Educational or scientific research.

(F) Continued operation of existing quarries, if they are determined to be consistent with guidelines to protect scenic, cultural, natural, and recreation resources.

(G) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(b) The following uses may be allowed on lands designated GMA-Open Space for the Mosley Lakes Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(B) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(C) Commercial trapping.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(c) The following uses may be allowed on lands designated GMA-Open Space for the Chenoweth Table Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610), after consultation with the Oregon Natural Heritage Program.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Oregon Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Oregon Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(d) The following uses may be allowed on lands designated GMA-Open Space for the Squally Point Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610) after consultation with the Oregon Natural Heritage Program.

(B) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Natural Heritage Program.

(C) Except as limited by (d)(A), above, all those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(e) The following uses may be allowed on lands designated GMA-Open Space for the Klickitat River Wildlife and Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610), after consultation with the Washington Natural Heritage Program and Washington Department of Fish and Wildlife.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(f) The following uses may be allowed on lands designated GMA-Open Space for the Balch Lake Wetlands Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Livestock grazing, subject to a range conservation plan, after consultation with the Washington Department of Fish and Wildlife.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Educational and scientific research, after consultation with the Washington Department of Fish and Wildlife.

(D) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610) after consultation with the Washington Department of Fish and Wildlife.

(E) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(g) The following uses may be allowed on lands designated GMA-Open Space for the Mouth of Wind River Wildlife Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research, after consultation with the Washington Department of Fish and Wildlife.

(E) Commercial fishing and trapping.

(F) Low-intensity recreation, subject to the guidelines for recreation intensity classes (Part I, Chapter 4: Recreation Resources), after consultation with the Washington Department of Fish and Wildlife.

(G) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(h) The following uses may be allowed on lands designated Open Space on those portions of state park ownerships not suitable for major recreation facilities subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research.

(E) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(3) The following new uses may be allowed on lands designated SMA-Open Space subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-81-520 through 350-81-620):

(a) Changes in existing uses, including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.

(b) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include vegetation management and forest practices (subject to the forest practice guidelines of 350-81-270 (2)(y) for the restoration of forest health, new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(c) Low-intensity recreation uses and developments, including educational and interpretive facilities, consistent with 350-81-620.

(d) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Open Space land.

(B) The size is the minimum necessary to provide the service.

(e) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks

(f) Treatment of noxious weeds shall be permitted without completion of an SMA Open Space plan when the following criteria have been met:

(A) Noxious weed infestation is new and eradication is still viable.

(B) Delayed or deferred treatment could have widespread or major adverse impacts to one or more of the following resources:

(i) Displacement of native and traditionally gathered plants;

(ii) Degradation of wildlife habitat and forage;

(iii) Degradation or loss of agricultural uses of land, such as cropland or livestock forage;

(iv) Limitation of recreational uses.

(C) For federal lands, treatment effects have been thoroughly evaluated in an environmental assessment.

(4) An Open Space plan shall be completed by the primary managing agency or landowner prior to any new land uses or development on lands designated SMA-Open Space, and shall be reviewed by the Forest Service. The Open Space plan shall include the following:

(a) Direction for resource protection, enhancement, and management.

(b) Review of existing uses to determine compatibility with Open Space values.

(c) Consultation with members of the public and with agency and resource specialists.

### **350-81-350. Residential Land Designations**

Commission Rule 350-81-350 through 350-81-390 shall apply to those areas designated Residential on the Scenic Area Land Use Designation Map.

### **350-81-360. Uses Allowed Outright—Residential Land**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space" [350-81-074(1)] are allowed without review on lands designated Residential.

### **350-81-365. Uses Allowed through the Expedited Development Review Process—Residential Land**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Residential.

### **350-81-370. Review Uses—Residential Land**

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) One single-family dwelling per legally created parcel. If the subject parcel is located adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, the use shall comply with the buffer and notification requirements for agricultural land [350-81-076 and 350-81-190 (1)(q)(E)], or forest land [(350-81-290 (1)(a) and 350-81-310 (1)(a)]. If the subject parcel is located within a Residential designation that is adjacent to lands designated Commercial Forest Land or Large or Small Woodland, the placement of a dwelling shall also comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-81-300).

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, subject to guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(e) Construction or reconstruction of roads.

(f) On parcels 10 acres or larger in the 5-acre Residential designation, or 20 acres or larger in the 10-acre Residential designation, a land division creating new parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124).

(g) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 590).

(h) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(i) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(j) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(k) Agricultural structures, except buildings, in conjunction with agricultural use.

(l) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(o) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(2) The following uses may be allowed on lands designated Residential subject to review for compliance with scenic, cultural, natural, and recreation resources guidelines (350-81-520 through 350-81-620):

(a) One single-family dwelling per legally created lot or consolidated parcel. The placement of a dwelling shall comply with fire protection standards developed by the county, in accordance with SMA Policy 13 in Part II, Chapter 2: Forest Land.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) New utility facilities.

(e) Fire stations.

(f) Home occupations and cottage industries subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(g) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100).

(h) Community parks and playgrounds.

(i) Road and railroad construction and reconstruction.

(j) Forest practices, as specified in 350-81-270.

(k) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(l) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(o) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(p) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-81-270 (2)(x).

### **350-81-380. Review Uses with Additional Approval Criteria—Residential Land**

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620) and "Approval Criteria for Specified Review Uses," (350-81-390).

(a) Accredited childcare centers within lands designated 1-acre Residential or 2-acre Residential. A childcare center may be allowed in other Residential designations within an existing church or community building.

(b) Schools within an existing church or community building.

(c) Expansion of existing primary or middle schools on land purchased prior to June 8, 1999. For purposes of this section, existing schools means public schools that existed prior to adoption of the original Management Plan on October 15, 1991.

(d) Utility facilities and railroads.

(e) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(f) Fire stations.

(g) Recreation development, subject to compliance with 350-81-610.

(h) Community parks and playgrounds, consistent with the standards of the National Park and Recreation Society regarding the need for such facilities.

(i) Bed and breakfast inns in single family dwellings located on lands designated 5-acre Residential or 10-acre Residential, pursuant to the guidelines in "Bed and Breakfast Inns" (350-81-100).

(j) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(k) Wine sales/tasting rooms in conjunction with an on-site winery, under the following conditions:

(A) The use shall comply with the guidelines in "Home Occupations and Cottage Industries" (350-81-098), with the following exceptions:

(i) The use may employ an unlimited number of outside employees.

(ii) The wine sales/tasting room may include interior and/or exterior space, provided the combined interior and exterior spaces shall not exceed 1,000 square feet.

(iii) The interior space may be located in an existing building or in a new building or addition to an existing building constructed for the primary purpose of housing the wine sales/tasting room.

(iv) The exterior space may be a veranda, patio, or other similar type of structure.

(l) Small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

### **350-81-390. Approval Criteria for Specified Review Uses on Lands Designated Residential**

(1) The uses identified in 350-81-380, may be allowed only if they meet all of the following:

(a) The proposed use will be compatible with the surrounding area. Review of compatibility shall include impacts associated with the visual character of the area; traffic generation; and noise, dust, and odors.

(b) The proposed use will not require public services other than those existing or approved for the area.

(c) If the subject parcel is located within 500 feet of lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, new buildings associated with the proposed use comply with the buffer guidelines in "Agricultural Buffer Guidelines" (350-81-076).

(d) If the subject parcel is located within 500 feet of lands designated Commercial Forest Land or Large or Small Woodland, new buildings associated with the proposed use comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-81-300).

### **350-81-400. Rural Center**

Commission Rule 350-81-400 through 350-81-420 shall apply to those areas designated Rural Center on the Scenic Area Land Use Designation Map.

### **350-81-410. Uses Allowed Outright—Rural Center**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(i)] are allowed without review on lands designated Rural Center and Commercial.

### **350-81-415. Uses Allowed through the Expedited Development Review Process—Rural Center**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the

expedited development review process on lands designated Rural Center and Commercial.

### **350-81-420. Review Uses—Rural Center**

(1) The following uses may be allowed within Rural Centers, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources:

(a) One single-family dwelling per legally created parcel.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 350-81-240 (1)(c).

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, pursuant to guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(e) Duplexes.

(f) Fire stations.

(g) Libraries.

(h) Government buildings.

(i) Community centers and meeting halls.

(j) Schools.

(k) Accredited childcare centers.

(l) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.

(A) Grocery stores.

(B) Variety and hardware stores.

(C) Shops, offices, and repair shops.

(D) Personal services such as barber and beauty shops.

(E) Travelers' accommodations, bed and breakfast inns.

(F) Restaurants.

(G) Taverns and bars.

(H) Gas stations.

(I) Gift shops.

(m) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(n) Utility facilities and railroads.

(o) Recreation development, subject to compliance with 350-81-610.

(p) Places of worship.

(q) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(r) Land divisions, subject to the standards and minimum lot sizes in Policies 6 and 7 in the "Land Use Policies" in Part II, Chapter 5: Commercial Land of the Management Plan.

(s) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divi-

sions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(t) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(u) Agricultural structures, except buildings, in conjunction with agricultural use.

(v) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(w) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

### **350-81-430. Commercial Land**

Commission Rule 350-81-430 through 350-81-460 shall apply to those areas designated Commercial on the Scenic Area Land Use Designation Map.

### **350-81-440. Uses Allowed Outright—Commercial Designations**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(1)] are allowed without review on lands designated Commercial.

### **350-81-445. Uses Allowed through the Expedited Development Review Process—Commercial Designations**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Commercial.

### **350-81-450. Review Uses—Commercial Designations**

(1) The following uses may be allowed on lands designated Commercial, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620) and "Approval Criteria for Specified Review Uses," (350-81-460):

- (a) Travelers' accommodations, bed and breakfast inns.
- (b) Restaurants.
- (c) Gift shops.

(d) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(e) One single-family dwelling per legally created parcel.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed as accessory buildings larger than 200 square feet in area or 10 feet in height.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel, subject to the following standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Utility facilities and railroads.

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(k) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(l) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(m) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

### **350-81-460. Approval Criteria for Review Uses on Lands Designated on Lands Designated Commercial**

(1) The uses identified under "Review Uses: Commercial Designations" may be allowed only if they meet the following two criteria:

(a) The proposal is limited to 5,000 square feet of floor area per building or use.

(b) The proposed use would be compatible with the surrounding area. Review for compatibility shall include impacts associated with the visual character of the area; traffic generation; and noise, dust and odors

### **350-81-470. Recreation**

Commission Rule 350-81-470 through 350-81-510 shall apply to those areas designated Public Recreation and Commercial Recreation on the Scenic Area Land Use Designation Map.

### **350-81-480. Uses Allowed Outright—Public Recreation and Commercial Recreation**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(1)] are allowed without review on lands designated Public Recreation and Commercial Recreation.

**350-81-485. Uses Allowed through the Expedited Development Review Process—Public Recreation and Commercial Recreation**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Public Recreation and Commercial Recreation.

**350-81-490. Review Uses—Public Recreation and Commercial Recreation**

(1) The following uses may be allowed on lands designated GMA-Public Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620) and compliance with 350-81-610 (5)(a) and (c) through (g), where applicable, of the "Approval Criteria for Recreation Uses" contained in the recreation intensity class guidelines (350-81-610):

(a) Publicly-owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-81-610).

(b) Commercial uses and non-resource based recreation uses that are part of an existing or approved resource-based public recreation use, consistent with the guidelines for such uses contained in this section.

(c) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(2) The following uses may be allowed on lands designated GMA Public Recreation, subject to compliance with the "Approval Criteria for Non-Recreation Uses in Public Recreation designations," (350-81-500), and (350-81-520 through 350-81-620):

(a) One single-family dwelling for each parcel legally created prior to adoption of the Management Plan. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 350-81-490 (2)(c).

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(f) Utility transmission, transportation, communication, and public works facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(3) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural and recreation resources (350-81-520 through 350-81-620) and compliance with 350-81-610 (5)(a) and (c) through (g) of the "Approval Criteria for Recreation Uses" guidelines (350-81-610):

(a) Commercially owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-81-610).

(b) Overnight accommodations that are part of a commercially owned, resource-based recreation use, where such resource-based recreation use occurs on the subject site or on adjacent lands that are accessed through the site, and that meet the following standards:

(A) Buildings containing individual units shall be no larger than 1,500 square feet in total floor area and no higher than 2-1/2 stories.

(B) Buildings containing more than one unit shall be no larger than 5,000 square feet in total floor area and no higher than 2-1/2 stories.

(C) The total number of individual units shall not exceed 25, unless the proposed development complies with standards for clustered accommodations in subsection (4) of this guideline.

(D) Clustered overnight travelers accommodations meeting the following standards may include up to 35 individual units:

(i) Average total floor area of all units is 1,000 square feet or less per unit.

(ii) A minimum of 50 percent of the project site is dedicated to undeveloped, open areas (not including roads or parking areas).

(iii) The facility is in an area classified for high-intensity recreation (Recreation Intensity Class 4).

(c) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and non-resource based recreation uses that are part of an existing or approved resource-based commercial recreation use, consistent with the policies, guidelines, and conditional use criteria for such uses contained in this section.

(d) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(4) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with the "Approval Criteria for Non-Recreational Uses in Commercial Recreation," (350-81-510), and the guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620):

(a) One single-family dwelling for each lot or parcel legally created prior to adoption of the Management Plan.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 2.C below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(f) Utility transmission, transportation, and communication facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (Part II, Chapter 7: General Policies and Guidelines).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(5) Land divisions may be allowed in GMA-Public Recreation, subject to compliance with 350-81-500 (1)(c), and in GMA Commercial Recreation, subject to compliance with 350-81-510 (1)(c).

(6) Lot line adjustments may be allowed, subject to compliance with the guidelines in "Lot Line Adjustments" (350-81-126).

(7) The following uses may be allowed on lands designated SMA-Public Recreation subject to review for compli-

ance with scenic, cultural, natural, and recreational resources guidelines:

(a) Forest uses and practices, as allowed for in 350-81-270.

(b) Public trails, consistent with the provisions in 350-81-620.

(c) Public recreational facilities, consistent with the provisions in 350-81-620.

(d) Public nonprofit group camps, retreats, conference or educational centers, and interpretive facilities.

(e) One single-family dwelling on a parcel of 40 contiguous acres or larger when it meets the conditions described for Agricultural Land (350-81-190) or Forest Land (350-81-270), or when shown to be necessary for public recreation site management purposes.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(g) below.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Home occupation and cottage industries, as specified in "Home Occupations and Cottage Industries" (350-81-098).

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Road and railroad construction and reconstruction.

(k) Utility facilities for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Public Recreation land.

(B) The size is the minimum necessary to provide the service.

(l) Agricultural review uses, as allowed for in 350-81-190.

(m) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(n) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(o) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

### **350-81-500. Approval Criteria for Non-Recreation Uses in GMA-Public Recreation Designations**

(1) The uses identified in 350-81-490 (2) and (5), may be allowed if they meet the following criteria:

(a) The proposed use will not interfere with existing or approved public recreation uses on the subject property or adjacent lands. Mitigative measures used to comply with this criterion may include provision of onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(b) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structures and other improvements may be used to comply with this criterion.

(c) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance, or otherwise improve recreational uses on the site.

### **350-81-510. Approval Criteria for Non-Recreation Uses in GMA-Commercial Recreation Designations.**

(1) The uses identified in 350-81-490 (4) and (5), may be allowed if they meet the following criteria:

(a) The proposed use will not interfere with existing or approved commercial recreation uses on the subject property or adjacent lands. Mitigative measures used to comply with this criterion may include provision of onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(b) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structure and other improvements may be used to comply with this criterion.

(c) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance, or otherwise improve recreational uses on the site.

### **350-81-520. General Management Area Scenic Review Criteria**

The following scenic review guidelines shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

(1) All review uses:

(a) New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

(b) New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in this chapter.

(d) A site plan and land use application shall be submitted for all new buildings, except for buildings smaller than 60 square feet in area and less than or equal to 10 feet in height, as measured at the roof peak. The site plan and application shall include all information required in the site plan guidelines in "Review Uses" 350-81-032(5). Supplemental requirements for developments proposed on lands visible

from key viewing areas are included in the key viewing areas guidelines in this chapter.

(e) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

(f) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable.

At a minimum, such reclamation plans shall include:

(A) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-mining existing grades and post-mining final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing, and equipment areas employed for the duration of the use.

(B) Cross-sectional drawings of the site showing pre-mining and post-mining grades.

(C) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.

(D) Description of drainage/erosion control features to be employed for the duration of the use.

(E) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject landscape setting, indicating the species, number, size, and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(g) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to submit written comments on the proposal. State agency comments shall address the following:

(A) Whether the proposed mining is subject to state reclamation permit requirements;

(B) If subject to state jurisdiction, whether an application has been received for a state reclamation permit and, if so, the current status of the application; and

(C) For uses subject to state jurisdiction, any issues or concerns regarding consistency with state reclamation requirements, or any suggested modifications to comply with state reclamation requirements.

The Executive Director may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction.

(2) Key Viewing Areas

(a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

(b) Each development shall be visually subordinate to its setting as seen from key viewing areas.

(c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

(d) The extent and type of conditions applied to a proposed development to achieve visual subordination shall be proportionate to its potential visual impacts as seen from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas.

(ii) The degree of existing vegetation providing screening.

(iii) The distance from the building site to the key viewing areas from which it is visible.

(iv) The number of key viewing areas from which it is visible.

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements).

(ii) Retention of existing vegetation.

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements).

(iv) New landscaping.

(e) New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.

(f) New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.

(g) Existing tree cover screening proposed development from key viewing areas shall be retained as specified in the Landscape Settings Design Guidelines in 350-81-520(3).

(h) The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.

(i) An alteration to a building built before November 17, 1986, that already protrudes above the skyline of a bluff, cliff, or ridge as seen from a key viewing area, may itself protrude above the skyline if:

(A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration, and

(B) There is no practicable alternative means of altering the building without increasing the protrusion.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-81-520 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction.

(C) Unless as specified otherwise by provisions in 350-81-520, landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The *Scenic Resources Implementation Handbook* shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-81-520(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Conditions regarding new landscaping or retention of existing vegetation for new developments on lands designated GMA Forest shall meet both scenic guidelines and fuel break requirements in 350-81-300 (1)(a).

(l) Unless expressly exempted by other provisions in 350-81-520, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The *Scenic Resources Implementation Handbook* will include a recommended palette of colors.

(m) The exterior of buildings on lands seen from key viewing areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all key viewing areas by existing topographic features. The *Scenic Resources Implementation Handbook* will include a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets recommended thresholds in the "Visibility and Reflectivity Matrices" in the *Implementation Handbook* (once they are created). Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination. Recommended square footage limitations for such surfaces will be provided for guidance in the *Implementation Handbook*.

(n) In addition to the site plan requirements in "Review Uses" 350-81-520(5), applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irri-

gation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

(o) For proposed mining and associated activities on lands visible from key viewing areas, in addition to submittal of plans and information pursuant to 350-81-520 (1)(f) section of this chapter, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable key viewing areas.

(p) Exterior lighting shall be directed downward and sited, hooded, and shielded such that it is not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(q) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of colors specified in the design guidelines for the subject property's landscape setting.

(r) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from key viewing areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.

(s) New main lines on lands visible from key viewing areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.

(t) New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas that require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

(u) New communications facilities may protrude above a skyline visible from a key viewing area only upon demonstration that:

- (A) The facility is necessary for public service,
- (B) The break in the skyline is seen only in the background, and
- (C) The break in the skyline is the minimum necessary to provide the service.

(v) Overpasses, safety and directional signs, and other road and highway facilities may protrude above a skyline visible from a key viewing area only upon a demonstration that:

- (A) The facility is necessary for public service, and
- (B) The break in the skyline is the minimum necessary to provide the service.

(x) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property

unbuildable. In such cases, variances to this guideline may be authorized.

(y) New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building site shall be used.

(z) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.

(aa) All proposed structural development involving more than 200 cubic yards of grading on sites visible from key viewing areas shall include submittal of a grading plan. This plan shall be reviewed by the local government for compliance with key viewing area policies. The grading plan shall include the following:

(A) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:

- (i) Existing and proposed final grades.
- (ii) Location of all areas to be graded, with cut banks and fill slopes delineated.
- (iii) Estimated dimensions of graded areas.

(B) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

- (i) Its purpose.
- (ii) An estimate of the total volume of material to be moved.
- (iii) The height of all cut banks and fill slopes.

(iv) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended.)

(v) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(vi) A description of any other interim or permanent erosion control measures to be used.

(bb) Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest key viewing areas from which it is visible may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to 350-81-520 have been met.

(B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any key viewing areas.

(C) A reclamation plan to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520 (1)(f) and (g)

(D) A written report on a determination of visual subordination has been completed, with findings addressing the

extent of visibility of proposed mining activities from key viewing areas, including:

(i) A list of key viewing areas from which exposed mining surfaces (and associated facilities/activities) would be visible.

(ii) An estimate of the surface area of exposed mining surfaces that would be visible from those key viewing areas.

(iii) The distance from those key viewing areas and the linear distance along those key viewing areas from which proposed mining surfaces are visible.

(iv) The slope and aspect of mining surfaces relative to those portions of key viewing areas from which they are visible.

(v) The degree to which potentially visible mining surfaces are screened from key viewing areas by existing vegetation, including winter screening considerations.

(vi) The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

(cc) Unless addressed by 350-81-520 (2)(bb), new production and/or development of mineral resources may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to this chapter have been met.

(B) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc., associated with the use would be fully screened from any key viewing area.

(C) A reclamation plan to restore the area to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520 (1)(f) and (g).

(dd) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

(ee) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarrying activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

### (3) Landscape Settings

All review uses within the following landscape settings shall comply with the following applicable guidelines:

#### (a) Pastoral

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve

visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas-fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).

(iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

(C) Compatible recreation uses include resource-based recreation of a very low-intensity or low-intensity nature (as defined by 350-81-610) occurring infrequently in the landscape.

#### (b) Coniferous Woodland

(A) Structure height shall remain below the forest canopy level.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(I) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.

(II) At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas-fir, grand fir, western red cedar, western hemlock, big leaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas).

(III) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, outdoor recreation uses should be low-intensity, and include trails, small picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur. They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

#### (c) Oak-Pine Woodland

(A) Structure height shall remain below the tree canopy level in wooded portions of this setting.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.

(ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

For substantially wooded portions:

(iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover

screening the development from key viewing areas shall be retained.

For treeless portions or portions with scattered tree cover:

(iv) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(v) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.

(vi) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(C) Resource-based recreation uses of varying intensities may be compatible with this setting, although most are of low-intensity nature (such as trails or small scenic outlooks). More intensive recreation uses may be compatible where allowed by 350-81-610, although they are generally rare in this setting. As with Woodland settings, intensive recreation uses in Oak-Pine Woodlands may be compatible if widely scattered and not in large concentrations.

(d) Grassland

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible. Exceptions to this guideline are permitted where necessary for farming operations.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(ii) Lower structures that emphasize horizontal lines and blend with this sweeping landscape should be encouraged rather than very tall structures.

(iii) Planting of trees for screening shall not be extensive, in character with the openness of this setting. Where used, screening vegetation shall either tie in with nearby riparian vegetation in seasonal drainages or emulate windrows. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include Oregon white oak, Lombardy poplar, black locust, black cottonwood (wet locations), Russian olive and ponderosa pine.

(C) Resource-based recreation uses of a very low-intensity or low-intensity nature that occur infrequently are compatible with this setting, and include hiking, hunting and wildlife viewing.

(e) Rural Residential

(A) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

(B) In portions of this setting visible from key viewing areas, and not exempt from visual subordination guidelines (see 350-81-520 (3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as scenic overlooks).

(f) Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland

(A) New development in this setting shall meet the design guidelines described for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In the event of a possible conflict between the two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.

(C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

(g) Residential

(A) In portions of this setting visible from key viewing areas and not exempt from visual subordination guidelines (see 350-81-520 (3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) The exteriors of structures shall be non-reflective unless fully screened from key viewing areas with existing vegetation and/or topography.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iv) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(B) Compatible recreation uses are limited to community park facilities.

(h) Village

(A) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 1/2 stories or less.

(B) For new commercial, institutional (churches, schools, government buildings), or multifamily residential uses on parcels fronting a scenic travel corridor (Washington State Route 14 or the Historic Columbia River Highway) and expansion of existing development for such uses, parking

shall be limited to rear or side yards of buildings to the maximum extent practicable.

(C) New vehicular access points to the scenic travel corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.

(D) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly shared landscaped open areas, etc.

(E) New commercial, institutional or multifamily residential uses fronting a scenic travel corridor shall comply with the following landscape requirements:

(i) Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet wide between the new use and the scenic travel corridor roadway.

(ii) The landscape strip required in 350-81-520 (3)(h)(E)(i) shall include shrubs, vegetative ground cover, and, at minimum, one tree. Trees shall be spaced as appropriate to the species and not to exceed 25 feet apart on the average.

(F) The use of building materials that reinforce the Village setting's character, such as wood, logs, or stone, and that reflect community desires, should be encouraged.

(G) Architectural styles that are characteristic of the area (such as 1 1/2-story dormer roof styles in Corbett) and that reflect community desires should be encouraged. Entry signs should be consistent with such architectural styles.

(H) Design features that create a "pedestrian-friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc., should be encouraged.

(I) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.

(J) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.

(K) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

(i) River Bottomlands

(A) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas-fir, western red cedar and western hemlock (west Gorge), and various native willow species.

(iii) At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.

(C) Compatible recreation uses depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible.

In other River Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be compatible, provided that:

(i) their designs emphasize retention and/or enhancement of native riparian communities,

(ii) structures and parking areas are visually subordinate

(iii) they are separated from other areas of concentrated recreation usage by stretches of natural-appearing shoreline and adjacent uplands.

(j) Gorge Walls, Canyons, and Wildlands

(A) New development and expansion of existing development shall be screened so it is not seen from key viewing areas, to the maximum extent practicable.

(B) All trees planted to screen permitted development and uses from key viewing areas shall be native to the area.

(C) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum removal necessary to accommodate facilities otherwise permitted in the underlying land use designation or for safety purposes.

(D) All structures shall be limited in height to a maximum of 1 1/2 stories.

(E) The exteriors of structures shall be non-reflective.

(F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors, unless public safety concerns or federal or state highway standards require otherwise.

(G) Compatible recreation uses are limited to very low or low-intensity resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such compatible uses (such as trails) are generally associated with minimal facility development, if any.

(k) Developed Settings and Visual Subordination Policies

GMA policies to protect key viewing area viewsheds require that all new development on lands seen from key viewing areas be visually subordinate to its landscape setting, except for "specified developed settings that are not visually sensitive."

Three landscape settings are considered developed settings within this context: Rural Residential, Residential, and Village. Of all GMA lands in these three settings, six particular areas that are not visually sensitive have been identified. New development in these settings shall be compatible with the setting, but not necessarily visually subordinate. New developments in these settings are exempt from the color and siting guidelines in the Key Viewing Areas section of this chapter. These areas are:

(A) Corbett Rural Center (Village)

(B) Skamania Rural Center (Village)

(C) West of Hood River Urban Area, east of Country Club Road (Rural Residential)

(D) Murray's Addition subdivision, The Dalles (Residential)

(E) Two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Residential)

(F) Portion of Underwood Heights along Cooper Avenue, south of Cook-Underwood Road (Rural Residential)

(4) Scenic Travel Corridors

All review uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

(a) For the purposes of implementing this section, the foreground of a scenic travel corridor shall include those lands within 1/4 mile of the edge of pavement of the scenic travel corridor roadway.

(b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway. A variance to this setback requirement may be granted pursuant to 350-81-078(2). All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway, to the maximum extent practicable.

(c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a scenic travel corridor roadway, except in a Rural Center designation (village landscape setting), shall comply with 350-81-520 (4)(b) above, to the maximum extent practicable.

(d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:

(A) An evaluation of potential visual impacts of the proposed project as seen from any key viewing area.

(B) An inventory of any rare plants, sensitive wildlife habitat, wetlands, or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable Management Plan guidelines to protect the resources.

(e) When evaluating possible locations for undergrounding of signal wires or powerlines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the *Columbia River Gorge National Scenic Area Corridor Visual Inventory* (April 1990).

(f) New production and/or development of mineral resources proposed within 1/4 mile of the edge of pavement of a scenic travel corridor may be allowed upon a demonstration that full visual screening of the site from the scenic travel corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a scenic travel corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within timeframes specified in 350-81-520 (2)(ee)

(g) Expansion of existing quarries may be allowed pursuant to 350-81-520 (2)(bb). Compliance with visual subor-

dinance requirements shall be achieved within timeframes specified in 350-81-520 (2)(dd).

**350-81-530. Special Management Area Scenic Review Criteria**

(1) SMA Design Guidelines Based on Landscape Settings

(a) The following guidelines apply to all lands within SMA landscape settings regardless of visibility from KVAs (includes areas seen from KVAs as well as areas not seen from KVAs):

(A) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape.

(i) The use of plant species common to the landscape setting shall be encouraged. The use of plant species in rows, as commonly found in the landscape setting, is encouraged.

(B) Coniferous Woodland and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous Woodland and Oak-Pine Woodland landscape.

(i) Buildings shall be encouraged to have a vertical overall appearance in the Coniferous Woodland landscape setting and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(C) Residential: The Residential setting is characterized by concentrations of dwellings.

(i) At Rowena Dell, new buildings shall have a rustic appearance using natural materials. At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(D) River Bottomlands: River Bottomlands shall retain the overall visual character of a floodplain and associated islands.

(i) Buildings shall have an overall horizontal appearance in areas with little tree cover.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(E) Gorge Walls, Canyonlands, and Wildlands: New developments and land uses shall retain the overall visual character of the natural-appearing landscape.

(i) Structures, including signs, shall have a rustic appearance, use nonreflective materials, have low contrast with the surrounding landscape, and be of a Cascadian architectural style.

(ii) Temporary roads shall be promptly closed and revegetated.

(iii) New utilities shall be below ground surface, where feasible.

(iv) Use of plant species non-native to the Columbia River Gorge shall not be allowed.

PROPOSED

(2) SMA Guidelines for Development and Uses Visible from KVAs

(a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

(b) New developments and land uses shall be evaluated to ensure that the required scenic standard is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from key viewing areas.

(c) The required SMA scenic standards for all development and uses are summarized in the following table:

**REQUIRED SMA SCENIC STANDARDS**

LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Coniferous Woodland, Oak-Pine Woodland	Forest (National Forest Lands), Open Space	Not Visually Evident
River Bottomlands	Open Space	Not Visually Evident
Gorge Walls, Canyonlands, Wildlands	Forest, Agriculture, Public Recreation, Open Space	Not Visually Evident
Coniferous Woodland, Oak-Pine Woodland	Forest, Agriculture, Residential, Public Recreation	Visually Subordinate
Residential	Residential	Visually Subordinate
Pastoral	Forest, Agriculture, Public Recreation, Open Space	Visually Subordinate
River Bottomlands	Forest, Agriculture, Public Recreation	Visually Subordinate

(d) In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development.

(e) Proposed developments or land uses shall be sited to achieve the applicable scenic standard. Development shall be designed to fit the natural topography, to take advantage of landform and vegetation screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.

(f) The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its degree of visibility from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing the degree of visibility, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas,

(ii) The degree of existing vegetation providing screening,

(iii) The distance from the building site to the key viewing areas from which it is visible,

(iv) The number of key viewing areas from which it is visible, and

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements),

(ii) Retention of existing vegetation,

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements), and

(iv) New landscaping.

(g) Sites approved for new development to achieve scenic standards shall be consistent with guidelines to protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources.

(h) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from key viewing areas.

(i) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that meeting this guideline is not feasible considering the function of the structure.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) to achieve the required scenic standard from key viewing areas shall be required only when application of all other available guidelines in this chapter is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is necessary to meet the required standard, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to meet the scenic standard within five years or less from the commencement of construction.

(C) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The *Scenic Resources Implementation Handbook* shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in this chapter, and minimum recommended sizes of

new trees planted (based on average growth rates expected for recommended species).

(k) Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The *Scenic Resources Implementation Handbook* will include a recommended palette of colors as dark or darker than the colors in the shadows of the natural features surrounding each landscape setting

(l) The exterior of buildings on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. The *Scenic Resources Implementation Handbook* will include a recommended list of exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets approval thresholds in the "Visibility and Reflectivity Matrices" in the *Implementation Handbook*. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure meeting the scenic standard. Recommended square footage limitations for such surfaces will be provided for guidance in the *Implementation Handbook*.

(m) Any exterior lighting shall be sited, limited in intensity, shielded, or hooded in a manner that prevents lights from being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes.

(n) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed 3 months.

### (3) SMA Guidelines for KVA Foregrounds and Scenic Routes

(a) All new developments and land uses immediately adjacent to scenic routes shall be in conformance with state or county scenic route guidelines.

(b) Scenic highway corridor strategies shall be developed and implemented for Interstate 84 (I-84), Washington State Route 14 (SR 14) and the Historic Columbia River Highway (HCRH). For SR 14 and the HCRH, this involves ongoing implementation (and possible updating) of the associated existing documents. For I-84, a new scenic corridor strategy shall be developed by the end of 2005.

(c) The goals of scenic corridor strategies shall include: 1) providing a framework for future highway improvements and management that meet Management Plan scenic guidelines and public transportation needs; and 2) creating design continuity for the highway corridor within the Scenic Area. Corridor strategies shall, at minimum, include design guidelines (e.g. materials, conceptual designs, etc.) for typical projects that are consistent with Management Plan scenic resources provisions and an interdisciplinary, interagency project planning and development process.

(d) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to applicable guidelines in 350-81-530(2).

(A) The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the requirements in the previous section and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.

(B) Findings must evaluate the following:

(i) The limiting factors to meeting the required scenic standard and/or applicable guidelines from the previous section,

(ii) Reduction in project size;

(iii) Options for alternative sites for all or part of the project, considering parcel configuration and on-site topographic or vegetative screening;

(iv) Options for design changes including changing the design shape, configuration, color, height, or texture in order to meet the scenic standard.

(C) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as seen from the foreground of key viewing areas:

(i) Form and Line-Design of the development shall minimize changes to the form of the natural landscape. Development shall borrow form and line from the landscape setting and blend with the form and line of the landscape setting. Design of the development shall avoid contrasting form and line that unnecessarily call attention to the development.

(ii) Color-Color shall be found in the project's surrounding landscape setting. Colors shall be chosen and repeated as needed to provide unity to the whole design.

(iii) Texture-Textures borrowed from the landscape setting shall be emphasized in the design of structures. Landscape textures are generally rough, irregular, and complex rather than smooth, regular, and uniform.

(iv) Design-Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious whole, using repetition of elements and blending of elements as necessary.

(e) Right-of-way vegetation shall be managed to minimize visual impacts of clearing and other vegetation removal as seen from key viewing areas. Roadside vegetation management (vista clearing, planting, etc.) should enhance views from the highway.

(f) Screening from key viewing areas shall be encouraged for existing and required for new road maintenance, warehouse, and stockpile areas.

### (4) SMA Guidelines for Areas Not Seen from KVAs

(a) Unless expressly exempted by other provisions in this chapter, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the *Scenic Resources Implementation Handbook*.

### **350-81-540. General Management Area Cultural Resource Review Criteria**

(1) General Provisions for Implementing the Cultural Resources Protection Process.

(a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

(b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

(c) Reconnaissance and Historic Surveys and Survey Reports.

(A) Reconnaissance survey requirements and exceptions.

(i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-80-504 (1)(c)(A)(ii) below.

(ii) A reconnaissance survey shall be required for all proposed uses, except:

(I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

(IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

(V) Proposed uses that would occur on sites that have been adequately surveyed in the past.

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

- Residential development that involves two or more new dwellings for the same project applicant.
- Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
- Public transportation facilities that are outside improved rights-of-way.
- Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.
- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

(B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

(C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

For 350-81-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

**(D) Reconnaissance Surveys for Small-Scale Uses.**

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

(i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.

(ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

**(E) Reconnaissance Survey Reports for Small-Scale Uses**

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

(i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.

(ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.

(iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

**(F) Reconnaissance Surveys for Large-Scale Uses**

(i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

(ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:

(I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

(II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

(III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

(IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

**(G) Reconnaissance Survey Reports for Large-Scale Uses**

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

(i) A description of the proposed use, including drawings and maps.

(ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

(iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.

(iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

**(H) Historic Surveys and Reports**

(i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.

(ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.

(iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

(e) Cultural resources are significant if one of the following criteria is satisfied:

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and

Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-81-040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons.

Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-81-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude when one of the following conditions exists:

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in

the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2(b)(B) above.

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(C) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(i) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(ii) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

(A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.

(C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant

within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.9) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.8.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800.9(a)].

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800.9(b)]. Adverse effects on cultural resources include, but are not limited to:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction.

(B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.

(C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before

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development begins, and such research is conducted in accordance with applicable professional standards and guidelines.

(ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.

(C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant,

or other appropriate mechanism shall be developed and recorded in county deeds and records.

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.8(d), including, but not limited to:

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.

(v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(6) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] 273.705, ORS 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [350-80-540 (1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [350-80-540 (3)(a)].

Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

(d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

#### (7) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.

(c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.

(e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and

68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [350-81-540 (5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [350-81-540 (5)(c)] are met and the mitigation plan is executed.

### **350-81-550. Special Management Area Cultural Resource Review Criteria.**

#### (1) General Guidelines for Implementing the Cultural Resources Protection Process

(a) All cultural resource information shall remain confidential, according to Section 6 (a)(1)(A) of the Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC 470 hh and 36 CFR 296.18.

(b) All cultural resources surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 CFR 61.

(c) The Forest Service will be responsible for performing the literature review and consultation, inventory, evaluations of significance, assessments of effect, and mitigation requirements in 350-81-550(4) for forest practices and National Forest System lands.

(d) New developments or land uses shall not adversely affect significant cultural resources.

(2) The procedures and guidelines in 350-81-540 shall be used to review all proposed developments and land uses other than those on all federal lands, federally assisted projects and forest practices.

(3) The procedures and guidelines in 36 CFR 800 and 350-81-550(4) shall be used by the Executive Director and federal agencies to evaluate new developments or land uses on federal lands, federally assisted projects, and forest practices.

(4) The following procedures as well as the provisions in 36 CFR 800 shall be used to assess potential effects to cultural resources.

#### (a) Literature Review and Consultation

(A) An assessment shall be made to determine if any cultural resources listed on the National Register of Historic Places at the national, state or county level exist on or within the area of potential direct and indirect impacts.

(B) A search shall be made of state and county government, National Scenic Area/Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural resources, including consultation with the State Historic Preservation Office and tribal governments. State and tribal government response to the consultation request shall be allowed for 30 days.

(C) Consultation with cultural resource professionals knowledgeable about the area.

(D) A field inventory by a cultural resource professional shall be required if the Forest Service or the Executive Director determines that a recorded or known cultural resource exists on or within the immediate vicinity of a new development or land use, including those reported in consultation with the Tribal governments.

(b) Field Inventory

(A) Tribal representatives shall be invited to participate in the field inventory.

(B) The field inventory shall consist of one or the other of the following guidelines, as determined by the cultural resource professional:

(i) Complete survey: the systematic examination of the ground surface through a controlled procedure, such as walking an area in evenly-spaced transects. A complete survey may also require techniques such as clearing of vegetation, augering or shovel probing of subsurface soils for the presence of buried cultural resources.

(ii) Sample survey: the sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for large or difficult to survey parcels, and is generally accomplished by a stratified random or non-stratified random sampling strategy. A parcel is either stratified by variables such as vegetation, topography or elevation, or by non-environmental factors such as a survey grid.

Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.

(C) A field inventory report shall be prepared, and shall include the following:

(i) A narrative integrating the literature review of section (4)(a) above with the field inventory of section (4)(b) above.

(ii) A description of the field inventory methodology used, including the type and extent of field inventory, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.

(iii) A statement of the presence or absence of cultural resources within the area of the new development or land use.

(iv) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.

(D) The report shall follow the format specified by the Washington Office of Archaeology and Historic Preservation for inventories conducted in the State of Washington. Reports for inventories conducted in the State of Oregon shall follow the format specified by the Oregon State Historic Preservation Office.

(E) The field inventory report shall be presented to the Forest Service or the Executive Director for review.

(c) Evaluations of Significance

(A) When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource in accor-

dance with to the criteria of the National Register of Historic Places (36 CFR 60.4).

(B) Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.

(C) Evaluations of the significance of traditional cultural properties shall follow National Register Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultural Properties, within local and regional contexts.

(D) Recommendations for eligibility to the National Register shall be completed for each identified resource, in accordance with National Register criteria A through D (36 CFR 60.4). The Forest Service or the Executive Director shall review evaluations for adequacy.

(E) Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.

(F) An assessment of effect shall be required if the Forest Service or the Executive Director determines that the inventoried cultural resources are significant.

(d) Assessment of Effect

(A) For each significant (i.e., National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.9 ("Assessing Effects"). Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for sections (4)(d)(B) through (4)(d)(D) below. The Forest Service or Executive Director shall review each determination for adequacy.

(B) If the proposed development or change in use will have "No Adverse Effect," as defined by 36 CFR 800.8, to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Requirements" of 36 CFR 800.8(a).

(C) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 CFR 800.9(b) to a significant cultural resource, the type and extent of "adverse effect" upon the qualities of the property that make it eligible for the National Register shall be documented. This documentation shall follow the process outlined under 36 CFR 800.5(e).

(D) If the "effect" appears to be beneficial (i.e., an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.8 ("Documentation Requirements").

(e) Mitigation

(A) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects. These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

(B) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be

affected, and documentation of their concerns, shall be included for all mitigation proposals.

(C) The Forest Service or the Executive Director shall review all mitigation proposals for adequacy.

(5) Discovery During Construction

All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Forest Service or the Executive Director if cultural resources are discovered during construction or development.

(a) If cultural resources are discovered, particularly human bone or burials, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery and recommend measures to protect and/or recover the resources.

(b) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:

(A) The applicant shall stop all work in the vicinity of the discovery.

(B) The applicant shall immediately notify the Executive Director, the Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.

(C) The Forest Service or the Executive Director shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.

(D) A cultural resource professional shall evaluate the potential significance of the resource pursuant to 350-81-550 (4)(c) and report the results to the Forest Service or the Executive Director.

(c) The cultural resource review process shall be complete and work may continue if the Forest Service or the Executive Director determines that the cultural resource is not significant.

(d) The cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to 350-81-550 (4)(e) if the Forest Service or the Executive Director determines that the cultural resource is significant.

**350-81-560. General Management Area Wetland Review Criteria**

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation.

In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the wetland and the wetlands buffer zone; and

(C) a description of actions that would alter or destroy the wetland.

(2) Uses allowed outright in wetlands and wetlands buffer zones.

(a) Commission Rule 350-81-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-81-560(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of wetlands acreage or functions, or

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-560 (2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-81-560(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

PROPOSED

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

(A) The extent of public need for the proposed use.

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(C) The functions and size of the wetland that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

(i)	Restoration:	2:1
(ii)	Creation:	3:1
(iii)	Enhancement:	4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

(A)	Forest communities:	75 feet
(B)	Shrub communities:	100 feet
(C)	Herbaceous communities:	150 feet

(d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

#### (8) Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

### **350-81-570. General Management Area Stream, Pond, Lake and Riparian Area Review Criteria**

(1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas

(a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.

(b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and

(C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.

(2) Uses allowed outright in streams, ponds, lakes, and their buffer zones.

(a) Commission Rule 350-81-570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant 350-81-570(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

(C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this

category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-074, 350-81-570 (2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-81-570(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and local laws.

(6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-81-560 (6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

(b) The proposed use is in the public interest as determined by 350-81-560 (6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.

(c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.

(B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.

(C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.

(F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement guidelines shall apply:

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.

(E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.

(F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.

(H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer

zone has been altered or destroyed, or as soon thereafter as is practicable.

(I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

(7) Stream, Pond, and Lake Buffer Zones

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet

(B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet

(C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-81-560 (7)(b), substituting the term pond or lake as appropriate.

(b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

(8) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

(a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.

(b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.

(c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for

planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

**350-80-580. General Management Area Sensitive Wildlife Review Criteria.**

(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

- Bald eagle habitat
- Deer and elk winter range
- Elk habitat
- Mountain goat habitat
- Peregrine falcon habitat
- Pika colony area
- Pileated woodpecker habitat
- Pine marten habitat
- Shallow water fish habitat (Columbia R.)
- Special streams
- Special habitat area
- Spotted owl habitat
- Sturgeon spawning area
- Tributary fish habitat
- Turkey habitat
- Waterfowl area
- Western pond turtle habitat

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

(i) listed as endangered or threatened pursuant to federal or state endangered species acts,

(ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

(iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or

(iv) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, and prairie falcon).

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) Field Survey

A field survey to identify sensitive wildlife areas or sites shall be required for:

- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-81-580(5) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

(A) Identify/verify the precise location of the wildlife area or site,

(B) Ascertain whether the wildlife area or site is active or abandoned, and

(C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

(A) Biology of the affected wildlife species.

(B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

(A) The sensitive wildlife area or site is not active, or

(B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

#### (5) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone.

Wildlife management plans shall meet the following guidelines:

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(6) New fences in deer and elk winter range

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

### **350-80-590. General Management Areas Rare Plant Review Criteria.**

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are

(A) endemic to the Columbia River Gorge and vicinity,

(B) listed as endangered or threatened pursuant to federal or state endangered species acts, or

(C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) Field Survey

A field survey to identify sensitive plants shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-81-590(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.

If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

(b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.

(c) New uses shall be prohibited within sensitive plant species buffer zones.

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-81-150(7), the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-81-590(6).

(e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.

Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

#### (5) Protection and Rehabilitation Plans

Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance.

Protection and rehabilitation plans shall meet the following guidelines:

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

(c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

#### (6) Sensitive Plant Buffer Zones

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(A) Identifies the precise location of the sensitive plants,

(B) Describes the biology of the sensitive plants, and

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

(d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.

Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

### **350-81-600. Special Management Areas Natural Resource Review Criteria**

(1) All new developments and uses, as described in a site plan prepared by the applicant, shall be evaluated using the following guidelines to ensure that natural resources are protected from adverse effects. Comments from state and federal agencies shall be carefully considered. (Site plans are described in 350-81-032).

(2) Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas)

(a) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in subsections (2)(a)(B)(i) and (ii) below. These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined below.

(A) All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.

(B) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(i) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.

(ii) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.

(iii) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be

exempted from the wetlands and riparian guidelines upon demonstration of all of the following:

(I) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.

(II) The wetland is not critical habitat.

(III) Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(C) The buffer width shall be increased for the following:

(i) When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone.

(ii) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.

(iii) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.

(D) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(E) Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(F) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.

(b) When a buffer zone is disturbed by a new use, it shall be replanted with only native plant species of the Columbia River Gorge.

(c) The applicant shall be responsible for identifying all water resources and their appropriate buffers. (see above).

(d) Wetlands Boundaries shall be delineated using the following:

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of

hydric soils and the soil survey maps shall be used as an indicator of wetlands.

(B) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.

(C) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the '1987 Corps of Engineers Wetland Delineation Manual (on-line Edition)'.

(D) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.

(e) Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for streams and the high water mark for ponds and lakes. The project applicant shall be responsible for determining the exact location of the appropriate boundary for the water resource.

(f) The Executive Director may verify the accuracy of, and render adjustments to, a bank full flow, high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary is contested by the project applicant, the Executive Director shall obtain professional services, at the project applicant's expense, or ask for technical assistance from the Forest Service to render a final delineation.

(g) Buffer zones shall be undisturbed unless the following criteria have been satisfied:

(A) The proposed use must have no practicable alternative as determined by the practicable alternative test.

Those portions of a proposed use that have a practicable alternative will not be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.

(B) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:

(i) A documented public safety hazard exists or a restoration/enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question, and

(ii) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project, and

(iii) The proposed project minimizes the impacts to the wetland.

(C) Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.

### (3) Wildlife and Plants

(a) Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are within 1000 ft of a sensitive wildlife/plant site and/or area.

Sensitive Wildlife Areas are those areas depicted in the wildlife inventory and listed in Table 4 in the Management Plan including all Priority Habitats listed in this Chapter. The

approximate locations of sensitive wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory.

(b) The Executive Director shall submit site plans (of uses that are proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife for wildlife issues and by the Oregon or Washington Natural Heritage Program for plant issues).

(c) The Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:

(A) Identify/verify the precise location of the wildlife and/or plant area or site,

(B) Determine if a field survey will be required,

(C) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or adversely affect (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season, and

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(i) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(ii) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant, (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(iii) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reduced buffer zones is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached

(d) The Executive Director, in consultation with the State and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:

(A) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner 1991).

(B) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(C) Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

(D) Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.

(E) In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.

(F) The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife 2000) and the Washington guidelines when they become finalized.

(G) The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.

(H) The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.

(I) Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed on the following Priority Habitats Table. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

**PRIORITY HABITATS TABLE**

Priority Habitats	Criteria
Aspen stands	High fish and wildlife species diversity, limited availability, high vulnerability to habitat alteration.
Caves	Significant wildlife breeding habitat, limited availability, dependent species.

**PRIORITY HABITATS TABLE**

Old-growth forest	High fish and wildlife density, species diversity, breeding habitat, seasonal ranges, and limited and declining availability, high vulnerability.
Oregon white oak woodlands	Comparatively high fish and wildlife density, species diversity, declining availability, high vulnerability
Prairies and steppe	Comparatively high fish and wildlife density, species diversity, important breeding habitat, declining and limited availability, high vulnerability.
Riparian	High fish and wildlife density, species diversity, breeding habitat, movement corridor, high vulnerability, dependent species.
Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.
Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.
Talus	Limited availability, unique and dependent species, high vulnerability.
Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.

(e) The wildlife/plant protection process may terminate if the Executive Director, in consultation with the Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife/plant protection process may conclude.

(f) If the above measures fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

(g) The Executive Director shall submit a copy of all field surveys (if completed) and mitigation plans to the Forest

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Service and appropriate state agencies. The Executive Director shall include all comments in the record of application and address any written comments submitted by the state and federal wildlife agency/heritage programs in the final decision.

Based on the comments from the state and federal wildlife agency/heritage program, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(h) The Executive Director shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.

#### (4) Soil Productivity

(a) Soil productivity shall be protected using the following guidelines:

(A) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.

(B) New developments and land uses shall control all soil movement within the area shown on the site plan.

(C) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.

(D) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

#### Practicable Alternative Test

(1) An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

(a) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands.

(b) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands.

(c) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

#### Mitigation Plan

(1) Mitigation Plan shall be prepared when:

(a) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).

(b) There is no practicable alternative (see the "practicable alternative" test).

(2) In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).

(3) The primary purpose of this information is to provide a basis for the project applicant to redesign the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas and sites, that maximizes his/her development options, and that mitigates, through restoration, enhancement, and replacement measures, impacts to the water resources and/or wildlife/plant area or site and/or buffer zones.

(4) The applicant shall submit the mitigation plan to the Executive Director. The Executive Director shall submit a copy of the mitigation plan to the Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how it reached an opposing conclusion.

(5) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a mitigation plan involving wetland creation.

(6) Mitigation plans shall include maps, photographs, and text. The text shall:

(a) Describe the biology and/or function of the sensitive resources (eg. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.

(b) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.

(c) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long-term use and integrity of the wildlife/plant area or site).

(d) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.

(e) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans, the local government, appropriate state agencies, and Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.

(7) At a minimum, a project applicant shall provide to the Executive Director a progress report every 3-years that

documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

(8) A final monitoring report shall be submitted to the Executive Director for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The Executive Director shall submit copies of the monitoring report to the Forest Service; who shall offer technical assistance to the Executive Director in helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.

(9) Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:

(a) Restoration and enhancement efforts shall be completed no later than one year after the sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(b) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community.

(c) Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a natural condition. Habitat shall be replicated in composition, structure, and function, including tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such as large woody debris and boulders.

(d) If this standard is not feasible or practical because of technical constraints, a sensitive resource of equal or greater benefit may be substituted, provided that no net loss of sensitive resource functions occurs and provided the Executive Director, in consultation with the appropriate State and Federal agency, determine that such substitution is justified.

(e) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(f) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(A) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(B) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as demonstrated by the 'Practical Alternative Test'.

(C) Fish passage shall be protected from obstruction.

(D) Restoration of fish passage should occur wherever possible.

(E) Show location and nature of temporary and permanent control measures that shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(F) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.

(G) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(H) Streambank and shoreline stability shall be maintained or restored with natural revegetation.

(I) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed.

Restoration: 2:1

Creation: 3:1

Enhancement: 4:1

(g) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the local government to help evaluate such reports and any subsequent activities associated with compliance.

(h) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in guideline. These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.

### 350-81-610. General Management Areas Recreation Resource Review Criteria

The following uses are allowable, subject to compliance with 350-81-610 (5) and (6).

(1) Recreation Intensity Class 1 (Very Low Intensity)

(a) Parking areas for a maximum of 10 cars for any allowed uses in Recreation Intensity Class 1.

(b) Trails for hiking, equestrian, and mountain biking use.

(c) Pathways for pedestrian and bicycling use.

(d) Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating equestrian use).

(e) Scenic viewpoints and overlooks.

(f) Wildlife/botanical viewing and nature study areas.

(g) River access areas.

(h) Simple interpretive signs and/or displays, not to exceed a total of 50 square feet.

(i) Entry name signs, not to exceed 10 square feet per sign.

(j) Boat docks, piers, or wharfs.

(k) Picnic areas.

(l) Restrooms/comfort facilities.

(2) Recreation Intensity Class 2 (Low Intensity)

(a) All uses permitted in Recreation Intensity Class 1.

(b) Parking areas for a maximum of 25 cars, including spaces for campground units, to serve any allowed uses in Recreation Intensity Class 2.

(c) Simple interpretive signs and displays, not to exceed a total of 100 square feet.

(d) Entry name signs, not to exceed 20 square feet per sign.

(e) Boat ramps, not to exceed two lanes.

(f) Campgrounds for 20 units or less, tent sites only.

(3) Recreation Intensity Class 3 (Moderate Intensity)

(a) All uses permitted in Recreation Intensity Classes 1 and 2.

(b) Parking areas for a maximum of 75 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 3.

(c) Interpretive signs, displays and/or facilities.

(d) Visitor information and environmental education signs, displays, or facilities.

(e) Entry name signs, not to exceed 32 square feet per sign.

(f) Boat ramps, not to exceed three lanes.

(g) Concessions stands, pursuant to applicable policies in Chapter 4, Part 1 of the Management Plan.

(h) Campgrounds for 50 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 3 campgrounds may also include one group campsite area, in addition to the allowed individual campground units or parking area maximums allowed as described herein.

(4) Recreation Intensity Class 4 (High Intensity)

(a) All uses permitted in Recreation Intensity Classes 1, 2, and 3.

(b) Parking areas for a maximum of 250 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 4.

(c) Horseback riding stables and associated facilities.

(d) Entry name signs, not to exceed 40 square feet per sign.

(e) Boat ramps.

(f) Campgrounds for 175 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 4 campgrounds may also include up to three group campsite areas, in addition to allowed individual campsite units or parking area maximums allowed as described herein.

(5) Approval Criteria for Recreation Uses

All proposed recreation projects outside of Public or Commercial Recreation designations shall comply with the appropriate scenic, cultural, natural and recreation resource guidelines (350-81-520 through 350-81-620), and shall satisfy the following:

(a) Compliance with 350-81-520 through 350-81-610.

(b) Cumulative effects of proposed recreation projects on landscape settings shall be based on the "compatible recreation use" guideline for the landscape setting in which the use is located.

(c) For proposed recreation projects in or adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland:

(A) The use would not seriously interfere with accepted forest or agricultural practices on surrounding lands devoted to forest or farm uses. Provision of on-site buffers may be used to partially or fully comply with this criterion, depending upon project design and/or site conditions.

(B) A declaration has been signed by the project applicant or owner and recorded with county deeds and records specifying that the applicant or owner is aware that operators are entitled to carry on accepted forest or farm practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland.

(d) For proposed projects including facilities for outdoor fires for cooking or other purposes, or for proposed campgrounds, compliance with the following:

(A) The project applicant shall demonstrate that a sufficient quantity of water necessary for fire suppression (as determined pursuant to applicable fire codes or the county fire marshal) is readily available to the proposed facility, either through connection to a community water system or on-site wells, storage tanks, sumps, ponds or similar storage devices. If connection to a community water system is proposed, the project applicant shall demonstrate that the water system has adequate capacity to meet the facility's emergency fire suppression needs without adversely affecting the remainder of the water system with respect to fire suppression capabilities.

(B) To provide access for firefighting equipment, access drives shall be constructed to a minimum of 12 feet in width and a maximum grade of 12 percent. Access drives shall be maintained to a level that is passable to firefighting equipment.

(e) Trail or trailhead projects shall comply with applicable trails policies in the Management Plan.

(f) For proposed projects providing boating or windsurfing access to the Columbia River or its tributaries: compliance with applicable "River Access and Protection of Treaty Rights" objectives in the Management Plan.

(g) For proposed projects on public lands or proposed projects providing access to the Columbia River or its tributaries: compliance with guidelines for protection of tribal treaty rights in 350-81-084.

(h) For proposed projects that include interpretation of natural or cultural resources: A demonstration that the interpretive facilities will not adversely affect natural or cultural resources and that appropriate and necessary resource protection measures shall be employed.

(i) For proposed Recreation Intensity Class 4 projects (except for projects predominantly devoted to boat access): A demonstration that the project accommodates provision of mass transportation access to the site. The number and size of the mass transportation facilities shall reflect the physical capacity of the site. This requirement may be waived upon a demonstration that provision of such facilities would result in overuse of the site, either degrading the quality of the recreation experience or adversely affecting other resources at the site.

#### (6) Facility Design Guidelines for All Recreation Projects

(a) Recreation facilities that are not resource-based in nature may be included at sites providing resource-based recreation uses consistent with the guidelines contained herein, as long as such facilities comprise no more than one-third of the total land area dedicated to recreation uses and/or facilities. Required landscaped buffers may be included in calculations of total land area dedicated to recreation uses and/or facilities.

(b) The facility design guidelines contained herein are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another.

To be considered a separate facility from other developments or improvements within the same recreation intensity class, recreation developments or improvements must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

(c) Parking areas, access roads, and campsites shall be sited and designed to fit into the existing natural contours as much as possible, both to minimize ground-disturbing grading activities and utilize topography to screen parking areas and associated structures. Parking areas, access roads, and campsites shall be sited and set back sufficiently from bluffs so as to be visually subordinate as seen from key viewing areas.

(d) Existing vegetation, particularly mature trees, shall be maintained to the maximum extent practicable, and utilized to screen parking areas and campsites from key viewing areas and satisfy requirements for perimeter and interior landscaped buffers.

(e) Parking areas providing more than 50 spaces shall be divided into discrete "islands" separated by unpaved, landscaped buffer areas.

(f) Lineal frontage of parking areas and campsite loops to scenic travel corridors shall be minimized to the greatest extent practicable.

(g) Ingress/egress points shall be consolidated to the maximum extent practicable, providing for adequate emergency access pursuant to applicable fire and safety codes.

(h) Signage shall be limited to that necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.

(i) Exterior lighting shall be shielded, designed and sited in a manner which prevents such lighting from projecting off-site or being highly visible from key viewing areas.

(j) Innovative designs and materials that reduce visual impacts (such as "turf blocks" instead of conventional asphalt paving) shall be encouraged through incentives such as additional allowable parking spaces and reduced required minimum interior or perimeter landscaped buffers. Upon a determination that potential visual impacts have been substantially reduced by use of such designs and materials, the Executive Director may allow either reductions in required minimum interior or perimeter landscape buffers up to 50 percent of what would otherwise be required, or additional parking spaces not to exceed 10 percent of what would otherwise be permitted.

(k) A majority of trees, shrubs, and other plants in landscaped areas shall be species native or naturalized to the landscape setting in which they occur (landscape setting design guidelines specify lists of appropriate species).

(l) All structures shall be designed so that height, exterior colors, reflectivity, mass, and siting result in the structures blending with and not noticeably contrasting with their setting.

(m) Landscape buffers around the perimeter of parking areas accommodating more than 10 vehicles shall be provided. Minimum required widths are 5 feet for 20 vehicles or fewer, 20 feet for 50 vehicles or fewer, 30 feet for 100 vehicles or fewer, and 40 feet for 250 vehicles or fewer.

(n) Interior landscaped buffers breaking up continuous areas of parking shall be provided for any parking areas with more than 50 spaces. The minimum width of interior landscaped buffers between each parking lot of 50 spaces or less shall be 20 feet.

(o) Within required perimeter and interior landscaped buffer areas, a minimum of one tree of at least 6 feet in height shall be planted for every 10 lineal feet as averaged for the entire perimeter width. A minimum of 25 percent of planted species in perimeter buffers shall be coniferous to provide screening during the winter. Project applicants are encouraged to place such trees in random groupings approximating natural conditions. In addition to the required trees, landscaping shall include appropriate shrubs, groundcover, and other plant materials.

(p) Minimum required perimeter landscaped buffer widths for parking areas or campgrounds may be reduced by as much as 50 percent, at the discretion of the Executive Director, if existing vegetation stands and/or existing topog-

raphy are utilized such that the development is not visible from any key viewing area.

(q) Grading or soil compaction within the drip line of existing mature trees shall be avoided to the maximum extent practicable, to reduce risk of root damage and associated tree mortality.

(r) All parking areas and campsites shall be set back from scenic travel corridors, and the Columbia River and its major tributaries at least 100 feet. Required perimeter landscaped buffers may be included when calculating such setbacks. Setbacks from rivers shall be measured from the ordinary high water mark. Setbacks from scenic travel corridors shall be measured from the edge of road pavements.

(s) Project applicants shall utilize measures and equipment necessary for the proper maintenance and survival of all vegetation utilized to meet the landscape guidelines contained herein, and shall be responsible for such maintenance and survival.

(t) All parking areas shall be set back from property boundaries by at least 50 feet. All campsites and associated facilities shall be set back from property boundaries by at least 100 feet.

(u) All proposed projects at levels consistent with Recreation Intensity Class 4 on lands classified Recreation Intensity Class 4 (except for proposals predominantly devoted to boat access) shall comply with 350-81-610 (5)(i) in this chapter regarding provision of mass transportation access.

### **350-81-620. Special Management Area Recreation Resource Review Criteria**

(1) The following shall apply to all new recreation developments and land uses in the Special Management Area:

(a) New developments and land uses shall not displace existing recreational use.

(b) Recreation resources shall be protected from adverse effects by evaluating new developments and land uses as proposed in the site plan. An analysis of both on and off site cumulative effects shall be required.

(c) New pedestrian or equestrian trails shall not have motorized uses, except for emergency services and motorized wheelchairs.

(d) Mitigation measures shall be provided to preclude adverse effects on the recreation resource.

(e) The facility guidelines contained in 350-81-620(1) are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another. Recreation developments or improvements to be considered a separate facility from other developments or improvements within the same recreation intensity class must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

(f) New development and reconstruction of scenic routes (see Part III, Chapter 1 of the Management Plan) shall include provisions for bicycle lanes.

(g) The Executive Director may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that:

(A) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from National Scenic Area recreation demand studies shall be relied upon to meet the criterion in the absence of current applicable studies.

(B) The proposed use is dependent on resources present at the site.

(C) Reasonable alternative sites offering similar opportunities, including those in Urban Areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(D) The proposed use is consistent with the goals, objectives, and policies in Chapter 4, Part 1 of the Management Plan.

(E) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural, or cultural resources and adjacent land uses.

(F) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

(G) Mass transportation shall be considered and implemented, if feasible, for all proposed variances to Recreation Intensity Class 4.

(H) Accommodations of facilities for mass transportation (bus parking, etc.) shall be required for all new high-intensity (Recreation Class 3 and 4) day-use recreation sites, except for sites predominantly devoted to boat access.

(2) Special Management Areas Recreation Intensity Class Guidelines

(a) Recreation Intensity Class 1 (Very Low Intensity)

Emphasis is to provide opportunities for semi-primitive recreation.

(A) Permitted uses are those in which people participate in outdoor activities to realize experiences such as solitude, tension reduction, and nature appreciation.

(B) The maximum site design capacity shall not exceed 35 people at one time on the site. The maximum design capacity for parking areas shall be 10 vehicles.

(C) The following uses may be permitted:

(i) Trails and trailheads.

(ii) Parking areas.

(iii) Dispersed campsites accessible only by a trail.

(iv) Viewpoints and overlooks.

(v) Picnic areas.

(vi) Signs.

(vii) Interpretive exhibits and displays.

(viii) Restrooms.

(b) Recreation Intensity Class 2 (Low Intensity)

Emphasis is to provide opportunities for semi-primitive recreation.

(A) Permitted uses are those that provide settings where people can participate in activities such as physical fitness, outdoor learning, relaxation, and escape from noise and crowds.

(B) The maximum site design capacity shall not exceed 70 people at one time on the site. The maximum design capacity for parking areas shall be 25 vehicles.

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(C) All uses permitted in Recreation Intensity Class 1 are permitted in Recreation Intensity Class 2. The following uses may also be permitted:

- (i) Campgrounds with vehicle access.
- (ii) Boat anchorages designed for no more than 10 boats at one time.
- (iii) Swimming areas.

(c) Recreation Intensity Class 3 (Moderate Intensity)

Emphasis is on facilities with design themes emphasizing the natural qualities of the area. Developments are complementary to the natural landscape, yet can accommodate moderate numbers of people.

(A) Permitted uses are those in which people can participate in activities to realize experiences such as group socialization, nature appreciation, relaxation, cultural learning, and physical activity.

(B) The maximum site design capacity shall not exceed 250 people at one time on the site. The maximum design capacity for parking areas shall be 50 vehicles. The GMA vehicle capacity level of 75 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 10 percent of the site.

(C) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 3 day-use recreation sites, except for sites predominantly devoted to boat access.

(D) All uses permitted in Recreation Intensity Classes 1 and 2 are permitted in Recreation Intensity Class 3. The following uses may also be permitted:

(i) Campgrounds with improvements that may include water, power, sewer, and sewage dump stations.

(ii) Boat anchorages designed for not more than 15 boats.

(iii) Public visitor, interpretive, historic, and environmental education facilities.

(iv) Full-service restrooms, may include showers.

(v) Boat ramps.

(vi) Riding stables.

(d) Recreation Intensity Class 4 (High Intensity)

Emphasis is on providing roaded natural, rural, and suburban recreation opportunities with a high level of social interaction.

(A) Permitted uses are those in which people can participate in activities to realize experiences such as socialization, cultural and natural history appreciation, and physical activity.

(B) The maximum design capacity shall not exceed 1,000 people at one time on the site. The maximum design capacity for parking areas shall be 200 vehicles. The GMA vehicle capacity level of 250 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 20 percent of the site.

(C) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 4 day-use recreation sites, except for sites predominantly devoted to boat access.

(D) All uses permitted in Recreation Intensity Classes 1, 2, and 3 are permitted in Recreation Intensity Class 4.

**Notice of Application Requirements**

350-81-630

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
<b>GENERAL MANAGEMENT AREA</b>								
Residential LUD - Review uses except SFDs located adjacent to Agriculture and Forest LUDs, and those uses within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Residential LUD - SFDs adjacent to Agriculture and Forest LUDs except those within 1000' of sensitive wildlife area or site, or a rare plant	X	X	X	X		X		
Residential LUD - Review uses within 1000' of a sensitive wildlife area or site except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X		X	
Residential LUD - SFDs adjacent to Agriculture and Forest LUDs within 1000' of a sensitive wildlife area or site	X	X	X	X		X	X	
Residential LUD - Review uses within 1000' of a rare plant except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X			X
Residential LUD - SFDs adjacent to Agriculture and Forest LUDs within 1000' of rare plant	X	X	X	X		X		X

PROPOSED

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Agriculture LUD - Review uses except non-farm SFD in Large-Scale Agriculture LUD and uses within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X	X			
Agriculture LUD - Review uses within 1000' of sensitive wildlife area or site except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X		X	
Agriculture LUD - Review uses within 1000' of a rare plant except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X			X
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture LUD, except those within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X		X		
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture within 1000' of sensitive wildlife area or site	X	X	X	X		X	X	
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture within 1000' of rare plant	X	X	X	X		X		X
Commercial LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Commercial LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X
Recreation LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Recreation LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Recreation LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X
Open Space LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Open Space LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Open Space LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X
Agriculture—Special LUD - Review Uses	X	X	X	X	X			X
<b>SPECIAL MANAGEMENT AREAS</b>								
Review Uses - All LUDs	X	X	X	X	X		X	
Forest LUD - Review uses except utility facilities, railroads, home occupations, cottage industries, wineries, ag. product process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit learning/research facilities, and those review uses within 1000' feet of a sensitive wildlife area or site, or rare plant	X	X	X	X	X			
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities, and not within 1000' of a sensitive wildlife area or site, or rare plant	X	X	X	X		X		

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	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Forest LUD - Review uses within 1000' of a sensitive wildlife area or site, except utility facilities, railroads, home occupations, wineries, ag. produce process and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X		X	
Forest LUD - Review uses within 1000' of a rare plant except utility facilities, railroads, home occupations, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X			X
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities within 1000' of a sensitive wildlife area or site								
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit learning/research facilities within 1000' of a rare plant	X	X	X	X		X		X
Commercial LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or rare plant	X	X	X	X	X			

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 05-03-095  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

(Division of Child Support)

[Filed January 18, 2005, 12:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-07-113 and 03-23-107.

Title of Rule and Other Identifying Information: Chapter 388-14A WAC, Division of Child Support (DCS) rules, this notice of proposed rule making combines two CR-101 filings with rule making on two subjects which both involve amendments to WAC 388-14A-3304. A list of rule sections

is shown below, identifying all proposed WAC sections, and then breaking the sections into Project 1 (Assessment of Interest on Child Support Arrears) and Project 2 (changes to the rules re: the notice of support owed and notice of support debt).

Amending WAC 388-14A-3304 The division of child support serves a notice of support debt when it is enforcing a ~~((foreign))~~ support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3320 What happens at a hearing on a notice of support ~~((debt or notice of support))~~ owed?, and 388-14A-7100 An order from another state may be registered in Washington for enforcement or modification.

New sections WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3321 What happens if the custodial parent requests a hearing on a notice of support debt and demand for payment?, 388-14A-7110 The division of child support may assess and collect interest on amounts owned under support orders entered or established in a jurisdiction other than Washington state, 388-14A-7120 When does DCS update the interest assessed on a case?, and 388-14A-8600 Does the division of child support enforce interest on unpaid support arrears?

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on March 8, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 9, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 8, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by March 4, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) DCS is adopting rules regarding the assessment and collection of interest on support arrearages on child support cases, in accordance with the requirements of the Uniform Interstate Family Support Act, while providing that DCS will continue its policy and practice of not assessing or collecting interest on support arrearages under Washington orders unless such interest is reduced to judgment; and

(2) DCS seeks to clarify the procedures for the notice of support debt and notice of support owed.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 26.21.016 for Rules in Project 1 - Assessment of Interest on Child Support Arrears, 388-14A-3304, 388-14A-7100, 388-14A-7110, 388-14A-7120 and 388-14A-8600; and RCW 74.08.090, 26.23.035, 34.05.220(1), and 74.20A.310 for Rules in Project 2 - Notice of Support Debt and Notice of Support Owed, WAC 388-14A-3304, 388-14A-3310, 388-14A-3317, 388-14A-3320, and 388-14A-3321.

Statute Being Implemented: RCW 26.21.016 for Rules in Project 1 - Assessment of Interest on Child Support Arrears, WAC 388-14A-3304, 388-14A-7100, 388-14A-7110, 388-14A-7120 and 388-14A-8600; and RCW 26.23.110 and 74.20A.040 for Rules in Project 2 - Notice of Support Debt and Notice of Support Owed, WAC 388-14A-3304, 388-14A-3310, 388-14A-3317, 388-14A-3320, and 388-14A-3321.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects indi-

viduals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the liability for care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

January 12, 2005

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-3304 The division of child support serves a notice of support debt when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support.** (1) The division of child support (DCS) may serve a notice of support debt on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support. A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(2) DCS serves a notice of support debt like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt except as provided in WAC 388-14A-3375.

(5) A notice of support debt becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request; ((or))

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

(6) A notice of support debt served in another state becomes final according to WAC 388-14A-7200.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC ~~((388-14A-3320))~~ 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection (9) of this section, DCS must:

(a) Stay enforcement of the notice of support debt except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection (8) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt must fully and fairly inform the NCP of the rights and responsibilities in this section.

(14) A notice of support debt that does not include interest does not relieve the NCP of any interest that may have accrued or may accrue under the support order covered by the notice.

(15) A notice of support debt that does include interest deals only the amount of debt, including interest, that is due and owing for the indicated time periods. Such a notice does not relieve the NCP of any interest that may have accrued or may accrue for any other time periods.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order.** (1) The division of child support (DCS) may serve a notice of support owed on a noncustodial parent (NCP) under RCW 26.23.110 to establish a fixed dollar amount of monthly support and accrued support debt:

(a) If a support obligation under a court order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of the court order.

(2) The notice of support owed may include((s)) day care costs and medical support if the court order provides for such costs.

(3) DCS serves a notice of support owed on an NCP like a summons in a civil action or by certified mail, return receipt requested.

(4) Following service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(5) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support;

(b) Any other information not contained in the order that was used to calculate monthly support and the support debt; and

(c) Notice of the right to request ((a)) an annual review of the order ~~((once yearly))~~ or a review on the date, if any, given in the order for an annual review.

(6) The NCP must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(7) A notice of support owed becomes final and subject to immediate ~~((wage))~~ income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under ~~((subsection (9) of))~~ this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

(8) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

~~(9) For the rules on a hearing on a notice of support owed ((is only for interpreting the court order for support and any modifying orders and not for changing or deferring the support provisions of the order. The hearing is only to determine:~~

~~(a) The amount of monthly support as a fixed dollar amount;~~

~~(b) Any accrued arrears through the date of hearing; and~~

~~(c) If a condition precedent in the court order to begin or modify the support obligation was met.~~

~~(10) If the NCP requested the hearing, he or she has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.~~

~~((H))), see WAC 388-14A-3320.~~

(10) A notice of support owed or ((an initial or review decision)) a final administrative order issued under ((subsection (9) of this section)) WAC 388-14A-3320 must inform the parties of the right to request ((a)) an annual review of the

order (~~once yearly or on the date, if any, given in the order for an annual review~~)).

~~((12))~~ (11) If an NCP or custodial parent (CP) requests a late hearing, the (~~NCP~~) party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.

~~((13))~~ (12) A notice of support owed fully and fairly informs the NCP of the rights and responsibilities in this section.

~~((14))~~ (13) For the purposes of this section, WAC 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian" or "custodial parent."

#### NEW SECTION

**WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?** (1) RCW 26.23.110 provides for an annual review of the support order if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

- (a) The collection by DCS of necessary information from CP and NCP;
- (b) The service of a notice of support owed; and
- (c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) Either CP or NCP may request an annual review of the support order, even though the statute mentions only the NCP.

(5) DCS may request an annual review of the support order but has no duty to do so.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-3320 What happens at a hearing on a notice of support (~~debt or notice of support~~) owed?** (1) A hearing on a notice of support (~~debt or a notice of support~~) owed is (~~for the limited purpose of determining the support debt through the date of the hearing under the order~~) only for interpreting the court order for support and any modifying orders and not for changing or deferring the support provisions of the order. The hearing is only to determine:

- (a) The amount of monthly support as a fixed dollar amount;
- (b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the court order to begin or adjust the support obligation was met.

(2) Either the noncustodial parent (NCP) or custodial parent (CP) may request a hearing on a notice of support owed. The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

(3) The office of administrative hearings (OAH) sends a notice of hearing (~~on a notice of support debt~~) to the non-custodial parent (NCP), to the division of child support (DCS), and to the payee. The NCP and the payee each may participate in the hearing as an independent party.

~~((3))~~ (4) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an (~~initial decision~~) order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An (~~initial decision~~) order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the payee appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

~~((4))~~ (5) If the payee requests a late hearing on a notice of support owed (~~or a notice of support debt~~), the payee must show good cause for filing the late hearing request.

#### NEW SECTION

**WAC 388-14A-3321 What happens if the custodial parent requests a hearing on a notice of support debt and demand for payment?** (1) If the custodial parent (CP) requests a hearing on a notice of support debt and demand for payment (also called the "notice of support debt"), the hearing is for the limited purpose of determining the support debt under the order through the date of the hearing.

(2) The office of administrative hearings (OAH) sends a notice of hearing to the NCP, to the division of child support (DCS), and to the payee.

(a) The NCP and the payee each may participate in the hearing.

(b) "Participating in" or "proceeding with" the hearing may include signing a consent order or agreed settlement under WAC 388-14A-3600.

(3) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the payee appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

(4) If the payee requests a late hearing on a notice of support debt, the payee must show good cause for filing the late hearing request.

(5) When DCS uses a notice of support debt to assess and collect interest on an out-of-state support order, see WAC 388-14A-7110.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-7100 An order from another state may be registered in Washington for enforcement or modification.** (1) A support enforcement agency, or a party to a child support order or an income-withholding order for support issued by a tribunal of another state, may register the order in this state for enforcement pursuant to chapter 26.21 RCW.

(a) ~~((The))~~ At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21.490 or it may be registered with the administrative tribunal according to subsection (2) of this section~~((, at the option of the division of child support (DCS)))~~. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state in the same manner and ~~((is))~~ subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state.

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after ~~((the date of receipt by certified or registered mail or personal service of the notice given to a nonregistering party within the state and within))~~ service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after ~~((the date of receipt by certified or registered mail or personal))~~ service of the notice ~~((on a nonregistering party outside of the state))~~ to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the

alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110.

(b) The notice must be:

(i) Served by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A hearing under this section is for the limited purpose of determining if the nonregistering party can prove one or more of the defenses listed in RCW 26.21.540(1).

(a) If the contesting party presents evidence establishing a full or partial defense under RCW 26.21.540(1), the presiding officer may:

(i) Stay enforcement of the registered order;

(ii) Continue the proceeding to allow the parties to gather additional relevant evidence; or

(iii) Issue other appropriate orders.

(b) DCS may enforce an uncontested portion of the registered order by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under RCW 26.21.540(1) to the validity or enforcement of the order, the presiding officer must issue an order confirming the registered order.

(d) The custodial parent (CP) or payee of the order may participate as a party to any hearing under this section.

(4) Except as provided below in subsections (5) and (6) of this section, confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. Confirmation may occur:

(a) By operation of law upon failure to contest registration; or

(b) By order of the administrative law judge (ALJ).

(5) Confirmation of a registered order that does not include interest does not relieve the NCP of any interest that may have accrued or may accrue under the confirmed order.

(a) If interest is later assessed, the NCP or CP may not dispute the confirmed amount of the support debt.

(b) The NCP or CP may dispute the amount of interest due and owing on that confirmed amount by requesting a conference board under WAC 388-14A-6400.

(6) Confirmation of a registered order that does include interest confirms only the amount of debt, including interest, that is due and owing for the indicated time periods. Such confirmation does not relieve the NCP of any interest that may have accrued or may accrue for any other time period.

(7) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state may register the order in this state according to RCW 26.21.560 through 26.21.580.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21.580 are met.

~~((6))~~ (8) Interpretation of the registered order is governed by RCW 26.21.510.

#### NEW SECTION

**WAC 388-14A-7110 The division of child support may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state.** (1) The division of child support (DCS) may accept an interstate request to assess and collect interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; or

(iv) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21 RCW.

(b) The party requesting that DCS assess and collect interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to assess and collect interest on an out-of-state support order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to assess and collect interest on the foreign order. See WAC 388-14A-7100 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to assess and collect interest on the out of state order. See WAC 388-14A-7100 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC 388-14A-7100(3) and WAC 388-14A-7115.

(a) WAC 388-14A-7100(4) describes the procedures for confirmation of the registered order.

(b) WAC 388-14A-7100(4) describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.

#### NEW SECTION

**WAC 388-14A-7115 Are there special rules for a hearing on a notice seeking to assess and collect interest on a support order?** (1) When the division of child support serves a notice of support debt and demand for payment or a notice of support debt and registration under WAC 388-14A-7110(2) and the notice becomes the subject of a hearing, this section applies to a determination of interest.

(2) The calculation of the amount of interest which has been certified by a IV-D agency or a CPA must be accepted as evidence at a hearing on a notice of support debt and demand for payment or on a notice of support debt and registration.

(a) Such certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

(3) A party challenging the certified calculation may challenge the calculation for one or more of the following reasons:

(a) The amount of principal is incorrect because credit was not given for payments made;

(b) The amount of principal is incorrect because credit was given for payments which were not actually made; or

(c) The interest calculation was not properly done.

(4) If the administrative law judge (ALJ) finds that the party challenging the interest calculation has shown that the amount of principal is incorrect, the ALJ:

(a) Enters an order stating the correct amount of principal;

(b) Orders the IV-D agency or CPA which certified the original interest calculation to:

(i) Recalculate the interest based on the new principal amount; and

(ii) Submit the new certified calculation to the ALJ within a reasonable amount of time; and

(c) After receiving the new certified calculation, enters an order determining the amount of debt, including interest, for the period claimed in the notice.

(5) If the ALJ orders a new certified calculation, DCS may enforce any amounts of principal the ALJ found to be due and owing under the support order while the administrative order under subsection (4)(c) of this section is pending.

(6) A claim that the interest calculation was not properly done must be supported by an interest calculation which is certified by a IV-D agency or a certified public accountant (CPA). The ALJ then determines which calculation is best supported by the evidence.

(7) The division of child support does not perform certified interest calculations for use in a hearing under this section.

NEW SECTION

**WAC 388-14A-7117 Are there special rules for a conference board on a notice seeking to assess and collect interest on a support order?** (1) When the division of child support serves a notice of support debt and demand for payment or a notice of support debt and registration under WAC 388-14A-7110(2) and the notice becomes the subject of a conference board under WAC 388-14A-6400, this section applies to a determination of interest.

(2) The calculation of the amount of interest which has been certified by a IV-D agency or a CPA must be accepted as evidence at a conference board on a notice of support debt and demand for payment or on a notice of support debt and registration.

(a) Such certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

(3) A party challenging the certified calculation may challenge the calculation for one or more of the following reasons:

(a) The amount of principal is incorrect because credit was not given for payment made;

(b) The amount of principal is incorrect because credit was given for payments which were not actually made; or

(c) The interest calculation was not properly done.

(4) If the conference board determines that the amount of principal is incorrect, the conference board may request that the IV-D agency or a certified public accountant that performed the initial calculation provide a new calculation based on the new principal amount.

(5) DCS may collect undisputed amounts of principal while the final conference board decision is pending.

(6) A claim that the interest calculation was not properly done must be supported by an interest calculation which is certified by a IV-D agency or a certified public accountant. The conference board then determines which calculation is best supported by the evidence.

(7) The division of child support does not perform certified interest calculations for use in a conference board under this section.

(8) The conference board issues a decision, based on the evidence, determining the debt amount, including interest, for the period claimed in the notice.

NEW SECTION

**WAC 388-14A-7120 When does DCS update the interest assessed on a case?** (1) When the division of child support (DCS) accepts an interstate case for assessment of interest under WAC 388-14A-7110(1), DCS may, at any time after service of a notice of support debt and registration or a notice of support debt and demand for payment, update the amount of interest assessed on the case.

(2) To notify the parties to the order that DCS has updated the amount of interest, DCS uses a form called the Updated Interest Calculation Letter.

(a) The updated interest calculation letter is based upon a calculation of interest which has been certified by a IV-D agency or certified public accountant (CPA).

(b) DCS sends the updated interest calculation letter to the noncustodial parent (NCP), by first class mail to the NCP's last known address.

(3) The updated interest calculation letter advises the NCP of:

(a) The new, updated amount of interest owed for the arrears period; and

(b) The updated total amount of support owed, including interest.

(4) An NCP who objects to an updated interest calculation letter may request a conference board under WAC 388-14A-6400 to dispute the terms of the letter.

(5) The calculation of the amount of interest which has been certified by a IV-D agency or CPA must be accepted as evidence at a conference board on an updated interest calculation letter.

(a) The certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

NEW SECTION

**WAC 388-14A-8600 Does the division of child support enforce interest on unpaid support arrears?** (1) Under RCW 26.23.030(2), the division of child support (DCS) has the authority to assess and collect interest on unpaid child support that has accrued under any support order entered into the Washington state support registry (WSSR).

(2) DCS does not assess or collect interest on administrative or court orders for support entered in the state of Washington unless the amount of interest has been reduced to a judgment.

(3) DCS may assess and collect interest on support orders entered outside of Washington state as provided in WAC 388-14A-7110.

(4) DCS may update the interest assessed on a case as provided in WAC 388-14A-7120.

**WSR 05-04-007**

**PROPOSED RULES**

**FOREST PRACTICES BOARD**

[Filed January 20, 2005, 9:31 a.m.]

Supplemental Notice to WSR 04-24-088.

Title of Rule and Other Identifying Information: Cultural resources protection and management in forest practices.

Date of Intended Adoption: February 16, 2005.

January 19, 2005

Pat McElroy

Chair

PROPOSED

**WSR 05-04-008**  
**WITHDRAWAL OF PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed January 21, 2005, 11:00 a.m.]

The Washington Utilities and Transportation Commission filed a proposed rule making (CR-102) regarding point protection for railroad operations on July 21, 2004, at WSR 04-15-140, and continued in WSR 04-17-057, 04-21-037, 04-23-053, and 04-24-087. The commission has decided not to proceed with this rule-making proceeding and requests that the proposed rule published in WSR 04-15-140 be withdrawn. The commission has sent a notice of the withdrawal of the proposal rule to all interested persons in the rule-making docket.

Questions regarding this matter should be addressed to Karen Caille at (360) 664-1136.

Carole J. Washburn  
Executive Secretary

**WSR 05-04-015**  
**PROPOSED RULES**  
**STATE BOARD OF EDUCATION**

[Filed January 24, 2005, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-08-056.

Title of Rule and Other Identifying Information: WAC 180-82-105 Assignment of classroom teachers within districts.

Hearing Location(s): Educational Service District 113, 601 McPhee Road S.W., Olympia, WA 98502, on March 16, 2005, at 8:30 a.m.

Date of Intended Adoption: March 18, 2005.

Submit Written Comments to: Larry Davis, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail ldavis@ospi.wednet.edu, fax (360) 586-2357, by March 2, 2005.

Assistance for Persons with Disabilities: Contact Laura Moore, Executive Assistant, by March 2, 2005, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to this rule will clearly define the assignment of teachers teaching in alternative schools.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapters 28A.410 and 28A.305 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: State Board of Education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 21, 2005  
Larry Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 03-23-039, filed 11/12/03, effective 12/13/03)

**WAC 180-82-105 Assignment of classroom teachers within districts.** In addition to holding teaching permits or certificates as required by WAC 180-16-220(2), the assignment of classroom teachers in the basic program of education shall comply with the following:

(1) Classroom teachers with standard or unendorsed continuing teacher certificates may be assigned to any grade or subject areas for which certification is required.

(2) Classroom teachers with initial, residency, endorsed continuing, or professional teacher certificates may be assigned only to the specified grades and specified subject areas stated as endorsements upon their respective certificates or permits.

(3) Classroom teachers with initial, residency, endorsed continuing, or professional teacher certificates who have an elementary education endorsement may be assigned to teach any subject in grades K-8.

(4) Any certificated teacher who has completed twenty-four quarter hours (sixteen semester hours) of academic study in a content area that will be offered in grades four through nine may be assigned to that course even if the teacher does not hold an endorsement in that area.

(5) Any certificated teacher may be assigned to a middle school or junior high school block program(~~(, which)~~). For the purpose of this section shall be defined as the same teacher assigned to teach two or more subject areas to the same group of students, if the teacher has an endorsement in one of the subject areas and has completed or will complete within one year nine quarter hours in each of the other subject areas.

(6)(a) Upon determination by school districts that teachers have the competencies to be effective teachers in alternative settings, individuals with initial, residency, endorsed continuing, or professional teacher certificates may be assigned to teach in alternative schools without regard to endorsement areas.

(b) Each high school district board of directors shall adopt a written policy regarding competencies of teachers assigned to teach in alternative settings as described under (a) of this subsection.

(7) Any certificated teacher may be assigned to courses offered in basic education subject areas not included with the list of endorsements specified in WAC 180-82-202.

(8) Any certificated teacher may be assigned to serve as a substitute classroom teacher at any grade level or in any subject area for a period not to exceed thirty consecutive school days in any one assignment.

(9) Any certificated person holding a limited certificate as specified in WAC 180-79A-230 or a career and technical education certificate as specified in chapter 180-77 WAC

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may be assigned as per the provisions of such section or chapter.

(10) If a teacher is assigned to provide special education, then the district must also comply with WAC 392-172-200 and 392-172-202.

(11)(a) For the purpose of this section, the term "specified subject areas" shall mean courses or classes with the same subject area title as specified by the classroom teacher's endorsement and courses or classes which the board of directors of the district, using the endorsement-related assignment table published by the state board of education as a nonbinding guideline, determines to substantially include the same subject area as the endorsement—e.g., a classroom teacher with a health endorsement may be assigned to any course, regardless of course title, which substantially includes health as the subject area.

(b) The endorsement-related assignment table published by the state board of education may not be changed without prior state board of education approval. Endorsement-related assigned classroom teachers must be evaluated annually specific to the assignment and achieve a satisfactory rating to continue in the assignment.

(12) Exceptions to the assignment requirements of subsection ~~((1))~~ (2) of this section must comply with WAC 180-82-110 provided, subsections (3) through (9) of this section need not comply with WAC 180-82-110.

(13) School district compliance with this section shall be subject to the state staff review process specified in WAC 180-16-195(2).

**WSR 05-04-017**  
**PROPOSED RULES**  
**STATE BOARD OF EDUCATION**  
[Filed January 24, 2005, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-09-065.

Title of Rule and Other Identifying Information: Chapter 180-46 WAC, Library media.

Hearing Location(s): Educational Service District 113, 601 McPhee Road S.W., Olympia, WA 98502, on March 16, 2005, at 8:30 a.m.

Date of Intended Adoption: March 18, 2005.

Submit Written Comments to: Larry Davis, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail ldavis@ospi.wednet.edu, fax (360) 586-2357, by March 2, 2005.

Assistance for Persons with Disabilities: Contact Laura Moore, Executive Assistant, by March 2, 2005, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will update, clarify and simplify the provisions relating to school library media programs.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 28A.230.240.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: State Board of Education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 21, 2005

Larry Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 92-24-025, filed 11/24/92, effective 12/25/92)

**WAC 180-46-005 Purpose and authority.** (1) ~~The purpose of this chapter is to ((implement RCW 28A.320.240, through the adoption of rules and regulations establishing minimum standards for the operation and stocking of school library media centers))~~ identify quality criteria for school library media programs, as may be established locally, that support the attainment of the state's learning goals.

(2) The authority for this chapter is RCW 28A.320.240.

NEW SECTION

**WAC 180-46-009 Definitions.** (1) "Teacher-librarian" means a certified teacher with a library media endorsement under WAC 180-82A-202 (1)(i), 180-82-344, or 180-82-346.

(2) "School library media program" means a school-based program that is staffed by a certificated teacher-librarian.

AMENDATORY SECTION (Amending WSR 92-24-025, filed 11/24/92, effective 12/25/92)

**WAC 180-46-020 School library media program**~~((s)).~~  
~~((Library media programs in each school district are to be directed toward the implementation of the district's instructional goals and objectives and consistent with the goals for Washington common schools, as adopted by the state board of education. These programs are to include a system for continuing evaluation.))~~ The school library media program is to include resources that promote a positive impact on student learning, such as a variety of resources for reading advocacy, student communication skills, electronic and print information, and resources that support the mastery of essential learning in all subject areas and the implementation of the district's school improvement plan, consistent with the goals for Washington common schools, as adopted by the state board of education.

AMENDATORY SECTION (Amending WSR 92-24-025, filed 11/24/92, effective 12/25/92)

**WAC 180-46-025 Services.** ~~((Each school district shall provide library media services relevant to and integrated with the district's instructional program and directed toward meeting the creative and informational needs of each student and staff member.))~~ The teacher-librarian, through the school

library media program, shall collaborate with classroom teachers to develop students' information and technology skills, help all students meet the content goals in all subject areas, and assist high school students completing the culminating project and high school and beyond plans required for graduation under WAC 180-51-061.

**AMENDATORY SECTION** (Amending WSR 92-24-025, filed 11/24/92, effective 12/25/92)

**WAC 180-46-055 Other sources.** Library media centers should provide direct access to a wide range of print and electronic resources. When it is not feasible to provide resources at the building level, the use of sources beyond the building shall be considered ((as)) an alternate way of ((~~meeting standards~~)) providing access.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 180-46-010 Library media centers.
- WAC 180-46-015 Library media collections.
- WAC 180-46-030 Equipment and materials.
- WAC 180-46-035 Production.
- WAC 180-46-040 Facilities.
- WAC 180-46-045 Staff.
- WAC 180-46-050 Access.
- WAC 180-46-065 Program evaluation.

**WSR 05-04-018  
PROPOSED RULES  
STATE BOARD OF EDUCATION**

[Filed January 24, 2005, 2:04 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR [04-12-113].

Title of Rule and Other Identifying Information: WAC 180-20-101 Minimum qualifications of school bus drivers.

Hearing Location(s): Educational Service District 113, 601 McPhee Road S.W., Olympia, WA 98502, on March 16, 2005, at 8:30 a.m.

Date of Intended Adoption: March 18, 2005.

Submit Written Comments to: Larry Davis, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail ldavis@ospi.wednet.edu, fax (360) 586-2357, by March 2, 2005.

Assistance for Persons with Disabilities: Contact Laura Moore, Executive Assistant, by March 2, 2005, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to make permanent the emergency adoption of the changes

approved by the State Board of Education at its January 2005 meeting.

The amendments to WAC 180-20-101 bring the rule into compliance with the Washington State Department of Licensing (DOL) terminology for commercial driver licenses after a positive drug/alcohol test; the changes also bring the rule into compliance with the federal statute regarding refusal to take a drug/alcohol test.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 28A.160.210.

Rule is necessary because of federal law, 49 C.F.R. 382.

Name of Proponent: State Board of Education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 21, 2005

Larry Davis

Executive Director

**AMENDATORY SECTION** (Amending WSR 04-08-055, filed 4/2/04, effective 5/3/04)

**WAC 180-20-101 Minimum qualifications of school bus drivers.** (1) Every school bus driver must meet and continue to meet the following minimum requirements:

(a) Be at least twenty-one years of age.

(b) Have a valid driver's license or commercial driver's license, as required by law, issued by the state department of licensing.

(c) Have at least one year of experience as a driver of a truck or commercial vehicle requiring a special endorsement or, in the alternative, at least three years of experience as a driver of a passenger vehicle.

(d) Hold a current and valid first-aid card or equivalent which certifies that the applicant has completed a course in the basic principles of first aid.

(e) Submit to the school district a disclosure of all crimes against children or other persons and all civil adjudications in a dependency action or in a domestic relation action and all disciplinary board final decisions of sexual abuse or exploitation or physical abuse as required by RCW 43.43.834(2) and disclosure of all convictions which may be grounds for denial of authorization under (h), (i), and (j) of this subsection.

(f) Submit to a criminal record check according to chapter 28A.400 RCW which shows that no offenses have been committed which would be grounds for denial of an authorization.

(g) Shall not have misrepresented or concealed a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

(h) Shall not have had a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding three years or have had their commercial driver's license disqualified, suspended or revoked within the preceding three years;

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a certified copy of the disqualification, suspension or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension or revocation.

(i) Shall not have incurred three or more speeding tickets of ten miles per hour or more over the speed limit within the last thirty-six months.

(j) Shall not have been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a plea of guilty or nolo contendere is the basis for the conviction) nor under a deferred prosecution under chapter 10.05 RCW where the conduct or alleged conduct is related to the occupation of a school bus driver, including but not limited to the following:

(i) Any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, sexual exploitation of a child under chapter 9.68A RCW; sexual offenses under chapter 9A.44 RCW where a minor is the victim; promoting prostitution of a minor under chapter 9A.88 RCW; the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction;

(ii) Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription within the last seven years: Provided, That in the case of felony convictions, the applicable time limit shall be ten years;

(iii) Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last three years;

(iv) Any crime against children or other persons as defined in RCW 43.43.830(5) when the date of the conviction or prison release, which ever is more recent, is within ten years of the date of the job application for felonies and within seven years for other crimes.

(k) Shall not have been found in any dependency action under RCW 13.34.030 to have sexually assaulted or exploited any minor or to have physically abused any minor, within the last seven years.

(l) Shall not have been found by a court in a domestic relation proceeding under Title 26 RCW, to have sexually abused or exploited any minor or to have physically abused any minor, within the last seven years.

(m) Shall not have been found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person, within the last seven years.

(n) Shall not have intentionally and knowingly transported public school students within the state of Washington within the previous five years with an expired, lapsed, surrendered, or revoked school bus driver's authorization in a position for which authorization is required under this chapter. Shall not have intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended driver's license.

(o) Shall not have a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, bus drivers, or other colleagues. This subsec-

tion shall not be applied so as to deny, revoke, or suspend authorizations to any individual for the orderly exercise during off-duty hours of any rights guaranteed under the law to citizens generally, except where such conduct indicates a safety risk for the transportation of students.

(p) Shall not have refused to take a drug or alcohol test as required by the provisions of 49 C.F.R. 382 within the preceding three years. Provided, this requirement shall not apply to any refusal to take a drug or alcohol test prior to January 31, 2005.

(2) Every school bus driver must also meet and continue to meet the following requirements:

(a) Verification by a local school district that the person seeking a school bus driver authorization:

(i) Is physically able to maneuver and control a school bus under all driving conditions; and

(ii) Is physically able to use all hand/or foot operated controls and equipment found on state minimum specified school buses; and

(iii) Is physically able to perform daily routine school bus vehicle safety inspections and necessary emergency roadside services; and

(iv) Has sufficient strength and agility to move about in a school bus as required to provide assistance to students in evacuating the bus. The driver must be able to move from a seated position in a sixty-five passenger school bus, or the largest school bus the driver will be operating, to the emergency door, open the emergency door, and exit the bus through the emergency door, all within twenty-five seconds.

(b) Provide verification of passing a medical examination every twenty-four months in accordance with the standards established in 49 C.F.R. 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations. School bus drivers must continue to meet these medical examination requirements during the time between examinations. This requirement does not prevent a school district from requesting a more frequent examination.

(c) Satisfactorily complete a school bus driver training course and each year thereafter, satisfactorily complete a school bus driver in-service training course.

## WSR 05-04-052

### PROPOSED RULES

### COUNTY ROAD

### ADMINISTRATION BOARD

[Filed January 28, 2005, 12:33 p.m.]

#### Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 136-01 WAC, Organization and operation of county road administration board.

Hearing Location(s): 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on April 28, 2005, at 2:00 p.m.

Date of Intended Adoption: April 28, 2005.

Submit Written Comments to: Karen Pendleton, 2404 Chandler County [Court] S.W., Suite 240, Olympia, WA 98504-0913, e-mail karen@crab.wa.gov, fax (360) 753-5989, by April 18, 2005.

Assistance for Persons with Disabilities: Contact Karen Pendleton by April 25, 2005, TTY (800) 833-6382.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add the designation of a board officer as second vice-chair.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: County Road Administration Board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 25, 2005

Jay P. Weber

Executive Director

**AMENDATORY SECTION** (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-01-030 Meetings and voting procedures.**

Regular public meetings of the county road administration board shall be held quarterly, at times and locations set by the board. At the summer meeting, the board shall elect a chair ~~((and))~~, a vice-chair, and a second vice-chair who shall ~~((both))~~ hold office until the next summer meeting. Additional meetings necessary to discharge the business of the board may be called from time to time by the chair. Each member of the board shall be entitled to one vote. No proxies shall be allowed. All questions shall be decided by majority vote. A quorum of five members of the board shall be required to vote or conduct any board business.

**WSR 05-04-057**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed January 28, 2005, 4:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-07-107.

Title of Rule and Other Identifying Information: Adopting new chapter 388-823 WAC, Division of developmental disabilities intake and determination of developmental disabilities; and repealing existing WAC 388-825-030, 388-825-035, and 388-825-040.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on April 5, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 6, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., April 5, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by April 1, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to clarify the entire application and eligibility determination process used by the Division of Developmental Disabilities (DDD). This new chapter:

- Describes how to apply for a determination of a developmental disability;
- Defines the conditions required to be considered a person with a developmental disability, defines how these conditions may meet substantial limitations to adaptive functioning and defines the evidence required to substantiate adaptive functioning limitations;
- Defines how the age of an individual affects the eligibility determination process;
- Describes the inventory for client and agency planning (ICAP);
- Defines the expiration of eligibility, reviews and reapplication; and
- Describes an individual's rights as a client of DDD.

Reasons Supporting Proposal: DDD determined that adopting new rules on the application and eligibility determination process would be more effective and clearer than amending current rules in chapter 388-825 WAC.

Statutory Authority for Adoption: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, and 71A.16.050.

Statute Being Implemented: Chapters 71A.10, 71A.12 and 71A.16 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, phone (360) 725-3416, fax (360) 407-0955; Implementation and Enforcement: Sue Poltl, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail poltlse@dshs.wa.gov, phone (360) 725-3454, fax (360) 407-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined that these rules do not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt from preparing a cost-benefit analysis pursuant to RCW 34.05.328 (5)(b)(vii).

These rules relate only to client medical and financial eligibility.

January 24, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-06 issue of the Register.

**WSR 05-04-058**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)

[Filed January 28, 2005, 4:27 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 388-76 WAC, Adult family home licensing; WAC 388-76-76505 (3) and (4) What physical structure requirements must the provider ensure that the home meets?

The rule applies to the building requirements for licensing of adult family homes.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on March 8, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 9, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., March 8, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by March 4, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to update the outdated building code references in the existing adult family home licensing rule to be consistent with the codes adopted by the state Building Code Council under chapter 19.27 RCW relating to adult family homes.

Reasons Supporting Proposal:

- Amends the existing adult family home licensing rule to be consistent with the statewide building code requirements as adopted by the state Building Code Council.
- Provides the local authority having jurisdiction (local building officials) with a single set of building code regulations to enforce for adult family homes.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapter 70.128 RCW, Adult family homes.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: A CR-101 preproposal notice was not filed and is not required for rules incorporating by reference the rules of other state agencies, see RCW 34.05.310 (4)(c).

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting: Roger A. Woodside, 4500 10th Avenue S.E., Lacey, WA, (360) 725-3204; Implementation and Enforcement: Joyce P. Stockwell, 4500 10th Avenue S.E., Lacey, WA, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 34.05.310 (4)(c) exempts this rule from the requirement of a small business economic impact statement as the rule...adopts and incorporates by reference without material change...rules of other Washington state agencies...and the material adopted and incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts this rule from the requirement of a cost-benefit analysis as the rule...adopts and incorporates by reference without material change...rules of other Washington state agencies...and the material adopted and incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

January 24, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 02-20-004, filed 9/18/02, effective 10/19/02)

**WAC 388-76-76505 What physical structure requirements must the provider ensure that the home meets?** (1) Each adult family home must meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family dwelling.

(2) It is the responsibility of the provider to check with local authorities to ensure all local codes are met.

(3) Effective July 1, (~~2004~~) 2004, the following (~~must~~) adult family homes must meet requirements in WAC (~~51-40-0310-14 Requirements for group R occupancies~~) 51-51-0324 Section R324, Adult family homes as established by the Washington state building code council:

(a) Any single-family dwelling that has been newly constructed meeting all current applicable building codes, that has never been occupied, and that has a pending adult family home license application with the department;

(b) Any single-family dwelling being converted for use as an adult family home.

(4) WAC (~~51-40-0310~~) 51-51-0324 Section R324 - Adult family homes does not apply to adult family homes licensed before July 1, (~~2004~~) 2004, that are being sold or transferred for the purpose continuing the operation of a licensed adult family home under new ownership.

(5) Windows in every room used by residents must be free of obstructions.

(6) When resident bedroom windows are fitted with storm windows, the provider must equip the storm windows

with release mechanisms that are easily opened from the inside without the use of a key or special knowledge or effort.

(7) The provider must ensure that every occupied area used by residents receiving care and services has access to one or more exit and must not pass through a room, garage, or other space subject to being locked or blocked from the opposite side.

(8) Every occupied area used by residents must not be accessible only by ladder, folding stairs, or trap door.

(9) The provider must ensure that every bathroom door lock opens from the outside in an emergency.

(10) The provider must ensure that every closet door opens from the inside and outside.

(11) The provider must ensure that exit doors leading to the outside will open from the inside without the use of a key or any special knowledge or effort.

### WSR 05-04-061

#### PROPOSED RULES

### BELLEVUE COMMUNITY COLLEGE

[Filed January 31, 2005, 9:20 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 04-23-049.

Title of Rule and Other Identifying Information: Use of Community College District VIII facilities by college groups and noncollege groups for first amendment activities. This chapter will be WAC 132H-142-010 through 132H-142-080.

Amends existing chapter 132H-140 WAC and renames it Facility usage for other than first amendment activities for Community College District VIII.

Hearing Location(s): Bellevue Community College, 3000 Landerholm Circle S.E., Room B201, Bellevue, WA 98007-6484, on March 9, 2005, at 2:00 p.m.

Date of Intended Adoption: March 9, 2005.

Submit Written Comments to: Elise Erickson, Bellevue Community College, 3000 Landerholm Circle S.E., Bellevue, WA 98007-6484, e-mail eerickso@bcc.ctc.edu, fax (425) 564-2261, by February 21, 2005.

Assistance for Persons with Disabilities: Contact Susan Gjomesli by March 1, 2005, TTY (425) 564-4110 or (425) 564-2498.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue Community College recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as a state educational institution of Washington.

The college's existing facilities use policy will change to delete references which conflict with the new first amendment policy and will contain language to refer interested parties to the new policy.

Statutory Authority for Adoption: RCW 28B.50.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Derek Edwards, Assistant Attorney General, Education Division, State of Washington, governmental.

Name of Agency Personnel Responsible for Drafting: Elise Erickson, A201, 3000 Landerholm Circle S.E., Bellevue, WA 98007-6484, (425) 564-2540; Implementation: Don Bloom, B202, 3000 Landerholm Circle S.E., Bellevue, WA 98007-6484, (425) 564-2451; and Enforcement: Terrie Graham, K100, 3000 Landerholm Circle S.E., Bellevue, WA 98007-6484, (425) 564-2400.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The new policy and changes to the existing facilities policy have no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs associated with implementation of this rule.

January 12, 2005

Debra P. Ross

Rules Coordinator

#### NEW SECTION

**WAC 132H-142-010 Title.** WAC 132H-142-010 through 132H-142-060 shall be known as use of Community College District VIII facilities by college groups and non-college groups for first amendment activities.

#### NEW SECTION

**WAC 132H-142-015 Definitions.** For the purposes of this policy non-college groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue Community College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Bellevue Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.

The College is a limited public forum for non-college groups. The limited public forum does not include college buildings or athletic fields. College buildings, rooms, and athletic fields may be rented in accordance with the college's facilities use policy.

#### NEW SECTION

**WAC 132H-142-020 Statement of purpose.** Bellevue Community College District VIII is an educational institution provided and maintained by the people of the state of Washington. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's buildings, facilities and grounds are dedicated and said buildings, facilities and grounds are not available for unrestricted use by non-college groups. While said buildings, facilities and grounds are not

available for unlimited use by college groups, it is recognized that Bellevue Community College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both non-college and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of non-college groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression.

#### NEW SECTION

##### **WAC 132H-142-030 Request for use of facilities.**

Subject to the regulations and requirements of this policy, college or non-college groups may use the campus limited forums for those activities protected by the first amendment. Examples of first amendment activities would include, but not necessarily be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints. Non-college groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") shall provide notice to the campus public safety department no later than forty-eight (48) hours prior to the event along with the following information:

- (1) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and
- (2) The name, address and telephone number of a contact person for the sponsoring organization; and
- (3) The date, time and requested location of the event; and
- (4) The nature and purpose of the event; and
- (5) The type of sound amplification devices to be used in connection with the event, if any; and
- (6) The estimated number of people expected to participate in the event.

Signs shall be no larger than three feet by five feet (3' x 5') and no individual may carry more than one sign.

If more than thirty (30) people are expected to participate in the event, the event must be held in the southern courtyard, just north of the Carlson Theater.

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

College groups are encouraged to notify the campus public safety department no later than 48 hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

College group events shall not last longer than eight hours from beginning to end. Non-college events shall not last longer than five hours from beginning to end.

Information may be distributed as long as it is not obscene or libelous or does not advocate unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site.

Speech that does no more than propose a commercial transaction shall not occur in connection with the event.

The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

All fire, safety, sanitation or special regulations specified for the event are to be obeyed.

The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.

The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.

The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

The event must also be in accordance with any other applicable college policies and regulations, regulations and policies of Bellevue Community College, local ordinances and/or state or federal laws.

#### NEW SECTION

**WAC 132H-142-040 Additional requirements for non-college groups.** The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than five hundred (500) people will attend the college event or activity.

#### NEW SECTION

**WAC 132H-142-050 The role of the president in first amendment decisions.** The president of the college may authorize first amendment activities which are reasonably determined not to cause disruption of college activities despite a literal violation of this policy statement. Such

determinations shall be made without consideration of the content or message of the first amendment activities.

The president of the college or designee may at any time, terminate, cancel or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.

#### NEW SECTION

**WAC 132H-142-060 Criminal trespass.** Any person determined to be violating these regulations is subject to an order from the college public safety department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.

#### NEW SECTION

**WAC 132H-142-070 Posting of a bond and hold harmless statement.** When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a college group or non-college group to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

#### NEW SECTION

**WAC 132H-142-080 First amendment activities and protection of the college mission.** The college recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as a state educational institution of Washington.

**AMENDATORY SECTION** (Amending WSR 82-11-039, Order 80, Resolution No. 149, filed 5/12/82)

**WAC 132H-140-010 Title.** WAC 132H-140-010 through 132H-140-110 will be known as facility usage for other than first amendment activities for Community College District VIII.

**AMENDATORY SECTION** (Amending WSR 02-14-007, filed 6/20/02, effective 7/21/02)

**WAC 132H-140-020 Statement of purpose.** Bellevue Community College District VIII is an educational institution provided and maintained by the people of the state of Washington. The college reserves its facilities, buildings and grounds for those activities ~~((that))~~ ~~((which))~~ that are related to its broad educational mission. At other times, the college facilities may be made available to other individuals and organizations.

The purpose of these regulations is to establish procedures and reasonable controls for the use of college facilities

for ~~((noncollege))~~ non-college groups and for college groups where applicable.

In keeping with this general purpose, and consistent with RCW 28B.50.140(7) and 28B.50.140(9), facilities should be available for a variety of uses which are of benefit to the general public if such general uses substantially relate to and do not interfere with the mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, or public service programs.

Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to insure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Such arrangements by both organizations and individuals must be made through campus operations.

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

#### NEW SECTION

**WAC 132H-140-025 Facilities use for first amendment activities.** Use of the campus for first amendment activities, as defined by law, is governed by the rules set forth in chapter WAC 132H-142-010 through WAC 132H-142-060. This chapter does not apply to those individuals or groups using the college facilities for first amendment activities.

**AMENDATORY SECTION** (Amending WSR 02-14-007, filed 6/20/02)

**WAC 132H-140-030 Request for use of facilities.** Requests by ~~((noncollege))~~ non-college groups for utilization of college facilities shall be made to the director of campus operations or a designee, who shall be the agent of the college in consummating rental and use agreements.

**AMENDATORY SECTION** (Amending WSR 02-14-007, filed 6/20/02)

**WAC 132H-140-050 Scheduling and reservation practices.** The primary purpose of college facilities is to serve the instructional program of the college. However, the facilities, when not required for scheduled college use, may be available for rental by the public in accordance with current fee schedules and other relevant terms and conditions for such use.

No college facilities may be used by individuals or groups from outside the college unless the facilities including buildings, equipment and facilities land have been reserved.

In determining whether to accept a request for the use of college facilities, the administration shall use the college mis-

sion statement and the following items, listed in priority order, as guidelines:

- (1) Bellevue Community College scheduled programs and activities.
- (2) Major college events.
- (3) Foundation related events.
- (4) ~~((Nonecollege))~~ Non-college (outside individual or organization) events.

Arrangements for use of college facilities must be made through the campus operations office.

**AMENDATORY SECTION** (Amending WSR 02-14-007, filed 6/20/02)

**WAC 132H-140-065 Limitations and denial of use.** Bellevue Community College is a state agency and exists to serve the public. However, the college may deny use of its facilities to any individual, group or organization if the requested use would

- (1) Interfere or conflict with the college's instructional, student services or support programs;
- (2) Interfere with the free flow of pedestrian or vehicular traffic on campus;
- (3) Involve illegal activity;
- (4) Create a hazard or result in damage to college facilities; or
- (5) Create undue stress on college resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.).

Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities), groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.

Any individual or group granted permission to use college facilities shall agree in advance to abide by all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group whose past conduct indicates a likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization which has used the facilities in the past and has damaged college property, left college buildings and grounds in excessive disorder, or failed to cooperate with college staff concerning use of the facilities.

No person or group may use or enter onto college grounds or facilities having in their possession firearms or other dangerous weapons, even if licensed to do so, except commissioned police officers as prescribed by law.

College facilities may be used for purposes of political campaigning by or for candidates who have filed for public office, directed to members of the public, only when the full rental cost of the facility is paid. Use of state funds to pay for facility rental costs for political campaigns is prohibited. ~~((No person may solicit contributions on college property for political uses, except where this limitation conflicts with federal law regarding interference with the mails.))~~

~~((Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises when such premises are open to public use. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits. While peaceful dissent is acceptable, violence or disruptive behavior is not a legitimate means of dissent. If any person, group, or organization attempts to resolve differences by means of violence, the college retains the right to take steps to protect the safety of individuals, the continuity of the educational process, and the property of the state.))~~

If at any time actual use of college facilities by an individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate, all persons engaged in such use shall immediately vacate the premises, and leave the college property upon command of the appropriate college official.

Advertising or promotional materials for any event being held in a college facility must follow the same procedure as applies to students outlined in WAC 132H-120-050.

Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs.

BCC facilities may not be used for private or commercial purposes unless such activities clearly serve the educational mission of the college, are either sponsored by an appropriate college unit or conducted by contractual agreement with the college. Commercial uses may also be made as noted in WAC 132H-133-050.

Alcoholic beverages will not be served without the approval of the president or his/her designee. It shall be the responsibility of the event sponsor to obtain all necessary licenses from the Washington State Liquor Control Board and adhere to their regulations, and those of Bellevue Community College.

## WSR 05-04-063

### PROPOSED RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. UW-040375—Filed January 31, 2005, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-08-132.

Title of Rule and Other Identifying Information: WAC 480-110-255 Jurisdiction and 480-110-205 Application of rules, for water companies, the proposed amendments would increase the maximum average annual revenue per customer jurisdictional threshold for water companies to reflect the latest final implicit price deflator of the United States Department of Commerce at the time of adoption, pursuant to RCW 80.04.010. In addition, proposed changes to WAC 480-110-255 would clarify the accounting methodology in computing the revenue threshold.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on March 16, 2005, at 9:30 a.m.

Date of Intended Adoption: March 16, 2005.

Submit Written Comments to: Carole J Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504, e-mail Records@wutc.wa.gov, fax (360) 586-1150, by February 23, 2005. Please include Docket No. UW-040375 in your communication.

Assistance for Persons with Disabilities: Contact Ms. Mary DeYoung by March 9, 2005, TTY (360) 586-8203 or (360) 664-1133.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The proposal would raise the jurisdictional revenue threshold as provided in RCW 80.04.010 to reflect a threshold revenue level that uses the latest final index number at the time of adoption. The draft rules reflect the final 3rd quarter 2004 index number released December 22, 2004, which would result in a \$468 threshold. This threshold may change at the time of the adoption based on the latest final implicit price deflator of the Department of Commerce. The proposal would allow non-regulated companies to increase revenue up to the threshold amount without becoming subject to commission regulation.

**Reasons Supporting Proposal:** The proposal would update the current jurisdictional threshold of \$429, set on December 31, 1999, clarify the accounting methodology for computing the revenue threshold, and allow unregulated companies to increase revenue up to the threshold amount and still remain outside the commission's jurisdiction.

**Statutory Authority for Adoption:** RCW 80.01.040, 80.04.160, and 80.04.010.

**Statute Being Implemented:** Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

**Name of Proponent:** Washington Utilities and Transportation Commission, governmental.

**Name of Agency Personnel Responsible for Drafting:** Danny Kermode, Reg. Analyst, 1300 South Evergreen Park Drive, Olympia, WA 98504, (360) 664-1253; **Implementation and Enforcement:** Carole J. Washburn, Secretary, 1300 South Evergreen Park Drive, Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed corrections and changes to rules will not result in or impose an increase in costs to water companies. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

January 31, 2005  
Carole J. Washburn  
Executive Secretary

**AMENDATORY SECTION** (Amending Order R-467, Docket No. UW-980082, filed 11/30/99, effective 12/31/99)

**WAC 480-110-205 Application of rules.** The rules in this chapter apply to any water company that distributes, sells, or supplies water, and that meets requirements for commission regulation or jurisdiction under RCW 80.04.010 and WAC 480-110-255. This includes investor-owned water companies that meet the jurisdictional threshold of serving one hundred or more customers or receive average revenue of four hundred (~~(twenty-nine)~~) sixty-eight dollars or more per customer per year.

**AMENDATORY SECTION** (Amending General Order No. R-473, Docket No. UW-991634, filed 8/21/00, effective 9/21/00)

**WAC 480-110-255 Jurisdiction.** (1) The commission only regulates investor-owned water companies that:

(a) Own, operate, control, or manage one or more water systems; except that control or management does not include management by a satellite management agency as defined in chapter 70.116 RCW if the satellite management agency is not an owner of the water company.

(b) Meet jurisdictional thresholds of one hundred or more customers, or (~~receive~~) has average revenue of more than four hundred (~~(twenty-nine)~~) sixty-eight dollars per customer per year.

If a water company serves customers	and ( <del>receives</del> ) <u>has</u> average annual revenue per customer	commission regulation
99 or less	<u>\$468 or less</u> ( <del>(than \$429)</del> )	No
99 or less	( <del>(\$429 or)</del> ) <u>more than \$468</u>	Yes
100 or more	<u>\$468 or less</u> ( <del>(than \$429)</del> )	Yes
100 or more	( <del>(\$429 or)</del> ) <u>more than \$468</u>	Yes

(2) The commission does not regulate the following providers of water service:

- (a) Cities, towns, or counties.
- (b) Public utility districts.
- (c) Water districts.
- (d) Local improvement districts.

(e) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.

(f) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service to nonmembers unless they serve one hundred or more nonmembers, or charge nonmembers more than four hundred (~~(twenty-nine)~~) sixty-eight dollars average annual revenue per nonmember.

(g) Entities or persons that provide water only to their tenants as part of the business of renting or leasing.

This may include:

- (i) Apartment buildings.

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- (ii) Mobile home parks.
- (iii) Manufactured home rental communities.
- (iv) Office complexes.
- (v) Commercial or industrial parks.

(3) To determine jurisdiction, the commission considers only those customers receiving water. The commission does not consider customers who do not receive water, such as customers who have paid:

- (a) Water-availability letter fees.
- (b) Standby charges.
- (c) System-readiness fees.
- (d) Ready-to-serve charges.

(4) To calculate the average annual revenue per customer, the commission considers only the charges that water-receiving customers (~~pay on a monthly~~) are billed on a recurring basis, other than contributions in aid of construction. For example, this includes money (~~paid~~) billed for flat-rate service or the metered base-charge and all usage charges.

(a) The commission does not include charges (~~paid-by~~) billed to customers who do not receive water, such as:

- (i) Water availability letter fees.
- (ii) Standby charges.
- (iii) System-readiness fees.
- (iv) Ready-to-serve charges.

(b) The commission does not consider contributions in aid of construction in determining jurisdiction. These contributions can be money, services or property. Payments can be made in a lump sum or financed over time. Examples of contributions in aid of construction include payments for:

- (i) Connection to system.
- (ii) Meter installation.
- (iii) System buy-in.
- (iv) Facilities charges.

(v) Assessments for capital plant and equipment.

(5) The following example shows how to calculate the average annual revenue per customer for two hypothetical customers. The data for each customer are provided at the end of the example:

(a) Select the most recent twelve consecutive months.

Example: February (~~1999~~) 2004 through January (~~2000~~) 2005.

(b) For each customer who received water service during the twelve-month period, add the amount the customer (~~paid to~~) was billed by the water company for items other than contribution in aid of construction items.

Example: Customer A (~~paid~~) billed \$340.  
Customer B (~~paid~~) billed \$283.

(c) For each customer who received water service during the twelve-month period, add the number of months the customer received water service.

Example: Customer A received water service for twelve months.  
Customer B received water service for nine months.

(d) Total the amount (~~paid-by~~) billed the customers during the twelve-month period.

Example:

	<u><del>(Paid to)</del> Billed by the Water Company During the Twelve-Month Period</u>
Customer A	\$340
Customer B	+ <u>\$283</u>
Total ( <del>(Paid)</del> ) <u>Billed</u> During Twelve-Month Period	\$623

(e) Total the number of months each customer received water service.

Example:

	<u>Number of Months Received Water Service During the Twelve-Month Period</u>
Customer A	12
Customer B	+ <u>9</u>
Total Months Received Water Service During the Twelve-Month Period	21

(f) Calculate the "Average Monthly Revenue Per Customer": Divide the "Total (~~(Paid)~~) Billed During the Twelve-Month Period" by the "Total Months Received Water Service During the Twelve-Month Period."

Example:

Total ( <del>(Paid)</del> ) <u>Billed</u> During the Twelve-Month Period	\$623
Total Months Received Water Service During the Twelve-Month Period	+ <u>21</u>
Average Monthly Revenue Per Customer	\$29.67

(g) Calculate the "Average Annual Revenue Per Customer": Multiply the "Average Monthly Revenue Per Customer" times 12 months.

(A) Average Monthly Revenue Per Customer	\$29.67
Months in a Year	x <u>12</u>
(B) Average Annual Revenue Per Customer	\$356.04

**DATA USED IN THE EXAMPLE  
TO CALCULATE  
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example—  
Customer A**

	<u>Standby Charge</u>	<u>Ready-to-Serve Charge</u>	<u>Connection Charge</u>	<u>Facilities Charge</u>	<u>Meter Base Charge</u>	<u>Meter Usage Charge</u>	
<u>Receive Water Service</u>	No	No	Yes	Yes	Yes	Yes	
<u>Contribution in Aid of Construction</u>	No	No	Yes	Yes	No	No	
							<u>Total</u>
							<u>((Paid))</u>
							<u>Billed</u>
<u>Year</u>							
<u>Month</u>							
<del>((1997))</del> 2004					\$20	\$4	\$24
<del>((1997))</del> 2004					\$20	\$5	\$25
<del>((1997))</del> 2004					\$20	\$2	\$22
<del>((1997))</del> 2004					\$25	\$5	\$30
<del>((1997))</del> 2004					\$25	\$6	\$31
<del>((1997))</del> 2004					\$25	\$12	\$37
<del>((1997))</del> 2004					\$25	\$6	\$31
<del>((1997))</del> 2004					\$25	\$4	\$29
<del>((1997))</del> 2004					\$25	\$4	\$29
<del>((1997))</del> 2004					\$25	\$3	\$28
<del>((1997))</del> 2004					\$25	\$2	\$27
<del>((1998))</del> 2005					<u>\$25</u>	<u>\$2</u>	<u>\$27</u>
	\$0	\$0	\$0	\$0	\$285	\$55	\$340
Number of months service					12		
							Not Receiving Water \$0
							Receiving Water - Contribution in Aid of Construction \$0
							Receiving Water - Other than Contribution in Aid of Construction \$340
							Total customer <del>((paid))</del> <u>billed</u> during period \$340

**DATA USED IN THE EXAMPLE  
TO CALCULATE  
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example—  
Customer B**

	<u>Standby Charge</u>	<u>Ready-to-Serve Charge</u>	<u>Connection Charge</u>	<u>Facilities Charge</u>	<u>Meter Base Charge</u>	<u>Meter Usage Charge</u>	
<u>Receive Water Service</u>	No	No	Yes	Yes	Yes	Yes	
<u>Contribution in Aid of Construction</u>	No	No	Yes	Yes	No	No	
							<u>Total</u>
							<u>((Paid))</u>
							<u>Billed</u>
<u>Year</u>							
<u>Month</u>							
<del>((1997))</del> 2004	\$7						\$7
<del>((1997))</del> 2004	\$7						\$7
<del>((1997))</del> 2004		\$12					\$12

**PROPOSED**

PROPOSED

((1997)) 2004	May			\$300	\$4,500	\$25	\$5	\$4,830
((1997)) 2004	June					\$25	\$4	\$29
((1997)) 2004	July					\$25	\$3	\$28
((1997)) 2004	August					\$25	\$12	\$37
((1997)) 2004	September					\$25	\$10	\$35
((1997)) 2004	October					\$25	\$15	\$40
((1997)) 2004	November					\$25	\$5	\$30
((1997)) 2004	December					\$25	\$2	\$27
((1998)) 2005	January					<u>\$25</u>	<u>\$2</u>	<u>\$27</u>
		\$14	\$12	\$300	\$4,500	\$225	\$58	\$5,109
	Number of months service						9	
						Not Receiving Water		\$26
						Receiving Water - Contributions in Aid of Construction		\$4,800
						Receiving Water - Other than Contribution in Aid of Construction		<u>\$283</u>
						Total customer ((paid)) billed during period		\$5,109

(h) To ensure that all customers are treated equitably, the commission will impute the same rates to any customers receiving free or reduced service that apply to other customers receiving comparable service on the same system.

Name of Proponent: State Board of Education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

February 1, 2005  
Larry Davis  
Executive Director

**WSR 05-04-075**  
**PROPOSED RULES**  
**STATE BOARD OF EDUCATION**

[Filed February 1, 2005, 2:21 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 04-12-108.

Title of Rule and Other Identifying Information: Chapter 180-55 WAC, School accreditation.

Hearing Location(s): Educational Service District 113, 601 McPhee Road S.W., Olympia, WA 98502, on March 16, 2005, at 8:30 a.m.

Date of Intended Adoption: March 18, 2005

Submit Written Comments to: Larry Davis, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail ldavis@ospi.wednet.edu, fax (360) 586-2357, by March 2, 2005.

Assistance for Persons with Disabilities: Contact Laura Moore, Executive Assistant, by March 2, 2005, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to the rule will allow the State Board of Education to approve third party accrediting bodies to recommend schools for accreditation by the state board. The third party accrediting bodies would have to meet certain criteria to be approved by the state board.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapters 28A.410 and 28A.305 RCW.

Rule is not necessitated by federal law, federal or state court decision.

**AMENDATORY SECTION** (Amending WSR 04-04-093, filed 2/3/04, effective 3/5/04)

**WAC 180-55-005 Purposes and authority.** (1) **Purposes.** The provision of school accreditation procedures by the state board of education is designed to serve the following purposes:

(a) Support the state board's long-term vision of a performance-based education system under WAC 180-51-001 by aligning school accreditation requirements to continuous improvement of student learning, achievement, and growth;

(b) Promote educational excellence and equity for every student through enhancement of the quality and effectiveness of the school's educational program in safe and supportive learning environments;

(c) Promote staff growth and commitment to the learning of every student;

(d) Build stronger links with families, parents, and the community by reaching consensus about educational expectations through family, parent, and community involvement;

(e) Provide a statement of accountability to the public;

(f) Assure that school districts, under the district policy on recognizing earned credits under WAC 180-51-050, shall accept credits earned from schools or programs, accredited by the state board of education((, the Northwest Association of Schools,)) or other accrediting body as may be recognized by the state board of education pursuant to WAC ((180-55-150)) 180-55-017; and

(g) Facilitate the sharing of effective schools practices and positive impacts on student learning through an external appraisal process.

(2) **Authority.** The authority for this chapter is RCW 28A.305.130(6).

**AMENDATORY SECTION** (Amending WSR 04-04-093, filed 2/3/04, effective 3/5/04)

**WAC 180-55-015 Definitions.** (1) An "accredited school" is a public or state board of education approved private school that meets statutory requirements and rules established by the state board of education, and one that has satisfactorily completed the accreditation procedures described by the state board of education pursuant to RCW 28A.305.130(6) and WAC 180-55-005 through ~~((180-55-032))~~ 180-55-020.

(2) "Approved private school" shall mean a school approved by the state board of education pursuant to chapter 28A.195 RCW and chapter 180-90 WAC.

(3) "Accredited" status shall be assigned to public or state board of education approved private schools that:

(a) Complete and meet fully state board of education requirements for accreditation as described in WAC 180-55-020, or;

(b) Participate and qualify in accordance with standards and procedures established by ~~((the Northwest Association of Schools (NAS)))~~ accrediting bodies or processes recognized by the state board of education.

(4) "School improvement plan" shall mean the same as described under WAC 180-16-220 (2)(b) and (d).

(5) "Continuous improvement process" shall mean the ongoing process used by a school to monitor, adjust, and update its school improvement plan.

(6) "Self-review" shall mean the same as described under WAC 180-16-220 (2)(c).

(7) "Appraisal" shall mean an objective, external appraisal of a school's self-review activities and school improvement plan pursuant to WAC 180-55-020(5).

(8) "Recognized accrediting body" shall mean an organization recognized by the state board of education and listed on the state board website.

(9) "Recognized accrediting process" shall mean the state board of education process managed through the educational service districts.

#### **NEW SECTION**

**WAC 180-55-017 Criteria for state board of education recognition of accrediting bodies.** (1)(a) A recognized accrediting body shall meet the definition of such pursuant to WAC 180-55-015(8).

(b) Accrediting bodies recognized by the state board of education shall verify that standards for schools seeking accreditation through them meet or exceed the school accreditation standards pursuant to WAC 180-16-220.

(c) Accrediting bodies recognized by the state board of education for the specific purpose of accrediting state board approved private schools, prior to being considered by the state board for recognition, shall have their accreditation standards verified for compliance under (b) of this subsection

by a private school advisory committee established by the superintendent of public instruction. If verified, the committee may recommend the accrediting body to the state board for recognition.

(d) A list of recognized accrediting bodies will be maintained on the website of the state board of education.

(2)(a) Public school districts must be approved by the state board of education prior to a school in the district being recommended by a state board of education recognized accrediting body for state accreditation consideration.

(b) Public schools may not seek accreditation through a sectarian affiliated accrediting body. Public schools may seek accreditation through a state board of education recognized accrediting body or process and be recommended for state accreditation consideration.

(c) Private schools must be approved by the state board of education prior to being recommended by a state board of education recognized accrediting body or process for state accreditation consideration.

#### **WSR 05-04-079**

#### **PROPOSED RULES**

#### **WASHINGTON STATE LOTTERY**

[Filed February 1, 2005, 3:49 p.m.]

Original Notice.

Continuance of WSR 05-01-080.

Preproposal statement of inquiry was filed as WSR [05-01-083].

Title of Rule and Other Identifying Information: Chapter 315-10 WAC, Instant games—General rules, changes to the instant game rules allow the lottery to offer nontraditional types of instant games.

Hearing Location(s): Washington's Lottery Headquarters, 814 East 4th Avenue, Olympia, WA 98506, on March 17, 2005, at 10:00 a.m.

Date of Intended Adoption: March 17, 2005.

Submit Written Comments to: Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, e-mail Cbuddeke@walottery.com, fax (360) 586-6586, by March 10, 2005.

Assistance for Persons with Disabilities: Contact Joan Ruell by March 10, 2005, TTY (360) 586-0933.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Traditionally, the lottery's instant games have been "Scratch" games (involving paper tickets with a scratch-off coating). These rule amendments allow the lottery to offer other types of instant games (that do not involve a scratch-off coating).

Reasons Supporting Proposal: These amendments will offer our players a new way to play the lottery's instant games.

Statutory Authority for Adoption: Chapter 67.70 RCW.

Statute Being Implemented: RCW 67.70.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington's Lottery, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, (360) 664-4833.

PROPOSED

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose costs on industry businesses, and the lottery has not been asked to prepare a small business economic impact statement, see RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, phone (360) 664-4833, fax (360) 586-6586, e-mail Cbuddeke@walottery.com.

January 31, 2005

Ceil Buddeke  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

**WAC 315-10-010 Instant games—Authorized—Director's authority.** It is the commission's intent to provide the director broad authority in carrying out the following duties:

(1) The commission hereby authorizes the director to select, operate, and contract relating to and for the operation of instant games meeting the criteria set forth in this chapter.

(2) The director shall establish final instant game specifications, including the determination of winning tickets, in executed working papers or software requirement specifications. The director shall keep ~~((executed working papers on file at the headquarters office location and make them))~~ the portions of these documents that are subject to public disclosure available for one hundred eighty days after the end of each game for public review during normal business hours.

(3) The director or designee shall inform commission members of instant game development.

**AMENDATORY SECTION** (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

**WAC 315-10-020 Definitions.** (1) Ticket. The ticket purchased for participation in an instant game and any ticket used in media promotions and retailer incentive programs authorized by the director for an instant game.

(2) Instant game. A game in which a ticket is purchased and ~~((upon removal of a latex covering on the front of the ticket,))~~ the ticket bearer determines his or her winnings, if any.

(3) Ticket bearer. The person who has signed the ticket or has possession of the unsigned ticket.

(4) Play symbols. The numbers or symbols appearing in the designated areas ~~((under the removable covering))~~ on the front of the ticket. Play symbols were formerly called play numbers. Both terms shall have the same meaning.

(5) Your(s). The ticket bearer's play area or areas (for example, "your hand(s)," "your card(s)," or "your roll(s)").

(6) Their(s). The opponent's play area or areas (for example, "their card(s)," or "their roll(s)").

(7) Validation number. The multidigit number found on the ticket and on any ticket stub. There must be a validation number on the ticket or any stub.

(8) Working papers or software requirement specifications. The documents providing production and winning ticket specifications for each instant ticket game. ~~((Executed working papers (including amendments, if any) are signed and dated by the lottery director.))~~

(9) Scratch game. ~~((Instant game as defined in subsection (1) of this section.))~~ An instant game in which a ticket is purchased and, upon removal of a scratch-off coating on the front of the ticket, the ticket bearer determines his or her winning, if any.

**AMENDATORY SECTION** (Amending WSR 97-04-047, filed 1/31/97, effective 3/3/97)

**WAC 315-10-022 What are the essential elements of instant game tickets?** The director shall establish in executed working papers or software requirement specifications for each instant game the specific form and location in which the following essential elements shall appear on each instant game ticket:

(1) **Play field** is generally the area ~~((under the latex covering that players scratch off to reveal))~~ that may contain play symbols, play symbol captions, prize symbols, prize symbol captions, and validation numbers;

(2) **Play spots** are the specific areas ~~((under the latex covering))~~ where play symbols are located;

(3) **Play symbols** are symbols, letters, or numbers appearing in each play spot of a ticket;

(4) **Play symbol captions** are small printed characters generally associated with each play symbol ~~((appearing))~~ which may appear on the play field ~~((which))~~ and correspond with and verify that play symbol. These captions spell out, in full or abbreviated form, the play symbol. There is only one play symbol caption for each play symbol, and each play symbol caption is associated with the three-digit ticket number;

(5) **Prize symbols** ~~((are))~~ may be numeric or symbolic representations, printed either in a display printed prize legend or on the play field, which indicate the amount of money a player may win;

(6) **Prize symbol captions** ~~((are))~~ may be small printed characters generally associated with each prize symbol appearing on the play field which correspond to and verify that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol;

(7) **Validation number** is a unique multidigit number on the ~~((front of the))~~ ticket ~~((that appears under the removable latex covering and is identified as "val. no."));~~

(8) **Pack-ticket number** is a ~~((thirteen digit number of the form XXXXXXXXXX X XXX printed on the back of the ticket. The first three digits are the game identifier. The first nine digits of the pack ticket number constitute the "pack number," which starts at XXX000001; the last three digits constitute the "ticket number," which starts at 000 and indicates the ticket's position within each pack of tickets))~~ number that may include the game, pack and ticket identifier;

(9) **Retailer verification code** ~~((consists of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 or less. A retailer verification code for a winning~~

~~ticket of a particular game is a unique multiple letter code which corresponds to the prize value of the ticket for that game. Each letter of the code appears in varying locations beneath the removable latex covering on the front of the ticket~~) is the code on the ticket that the lottery retailer uses to verify instant winners; and

(10) **Odds of winning** shall always appear on the back of the ticket.

AMENDATORY SECTION (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

**WAC 315-10-023 What are the prizes available for instant games?** Prizes available are as set forth on the instant game ticket. ~~((Prizes may range from one dollar up to and including one million dollars.))~~ Prizes may also include Win for Life prizes. Win for Life prizes will be paid in accordance with WAC 315-06-120(14) and may include prizes exceeding one million dollars.

AMENDATORY SECTION (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

**WAC 315-10-024 What are the methods of selecting winning tickets?** (1) Methods for selecting winning tickets shall be as set forth on the instant game ticket and in the executed working papers ~~((on file at lottery headquarters in Olympia, Washington))~~ or software requirement specifications. Methods for selecting winning tickets include:

(a) Higher number. Your (the player's) number is greater than their number.

(b) Match one or more. Match your play symbols to the winning play symbol(s).

(c) Bonus play. ~~((Uncover))~~ Find a bonus symbol to win a bonus prize instantly.

(d) Match two or more consecutive. Match two or more consecutive "Game Cards" within a game to the "Draw Cards" to win the corresponding amount shown on the ticket.

(e) Match two or more. Match two or more "Game Cards" within a game to the "Draw Cards" to win the corresponding amount shown on the legend on the ticket.

(f) Three like cards. Get three like cards with one hand to win the corresponding amount shown on the ticket.

(g) Grand prize drawing. ~~((Uncover))~~ Find a bonus symbol that qualifies you to enter a grand prize drawing or submit one or more nonwinning tickets to enter a grand prize drawing.

(h) Match symbols. ~~((Uncover))~~ Match a specified number of identical play symbols on a play area.

(i) Add up "yours." Add up the play symbols designated as "yours" and the total is greater than, less than or equal to the symbol or symbols designated as "theirs."

(j) Add up. Add up the play symbols and the amount is greater than or equal to the designated symbols on the ticket.

(k) Tic tac toe. ~~((Uncover))~~ Match three identical play symbols, in a row, column, or diagonal, on a ~~((9-symbol))~~ grid ~~((on))~~ in the play area.

(l) Sequence. ~~((Uncover))~~ Find the designated play symbols in the specified sequential order.

(m) Spellout. ~~((Uncover))~~ Find the play symbols to form the designated word or words.

(n) In between. ~~((Uncover))~~ Find the play symbol or symbols designated as "yours" with a value less than the play symbol or symbols designated as "their high ~~((eard))~~ value" and greater than the play symbol or symbols designated as "their low ~~((eard))~~ value."

(2) Each of the methods described in subsection (1) of this section may include a special variant such as "automatic win feature," "doubler," "wild card," or "free space" that provides added or alternative methods of winning.

AMENDATORY SECTION (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

**WAC 315-10-030 Instant games criteria.** (1) The total of all prizes available to be won in an instant game shall not be less than forty-five percent of the instant game's projected revenue.

(2) There is no required frequency of drawing or method of selection of a winner in an instant game.

(3) At the director's discretion, an instant game may include a grand prize drawing(s). The criteria for the grand prize drawing shall be as follows:

(a) Finalists for a grand prize drawing shall be selected in an elimination drawing(s) from ~~((redeemed))~~ tickets meeting the criteria stated on the ticket and in executed working papers ~~((on file at lottery headquarters))~~ or software requirement specifications or stated in lottery promotional materials, at the discretion of the director. Participation in the elimination drawing(s) shall be limited to such tickets ~~((which))~~ that are actually received or ticket information is actually received and validated by the director on or before a date to be announced by the director. The director may reserve the right to place any semi-finalist whose entry was not entered in the elimination drawing(s) and who is subsequently determined to have been entitled to such entry into an elimination drawing of a subsequent instant game, and the determination of the director shall be final.

(b) The number of prizes and the amount of each prize in the grand prize drawing(s) shall be determined by the director to correspond with the size and length of the instant game and to comply with subsection (1) of this section.

(c) The dates and times as well as the procedures for conducting the elimination drawing and grand prize drawing shall be determined by the director.

AMENDATORY SECTION (Amending WSR 97-04-047, filed 1/31/97, effective 3/3/97)

**WAC 315-10-035 How do I know if I have a winning instant game ticket?** Each instant ticket shall be printed with instructions clearly indicating what constitutes a winning ticket. In addition, written descriptions of winning play and prize symbol combinations shall be included in the executed working papers or software requirement specifications for the production of each game. ~~((In general, winners of an instant game are determined by the matching or specified alignment of the play symbols on the ticket.))~~ The ticket bearer must submit the winning ticket to the lottery as specified by the director. The winning ticket must be validated by the lottery through use of the validation number or any other means as specified in this chapter or by the director.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

**WAC 315-10-040 Confidentiality of tickets.** No lottery retailer or its employees or agents shall attempt to ascertain the ~~((numbers or symbols appearing in the designated areas under the removable latex coverings))~~ retailer verification code or otherwise attempt to identify unsold winning tickets.

AMENDATORY SECTION (Amending WSR 97-04-047, filed 1/31/97, effective 3/3/97)

**WAC 315-10-055 How much time does a player have to redeem winning and/or grand prize drawing instant game tickets?** (1) A player may submit a winning ticket for prize payment up to one hundred eighty days after the official end of game or one hundred eighty days from date of purchase of a computer generated ticket.

(2) In order to participate in a grand prize drawing in which the entry is the submittal of one or more winning or nonwinning tickets, a player must redeem and submit such a ticket or tickets or ticket information within the time limits set forth in chapter ~~((315-11))~~ 315-06 WAC governing the conduct of that specific game.

AMENDATORY SECTION (Amending WSR 97-04-047, filed 1/31/97, effective 3/3/97)

**WAC 315-10-070 Ticket validation requirements.** (1) To be a valid Washington state lottery instant game ticket, a ticket must meet all of the following validation requirements.

(a) The ticket must have been issued by the director in an authorized manner.

(b) The ticket must not be altered, unreadable, or tampered with in any manner.

(c) The ticket must not be counterfeit in whole or in part.

(d) The ticket must not be stolen nor appear on any list of omitted tickets on file with the lottery.

(e) The ticket must be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

(f) If play symbol and play symbol captions are present in the playfield, the ticket must have at least one play symbol and at least one play symbol caption under each play spot. ~~((These elements))~~ Play symbols must be present in their entirety, legible, right-side up, and not reversed in any manner.

(g) The ticket must have at least one pack-ticket number or serial number, exactly one retailer verification code, and exactly one validation number. These elements must be present in their entirety, legible, ~~((right side up,))~~ and not reversed in any manner.

(h) The validation number of an apparent winning ticket shall appear on the lottery's official list of validation numbers of winning tickets; and a ticket with that validation number shall not have been previously paid.

(i) The ticket must pass all additional confidential validation requirements, if any, established by the director.

(2) The director may authorize reconstruction of an alleged winning ticket which was not received and/or cannot

be located by the lottery; provided, that the person requesting reconstruction submits to the lottery sufficient evidence to enable reconstruction and that they have submitted a claim for the prize, if any, for that ticket. If the reconstructed ticket is a winning ticket and meets the validation requirements contained in subsection (1) of this section and the specific validation requirements contained in the rules for its specific game, the director may authorize payment of the prize; provided, that the ticket shall not be validated nor the prize paid prior to ~~((the))~~ one hundred ~~((eighty-first))~~ eighty days following the official end of that instant game. A ticket(s) validated pursuant to this subsection shall not entitle the claimant entry into the grand prize drawing, if any, for that or any subsequent instant game.

(3) Any ticket not passing all the validation requirements in subsection (1) of this section and the specific validation requirements contained in the rules for its specific game is invalid and ineligible for any prize.

(4) The director may replace any invalid ticket with an unplayed ticket of equivalent sales price from any current instant game. In the event a defective ticket is purchased, the only responsibility or liability of the lottery shall be the replacement of the defective ticket with an unplayed ticket of equivalent sales price from any current instant game, or issue a refund of the sales price. However, if the ticket is partially mutilated or if the ticket is not intact but it still can be validated by other validation tests, the director may pay the prize for that ticket.

AMENDATORY SECTION (Amending WSR 97-04-047, filed 1/31/97, effective 3/3/97)

**WAC 315-10-075 How do I claim an instant game prize?** Procedures for claiming instant game prizes are as follows:

(1) To claim an instant game prize of \$600.00 or less the claimant may ~~((may))~~ present the apparent winning ticket to any lottery retailer regardless of where the ticket was purchased, or may present the apparent winning ticket to the lottery by mail or in person. When a retailer is presented with a claim under this section, the retailer shall verify the claim and, if acceptable, make payment of the amount due the claimant. The prizes shall be paid during all normal business hours of that retailer provided that claims can be validated on the lottery's ~~((instant ticket scanner))~~ terminal. The retailer shall not charge the claimant any fee for payment of the prize or for cashing a business check drawn on the retailer's account.

(2) In the event the retailer cannot verify the claim, the claimant shall present a claim to the lottery by mail or in person. If the claim is validated by the lottery, ~~((a check))~~ funds shall be forwarded to the claimant in payment of the amount due. In the event that the claim is not validated by the director, the claim shall be denied and the claimant shall be promptly notified.

(3) To claim an instant prize of more than \$600.00, the claimant shall complete a claim form, as provided in WAC 315-06-120, which is obtained from the lottery retailer or the lottery and mail or present in person the completed form together with the apparent winning ticket to the lottery. Upon

validation by the director, (~~(a-check)~~) funds shall be (~~(mailed)~~) forwarded or presented to the claimant in payment of the amount due, less any applicable federal income tax withholding and deductions pursuant to RCW 67.70.255 and WAC 315-06-125. In the event that the claim is not validated by the director, the claim shall be denied and the claimant shall be promptly notified.

(4) To claim an instant prize pursuant to WAC 315-10-070(2), the claimant shall notify the lottery of the claim and request reconstruction of the ticket not later than one hundred eighty days after the official end of that instant game or one hundred eighty days from purchase of a computer generated ticket. If the director authorizes reconstruction, the ticket shall not be validated nor the prize paid prior to (~~(the)~~) one hundred (~~(eighty-first)~~) eighty days following the official end of that instant game or one hundred eighty days from purchase of a computer generated ticket. A ticket(s) validated pursuant to WAC 315-10-070(2) shall not entitle the claimant entry into the grand prize drawing, if any, for that or any subsequent instant game.

(5) Any ticket not passing all the validation checks specified by the director is invalid and ineligible for any prize and shall not be paid. However, the director may, solely at his or her option, replace an invalid ticket with an unplayed ticket (or tickets of equivalent sales price from any other current game). In the event a defective ticket is purchased, the only responsibility or liability of the director shall be the replacement of the defective ticket with another unplayed ticket (or tickets of equivalent sale price from any other current game).

#### WSR 05-04-080

#### PROPOSED RULES

#### WASHINGTON STATE LOTTERY

[Filed February 1, 2005, 3:50 p.m.]

Original Notice.

Continuance of WSR 05-01-080.

Preproposal statement of inquiry was filed as WSR [05-01-081].

Title of Rule and Other Identifying Information: Chapter 315-33A WAC, Quinto rules, changes to the Quinto rules allow additional drawing days and all first prizes will be at the discretion of the director.

Hearing Location(s): Washington's Lottery Headquarters, 814 East 4th Avenue, Olympia, WA 98506, on March 17, 2005, at 10:00 a.m.

Date of Intended Adoption: March 17, 2005.

Submit Written Comments to: Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, e-mail Cbuddeke@walottery.com, fax (360) 586-6586, by March 10, 2005.

Assistance for Persons with Disabilities: Contact Joan Reuell by March 10, 2005, TTY (360) 586-0933.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At the Lottery Commission's January 20, 2005, meeting Washington's lottery intends to recommend permanent amendment of this rule, to correctly reflect the drawing schedule change for increased consumer awareness and increased revenue contributions to the state. The rule has been adopted by the Lottery

Commission on an emergency basis, effective January 21, 2005.

Reasons Supporting Proposal: The rule broadens players' opportunities and options in the Quinto game.

Statutory Authority for Adoption: Chapter 67.70 RCW.

Statute Being Implemented: RCW 67.70.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington's Lottery, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, (360) 664-4833.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose costs on industry businesses, and the lottery has not been asked to prepare a small business economic impact statement, see RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, phone (360) 664-4833, fax (360) 586-6586, e-mail Cbuddeke@walottery.com.

January 31, 2005

Ceil Buddeke

Rules Coordinator

AMENDATORY SECTION (Amending WSR 92-11-033, filed 5/15/92, effective 6/15/92)

**WAC 315-33A-010 Definitions for Quinto.** (1) Card suit: Heart, diamond, club, or spade symbol.

(2) Number: Any integer from 2 through 10 inclusive and jack, queen, king, or ace.

(3) Set: One number and one card suit, for example, ten of clubs, jack of hearts, two of diamonds, ace of spades.

(4) Play: One selection of five sets.

(5) Play slip: A mark-sensitive game card used by players of Quinto to select plays.

(6) Quinto ticket: A computer-generated receipt evidencing payment for one or more plays in the Quinto game. Tickets shall be issued by a licensed lottery retailer and shall list the five number play(s) that belong to the ticket holder.

AMENDATORY SECTION (Amending WSR 92-11-033, filed 5/15/92, effective 6/15/92)

**WAC 315-33A-020 Price of Quinto play.** The price of each Quinto play shall be \$1.00. Each Quinto ticket shall contain at least one(~~, but not more than five~~) Quinto play(s).

AMENDATORY SECTION (Amending WSR 93-19-052, filed 9/10/93, effective 10/11/93)

**WAC 315-33A-030 Play for Quinto.** (1) Type of play: Each play is a selection of five sets. A winning play is achieved only when 2, 3, 4, or 5 of the sets selected match, in any order, the five winning sets drawn by the lottery.

(2) Method of play: A player may use a play slip to make set selections. The (~~(on-line)~~) lottery terminal will read the play slip and issue ticket(s) with corresponding sets. A player

may ~~((also))~~ choose to have the ~~((on-line computer system make all set selections with the use of))~~ set selections made by the lottery terminal, a random number generator operated by the computer, ((a method)) commonly referred to as "quick ~~((play))~~ pick."

**AMENDATORY SECTION** (Amending WSR 91-20-062, filed 9/25/91, effective 10/26/91)

**WAC 315-33A-040 Prizes for Quinto.** (1) The prize amount to be paid to each Quinto player who holds a winning combination of sets in the first prize category shall vary due to the parimutuel calculation of prizes. The prize amount to be paid to each Quinto player who holds a winning combination of sets in the second prize category shall be \$1,000.00. The prize amount to be paid to each Quinto player who holds a winning combination of sets in the third prize category shall be \$20.00. The prize amount to be paid to each Quinto player who holds a winning combination of sets in the fourth prize category shall be \$1.00.

WINNING COMBINATIONS	PRIZE CATEGORIES	ODDS OF WINNING (ONE PLAY)
All five winning sets in one play	First Prize	1:2,598,960
Any four but not five winning sets in one play	Second Prize: \$1,000	1:11,059
Any three but not four or five winning sets in one play	Third Prize: \$20	1:240
Any two, but not three, four or five winning sets in one play	Fourth Prize: \$1	1:16

(2) Prize amounts.

(a) First prize (cashpot). All first prizes will be the amount announced by the director as the Quinto cashpot. The cashpot will be divided equally among all players who selected all five winning sets in one play (in any sequence).

~~((i) A \$100,000.00 prize is to be divided equally among all players who hold all five winning sets in one play in any sequence, provided, that the first prize shall be increased pursuant to subsection (3) of this section.~~

~~((ii) The director may utilize revenue accumulated in the Quinto prize reserve, under WAC 315-33-040 (2)(d) to increase the first prize jackpot to an amount greater than \$100,000.~~

~~((iii) The first prize may be set at an amount greater than \$100,000 at the discretion of the director.))~~

(b) Second prize. A \$1,000.00 prize is to be paid to each player who holds four of the five winning sets in one play in any sequence.

(c) Third prize. A \$20.00 prize is to be paid to each player who holds three of the five winning sets in one play in any sequence.

(d) Fourth prize. A \$1.00 prize is to be paid to each player who holds two of the five winning sets in one play in any sequence.

(e) The holder of a winning ticket may win only one prize per play in connection with the winning sets drawn and

shall be entitled only to the highest prize amount won by those sets.

(f) In the event any player who holds two, three, four or five of the five winning sets does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for use, pursuant to RCW 67.70.190.

~~(3) ((Roll-over feature. If no player holds all five winning sets for any given drawing, the jackpot allocated for first prize for that drawing will be added to the first prize for the next drawing. This process is repeated until the first prize is won.~~

(4)) Prize payments will be made in accordance with WAC 315-30-030(6). Each prize shall be paid in a single payment. Federal income tax shall be withheld from prize payments as required by law.

**AMENDATORY SECTION** (Amending WSR 93-19-052, filed 9/10/93, effective 10/11/93)

**WAC 315-33A-050 Ticket purchases.** (1) Quinto tickets may be purchased ~~((or redeemed no less than seventeen hours each day))~~ daily in accordance with a schedule to be determined by the director ~~((, provided that on-line))~~. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours. Quinto tickets may be purchased only from a licensed lottery retailer.

~~((2) ((Quinto tickets may be purchased only from a lottery retailer authorized by the director to sell on-line tickets.~~

(3)) Quinto tickets shall, on the front of the ticket, contain the selection of sets, amount, drawing date, ~~((and validation))~~ ticket serial number and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information, ~~((and))~~ signature area, governing statutes and rules, and the ticket ~~((serial))~~ stock number. ~~((The overall odds of winning shall appear on the ticket.))~~

**AMENDATORY SECTION** (Amending WSR 99-16-008, filed 7/22/99, effective 8/22/99)

**WAC 315-33A-060 Drawings.** (1) The Quinto drawing ~~((pursuant to this chapter))~~ shall be held up to once every twenty-four hours, at the discretion of the director.

(2) The drawing will be conducted by lottery officials.

(3) Each drawing shall ~~((determine, at random,))~~ randomly select five winning sets ~~((with the aid of mechanical drawing equipment which))~~. The drawing method shall be tested before and after ((that)) each drawing. Any drawn sets are not declared winners until the drawing is certified by the lottery. The winning sets shall be used in determining all Quinto winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(4) The drawing shall not be invalidated based on the liability of the lottery.

PROPOSED

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 315-33A-070 Suspension/termination of Quinto.

Olympia, WA 98506, phone (360) 664-4833, fax (360) 586-6586, e-mail Cbuddeke@walottery.com.

January 31, 2005  
Ceil Buddeke  
Rules Coordinator

**WSR 05-04-081  
PROPOSED RULES  
WASHINGTON STATE LOTTERY**

[Filed February 1, 2005, 3:51 p.m.]

Original Notice.

Continuance of WSR 05-01-080.

Preproposal statement of inquiry was filed as WSR [05-01-080].

Title of Rule and Other Identifying Information: Chapter 315-34 WAC, Lotto 6 of 49 rules, changes to the Lotto rules allow additional drawing days and all first prizes will be at the discretion of the director.

Hearing Location(s): Washington's Lottery Headquarters, 814 East 4th Avenue, Olympia, WA 98506, on March 17, 2005, at 10:00 a.m.

Date of Intended Adoption: March 17, 2005.

Submit Written Comments to: Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, e-mail Cbuddeke@walottery.com, fax (360) 586-6586, by March 10, 2005.

Assistance for Persons with Disabilities: Contact Joan Reuell by March 10, 2005, TTY (360) 586-0933.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At the Lottery Commission's January 20, 2005, meeting Washington's lottery intends to recommend permanent amendment of this rule, to correctly reflect the drawing schedule change for increased consumer awareness and increased revenue contributions to the state. The rule has been adopted by the Lottery Commission on an emergency basis, effective January 21, 2005. The emergency rule is shown below and is identical to the amendment that will be proposed for permanent adoption.

Reasons Supporting Proposal: The rule broadens players' opportunities and options in the Lotto game.

Statutory Authority for Adoption: Chapter 67.70 RCW.

Statute Being Implemented: RCW 67.70.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington's Lottery, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, (360) 664-4833.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose costs on industry businesses, and the lottery has not been asked to prepare a small business economic impact statement, see RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ceil Buddeke, 814 East 4th Avenue,

**AMENDATORY SECTION** (Amending WSR 96-15-054, filed 7/15/96, effective 8/15/96)

**WAC 315-34-010 Definitions for Lotto.** (1) Number: Any play integer from 1 through 49 inclusive.

(2) Game grids: A field of ~~((the))~~ 49 numbers found on the play slip.

(3) Play: One selection of six numbers.

(4) ~~((Pair))~~ Set: Two plays.

(5) Play slip: A ~~((mark-sense))~~ mark-sensitive game card used by players of Lotto to select plays.

(6) Lotto ticket: A computer-generated receipt evidencing payment for two or more plays in the Lotto game. Tickets shall be issued by ~~((an on-line terminal))~~ a licensed lottery retailer and shall list the set of six-number plays that belong to the ticket holder.

**AMENDATORY SECTION** (Amending WSR 96-15-054, filed 7/15/96, effective 8/15/96)

**WAC 315-34-020 Price of Lotto play.** The price of each Lotto play shall be \$.50 and shall be sold only in ~~((pairs))~~ sets for \$1.00.

**AMENDATORY SECTION** (Amending WSR 90-19-048, filed 9/14/90, effective 10/15/90)

**WAC 315-34-030 Play for Lotto.** (1) Type of play: A Lotto player must select six numbers in each play. A winning play is achieved only when 3, 4, 5, or 6 of the numbers selected by the player match, in any order, the six winning numbers drawn by the lottery.

(2) Method of play: The player will use play slips to make number selections. The ~~((on-line))~~ lottery terminal will read the play slip and issue ticket(s) with corresponding plays. If a play slip is not available, the ~~((on-line))~~ lottery retailer may enter the selected numbers via the keyboard. A player may choose to have the number selections made by the lottery terminal, a random number generator operated by the computer, commonly referred to as "quick ~~((play))~~ pick."

**AMENDATORY SECTION** (Amending WSR 03-23-097, filed 11/17/03, effective 11/17/03)

**WAC 315-34-040 ~~((Prize(s)))~~ Prizes for Lotto.** (1) The prize amounts to be paid to each Lotto player who selects a winning combination of numbers in the first, second, third~~((s))~~, and ~~((fourth))~~ fourth prize categories are as follows:

WINNING COMBINATIONS	PRIZE CATEGORIES	PRIZE AMOUNTS	ODDS OF WINNING (ONE PLAY)
All six <del>((winner-win-ning))</del> <u>winning</u> numbers in one play	First Prize	Jackpot	<del>((1:6,991,908))</del> <u>1:13,983,816</u>

PROPOSED

PROPOSED

WINNING COMBINATIONS	PRIZE CATEGORIES	PRIZE AMOUNTS	ODDS OF WINNING (ONE PLAY)
Any five but not six winning numbers in one play	Second Prize	\$1,000	<del>((1:27,100))</del> <u>1:54,201</u>
Any four but not five or six winning numbers in one play	Third Prize	<del>(((\$30)))</del> <u>\$30</u>	<del>((1:516))</del> <u>1:1,033</u>
Any three but not four, five or six winning numbers in one play	Fourth Prize	\$3	<del>((1:28))</del> <u>1:57</u>

(2) Prize amounts.

(a) First prize (jackpot). ~~((The))~~ All first prizes will be the amount announced by the director as the Lotto jackpot. The jackpot will be divided equally among all players who selected all six winning numbers in one play (in any sequence).

(b) Second prize. The second prize will be \$1,000, which will be paid to each player who selected five of the six winning numbers in one play (in any sequence).

(c) Third prize. The third prize will be \$30, which will be paid to each player who selected four of the six winning numbers in one play (in any sequence).

(d) Fourth prize. A \$3.00 prize is to be paid to each player who selected three of the six winning numbers in one play (in any sequence).

(e) The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(f) In the event any player who has selected three, four, five, or six of the six winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for further use as prizes, pursuant to RCW 67.70.190.

AMENDATORY SECTION (Amending WSR 01-17-022, filed 8/6/01, effective 9/6/01)

**WAC 315-34-050 Ticket purchases.** (1) Lotto tickets may be purchased ~~((or redeemed during no less than seven-teen hours each day))~~ daily in accordance with a schedule to be determined by the director ~~((, provided that on-line))~~. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours. Lotto tickets may be purchased only from a licensed lottery retailer.

(2) ~~((Lotto tickets may be purchased only from a lottery retailer authorized by the director to sell on-line tickets.~~

~~((3)))~~ Lotto tickets shall, on the front of the ticket, contain the player's selection of numbers, amount, game grids played, drawing date ~~((and validation))~~, ticket serial number and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information and signature area, governing statutes and rules, and the ticket ~~((serial))~~ stock number.

AMENDATORY SECTION (Amending WSR 01-17-022, filed 8/6/01, effective 9/6/01)

**WAC 315-34-057 Lotto prize claim and payment methods.** The following sets forth requirements for claims and payment of Lotto prizes:

(1) Claims for prize payment shall be made in accordance with ~~chapter 315-30~~ WAC ((315-30-030(6))).

(2) Prize payments shall be made as follows:

(a) **Cash option:** After a player has claimed a jackpot prize or a share of a jackpot prize, and after the claim has been validated (including a debt check pursuant to WAC 315-06-125), the player may elect to be paid a one-time single cash payment of fifty percent of his or her share of the announced jackpot, provided:

(i) The player must elect this cash option within sixty days of the validation of his or her prize, by following the procedure required by the lottery;

(ii) If the federal tax code is interpreted by federal authorities to require that this cash option be exercised within sixty days of the drawing for the prize, then (a)(i) of this subsection will not apply and instead, the player must elect this cash option within sixty days of the date of the drawing for the prize;

(iii) The player's choice of payment method as designated by signing the appropriate lottery form is final and may not be changed by the player at a later date.

(b) **Annuity:** A player who chooses not to elect the cash option or who does not elect the cash option within the sixty-day limit will be paid his or her prize in twenty-five annual installment payments.

AMENDATORY SECTION (Amending WSR 90-19-048, filed 9/14/90, effective 10/15/90)

**WAC 315-34-060 Drawings.** (1) The Lotto drawing shall be held ~~((each week on Wednesday and Saturday evenings beginning October 24, 1990, except that the director may change the drawing schedule if Wednesday or Saturday is a holiday))~~ up to once every twenty-four hours, at the discretion of the director.

(2) The drawing will be conducted by lottery officials.

(3) Each drawing shall ~~((determine, at random, six winning numbers with the aid of mechanical drawing equipment which))~~ randomly select six winning numbers between 1 and 49. The drawing method shall be tested before and after ((that)) each drawing. Any drawn numbers are not declared winning numbers until the drawing is certified by the lottery. The winning numbers shall be used in determining all Lotto winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(4) The drawing shall not be invalidated based on the liability of the lottery.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 315-34-070 Double Lotto.

WAC 315-34-080 Price of Double Lotto play.

WAC 315-34-090 Prizes for Double Lotto.

WAC 315-34-100 Double Lotto ticket purchases.

Statutory Authority for Adoption: RCW 67.16.020 and [67.16.]040.

Statute Being Implemented: None.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington Horse Racing Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

February 1, 2005

R. M. Leichner

Executive Secretary

**WSR 05-04-083**

**PROPOSED RULES**

**HORSE RACING COMMISSION**

[Filed February 2, 2005, 7:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-21-008.

Title of Rule and Other Identifying Information: Chapter 260-84 WAC, Fines and suspensions.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on March 10, 2005, at 9:30 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by March 7, 2005.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 10, 2005, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to make sweeping changes to chapter 260-84 WAC, Fines and suspensions, as part of the agency's effort to comply with the Governor's Executive Order 97-02 regulatory improvement. The proposal does the following: (1) Renames the chapter from fines and suspensions to penalties; (2) moves the penalty matrix from WAC 260-24-510 to chapter 260-84 WAC; (3) moves four sections from chapter 260-70 WAC, Controlled medication program, to chapter 260-84 WAC; and (4) repeals WAC 260-70-670, 260-70-680, 260-70-690, 260-70-800, 260-84-010, 260-84-020, and 260-84-050.

Reasons Supporting Proposal: Assists the agency to improve the efficiency and fairness of our regulatory process.

**Chapter 260-84 WAC**

~~((FINES AND SUSPENSIONS))~~ **PENALTIES**

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-84-050 Suspensions—Computation of time.** All suspensions for a specified period of time ~~((to be considered))~~ shall be in calendar days. Rulings ~~((to))~~ shall show the first and last day of suspension.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-84-060 ((General)) Penalty matrixes.** ~~((Violators of any rule shall be subject to ejection from the grounds and/or to fine, suspension or to be ruled off.))~~ (1) The imposition of reprimands, fines and suspensions shall be based on the following penalty matrixes:

<b><u>Class A &amp; B Licensed Facilities</u></b>			
<u>Violations within last 12 months</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense or subsequent offense</u>
<u>Smoking in restricted areas WAC 260-20-030</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>
<u>Disturbing the peace WAC 260-80-140</u>	<u>Warning - \$200 and/or suspension</u>	<u>Warning - \$500 and/or suspension</u>	<u>Suspension</u>
<u>Person performing duties for which they are not licensed WAC 260-36-010</u>	<u>\$50</u>	<u>\$100</u>	<u>\$150</u>
<u>Unlicensed or improperly licensed personnel (trainer's responsibility) WAC 260-28-230</u>	<u>\$500</u>		
<u>Licensing - failure to divulge a felony WAC 260-36-120</u>	<u>\$100 or possible denial of license</u>		

PROPOSED

PROPOSED

<b>Class A &amp; B Licensed Facilities</b>			
<u>Violations within last 12 months</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense or subsequent offense</u>
<u>Licensing - failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120</u>	<u>Warning - \$50</u>		
<u>Licensing - providing false information on application WAC 260-36-120</u>	<u>\$50 - \$250 or possible denial of license</u>		
<u>Licensing - nonparticipation WAC 260-36-080</u>	<u>License canceled</u>		
<u>Violation of any claiming rule in chapter 260-60 WAC</u>	<u>\$200 - \$500 plus possible suspension</u>		
<u>Use of improper, profane or indecent language to a racing official WAC 260-80-130</u>	<u>\$50</u>	<u>\$100</u>	<u>\$250</u>
<u>Unsafe vehicle operation WAC 260-20-020</u>	<u>Warning - \$50</u>	<u>\$100 and recommend racing association revoke vehicle pass</u>	
<u>Financial responsibility WAC 260-28-030</u>	<u>Resolve 30 days or before the end of the meet (whichever is sooner) to resolve or suspension</u>		
<u>Failure to appear - hearing WAC 260-24-510</u>	<u>Suspension pending appearance</u>		
<u>Failure to honor riding engagements (call) - agents WAC 260-32-400</u>	<u>\$75</u>	<u>\$100</u>	<u>\$200</u>
<u>Reporting incorrect weight - jockeys WAC 260-32-150</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<u>Failure to appear for films - jockeys WAC 260-24-510</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<u>Failure to fulfill riding engagement WAC 260-32-080</u>	<u>\$100</u>	<u>\$150</u>	<u>\$200</u>
<u>Easing mount without cause WAC 260-52-040</u>	<u>\$250</u>	<u>\$250 and/or suspension</u>	<u>\$500 and/or suspension</u>
<u>Jockey failing to maintain straight course or careless riding WAC 260-52-040</u>	<u>Warning - \$750 and/or suspension (riding days)</u>		
<u>Jockey's misuse of whip WAC 260-52-040</u>	<u>Warning - \$2500</u>		
<u>Use of stimulating device (may include batteries) WAC 260-52-040</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Entering ineligible horse WAC 260-80-030</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>
<u>Arriving late to the paddock WAC 260-28-200</u>	<u>Warning - \$50</u>	<u>Warning - \$50</u>	<u>\$50 - \$100</u>

<b>Class A &amp; B Licensed Facilities</b>			
<u>Violations within last 12 months</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense or subsequent offense</u>
<u>Failure to have registration papers on file - resulting in a scratch WAC 260-40-090</u>	<u>\$50 - \$100</u>	<u>\$100</u>	<u>\$100</u>
<u>Failure to handle business properly - late equipment change, etc. WAC 260-44-010</u>	<u>Warning - \$50</u>	<u>\$100</u>	<u>\$100</u>
<u>Failure to report the correct name of a horse working WAC 260-40-100</u>	<u>Warning - \$50</u>	<u>\$100</u>	<u>\$150</u>
<u>Insufficient workouts - resulting in scratch WAC 260-40-100</u>	<u>\$50 - \$100</u>	<u>\$100</u>	<u>\$100</u>

<b>Class C Licensed Facilities</b>			
<u>Violations within last 12 months</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense or subsequent offense</u>
<u>Smoking in restricted areas WAC 260-20-030</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>
<u>Disturbing the peace WAC 260-80-140</u>	<u>Warning - \$100 and/or suspension</u>	<u>\$250 and/or suspension</u>	<u>Suspension</u>
<u>Person performing duties for which they are not licensed WAC 260-36-010</u>	<u>\$50</u>	<u>\$100</u>	<u>\$150</u>
<u>Unlicensed or improperly licensed personnel (trainer's responsibility) WAC 260-28-230</u>	<u>\$100</u>		
<u>Licensing - failure to divulge a felony WAC 260-36-120</u>	<u>\$100 or possible denial of license</u>		
<u>Licensing failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120</u>	<u>Warning - \$25</u>		
<u>Licensing - providing false information on application WAC 260-36-120</u>	<u>\$50 - \$250 or possible denial of license</u>		
<u>Licensing - nonparticipation WAC 260-36-080</u>	<u>License canceled</u>		
<u>Violation of any claiming rule in chapter 260-60 WAC</u>	<u>\$100 - \$250 plus possible suspension</u>		
<u>Use of improper, profane or indecent language to a racing official WAC 260-80-130</u>	<u>\$50</u>	<u>\$100</u>	<u>\$250</u>
<u>Unsafe vehicle operation WAC 260-20-020</u>	<u>Warning - \$50</u>		
<u>Financial responsibility WAC 260-28-030</u>	<u>Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension</u>		
<u>Failure to appear - hearing WAC 260-24-510</u>	<u>Suspension pending appearance</u>		
<u>Failure to honor riding engagements (call) - agents WAC 260-32-400</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>
<u>Reporting incorrect weight - jockeys WAC 260-32-150</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>

PROPOSED

<b>Class C Licensed Facilities</b>			
<u>Violations within last 12 months</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense or subsequent offense</u>
<u>Failure to appear for films - jockeys WAC 260-24-510</u>	\$25	\$50	\$100
<u>Failure to fulfill riding engagement WAC 260-32-080</u>	\$50	\$100	\$200
<u>Easing mount without cause WAC 260-52-040</u>	\$100	\$200 and/or suspension	\$400 and/or suspension
<u>Jockey failing to maintain straight course or careless riding WAC 260-52-040</u>	<u>Warning - \$750 and/or suspension (riding days)</u>		
<u>Jockey's misuse of whip WAC 260-52-040</u>	<u>Warning - \$2500</u>		
<u>Use of stimulating device (may include batteries) WAC 260-52-040</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Entering ineligible horse WAC 260-80-030</u>	\$25	\$50	\$50
<u>Arriving late to the paddock WAC 260-28-200</u>	<u>Warning - \$25</u>	\$50	\$50
<u>Failure to have registration papers on file - resulting in a scratch WAC 260-40-090</u>	\$50	\$100	\$100
<u>Failure to handle business properly - late equipment change, etc. WAC 260-44-010</u>	<u>Warning - \$50</u>	\$50	\$50

<b>Class A, B &amp; C Licensed Facilities</b>			
<u>Violations within last 5 years</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense or subsequent offense</u>
<u>Engaging in the illegal sale or distribution of alcohol WAC 260-34-045</u>	<u>30 day suspension</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>	
<u>Using an illegal controlled substance other than marijuana WAC 260-34-045</u>	<u>30 day suspension</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>	
<u>Being under the influence of alcohol and/or drugs WAC 260-34-045</u>	<u>Warning to 1 day suspension</u>	<u>3 day suspension</u>	<u>30 day suspension (1 year suspension plus mandatory referral to the commission for revocation for 4th offense)</u>
<u>Possession or use of marijuana WAC 260-34-045</u>	<u>3 day suspension</u>	<u>30 day suspension</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>

PROPOSED

<b>Class A, B &amp; C Licensed Facilities</b>			
<u>Violations within last 5 years</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense or subsequent offense</u>
<u>Illegal possession of any felony drug or controlled substance WAC 260-34-045</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Refusal to submit to a drug or alcohol test WAC 260-34-045 and 260-34-060</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Possession of any equipment or material used for the manufacture or distribution of any drug or controlled substance, or engaging in the sale, manufacture or distribution of any drug or controlled substance on the grounds WAC 260-08-150</u>	<u>Immediate ejection from the grounds and mandatory referral to the commission for revocation</u>		
<u>Violations within last 12 months</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
<u>Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030</u>	<u>\$50</u>	<u>\$100</u>	<u>\$250 plus possible suspension</u>
<u>Failure to post problem gambling signs WAC 260-12-250</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<u>Failure to complete provisional license application WAC 260-36-200</u>	<u>\$100</u>		
<u>Failure to pay or default on L&amp;I payment WAC 260-28-220</u>	<u>Suspension until paid plus \$25 for each quarter payment is late</u>		
<u>Failure to maintain employee L&amp;I records for grooms and assistant trainers (trainer's responsibility) WAC 260-28-230</u>	<u>Warning - \$50</u>		
<u>Unlicensed person on the backside WAC 260-20-040</u>	<u>Report violation to the racing association</u>		

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee shall include violations, which occurred in Washington as well as any other recognized racing jurisdiction.

(3) For any other violation not specifically listed above, the stewards shall have discretion to impose the penalties as provided in WAC 260-24-510 (3)(b). For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the parimutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of the rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards shall follow the penalty guidelines as set forth in WAC 260-84-090.

(6) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a stewards' referral shall not preclude commission action in any matter. A stewards' ruling shall not prevent the commission from imposing a more severe penalty.

**AMENDATORY SECTION** (Amending Rules of racing, filed 4/21/61)

**WAC 260-84-070 Ejection from grounds—Permission to reenter.** Any person ejected from the grounds of an association shall be denied admission to said grounds until permission ((for this reentering) to reenter has been obtained ((and approved by)) from the commission, or its designee.

**NEW SECTION**

**WAC 260-84-090 Medication and prohibited substances—Penalties—Guidelines.** Upon a finding of a viola-

tion of the medication and prohibited substances rules in chapter 260-70 WAC, the stewards shall consider the classification level of the medication, drug or substance as established in WAC 260-70-680 prior to imposing a penalty. The stewards shall also consult with an official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation and whether the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's report received per WAC 260-70-540. A lesser penalty than that established in WAC 260-84-110 may be imposed if a majority of the stewards determine that mitigating circumstances warrant a lesser penalty. If a majority of the stewards determine a greater penalty is appropriate or that a penalty in excess of the authority granted them is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action. In determining if there are mitigating circumstances surrounding a medication violation for substances referred to in chapter 260-70 WAC, at least the following shall be considered:

- (1) The past record of the trainer and/or veterinarian in medication/drug cases;
- (2) The potential of the medication/drug to influence a horse's racing performance;
- (3) The availability of the medication/drug;
- (4) Whether there is reason to believe the responsible party knew of the administration of the medication/drug used;
- (5) The steps taken by the trainer to safeguard the horse;
- (6) The probability of environmental contamination or inadvertent exposure due to human drug use;
- (7) The purse of the race;
- (8) Whether the medication found was one for which the horse was receiving a treatment as determined by the veterinarian report(s);
- (9) Whether there was any suspicious betting pattern in the race; and
- (10) Whether the presence of the medication/drug in urine was confirmed in serum or plasma.

#### NEW SECTION

**WAC 260-84-100 Furosemide penalties.** Penalties shall be assessed against any person found to be responsible or party to the improper administration of furosemide or failure to administer furosemide when required, in chapter 260-70 WAC as follows:

- (1) For persons found to be responsible or party to the improper administration of furosemide:
  - (a) For a first offense - One to three day suspension and \$250 fine and possible loss of purse.
  - (b) For a second offense - Three to fifteen day suspension and \$500 fine and possible loss of purse.
  - (c) For a third offense - Fifteen to thirty day suspension, \$750 fine and possible loss of purse.
  - (d) For a fourth offense - Thirty to sixty day suspension, \$1000 fine and possible loss of purse.
  - (e) For a fifth or subsequent offense - One year suspension and mandatory referral to the commission, \$2500 fine and possible loss of purse.

(2) For persons found to be responsible for failure to administer furosemide in a horse required to run on furosemide or a horse that has been administered furosemide that does not show a detectable concentration of the drug in the post-race serum or plasma, as required in WAC 260-70-660:

- (a) For a first offense - One to three day suspension and \$250 fine and possible loss of purse.
- (b) For a second offense - Three to fifteen day suspension and \$500 fine and possible loss of purse.
- (c) For a third offense - Fifteen to thirty day suspension, \$750 fine and possible loss of purse.
- (d) For a fourth offense - Thirty to sixty day suspension, \$1000 fine and possible loss of purse.
- (e) For a fifth or subsequent offense - One year suspension and mandatory referral to the commission, \$2500 fine and possible loss of purse.

(3) Equine medication violations from Washington in all recognized racing jurisdictions, shall be considered when assessing penalties.

#### NEW SECTION

**WAC 260-84-110 Penalties for uniform classifications.** Penalties shall be assessed against any person found to be responsible or party to the improper administration of a drug or the intentional administration of a drug resulting in a positive test. In assessing penalties under this section, violations from Washington and all recognized racing jurisdictions shall be considered.

- (1) Class 1 - One to five year suspension and at least \$5,000 fine and loss of purse.
- (2) Class 2 - Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.
- (3) Class 3 - Sixty days to six months suspension and up to \$1,500 fine and loss of purse.
- (4) Class 4 - Fifteen to sixty days suspension and up to \$1,000 fine and loss of purse.
- (5) Class 5 - Warning to fifteen days suspension with a possible loss of purse and/or fine.

#### NEW SECTION

**WAC 260-84-120 Penalties relating to permitted medication.** (1) Should the laboratory analysis of serum or plasma taken from a horse show the presence of more than one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of these rules or the presence of phenylbutazone in excess of the quantities authorized by the rules, the following penalties shall be assessed:

- (a) For a first offense a fine of \$300;
- (b) For a second offense a fine of \$750;
- (c) For a third offense a fine of \$1,000 with a fifteen to sixty day suspension.

(2) Should the laboratory analysis of serum or plasma taken from a horse show the presence of phenylbutazone in excess of the quantities authorized by this rule, the following penalties shall be assessed:

PROPOSED

Concentration	1st Offense	2nd Offense	3rd and Subsequent Offenses
> 5.0 but < 6.5 mcg/ml	Warning	Fine not to exceed \$300	Fine not to exceed \$500
≥ 6.5 but < 10.0 mcg/ml	Warning - \$300	Fine not to exceed \$500	Fine not to exceed \$1000
≥ 10.0 mcg/ml	Fine not to exceed \$500	Fine not to exceed \$1000	Fine not to exceed \$2500 and possible suspension

(3) Detection of any unreported permitted medication, drug, or substance by the primary testing laboratory may be grounds for disciplinary action.

(4) As reported by the primary testing laboratory, failure of any test sample to show the presence of permitted medication, drug or substance when such permitted medication, drug or substance was required to be administered may be grounds for disciplinary action.

(5) In assessing penalties for equine medication, violations from Washington and all recognized racing jurisdictions shall be considered.

**NEW SECTION**

**WAC 260-84-130 Penalties for prohibited practices.**

For a person found to be responsible for or party to violation of WAC 260-70-545, including the treating veterinarian, the following penalties shall be assessed:

(1) For violations of WAC 260-70-545, except WAC 260-70-545 (4)(b);

(a) For first offense - Thirty day suspension and \$1,000 fine;

(b) For second offense - Sixty day suspension and \$2,000 fine;

(c) For third offense - One year suspension, \$2,500 fine and a mandatory referral to the commission.

(2) For violations of WAC 260-70-545 (4)(b), the person found to be responsible for or party to the violation, including the treating veterinarian shall be suspended for one year, shall pay a \$2,500 fine and there shall be a mandatory referral to the commission.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 260-84-010 Who may impose.
- WAC 260-84-020 Report to commission.
- WAC 260-84-030 Fines—When due.

**WSR 05-04-084**

**PROPOSED RULES**

**HORSE RACING COMMISSION**

[Filed February 2, 2005, 8:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-04-023.

Title of Rule and Other Identifying Information: WAC 260-24-510 and 260-24-500.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on March 10, 2005, at 9:30 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by March 7, 2005.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 7, 2005, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-24-510, to clarify the authority of the stewards related to the following: (1) Limiting their authority to chapters 260-12 through 260-84 WAC, excluding chapters 260-49 and 260-75 WAC; (2) eliminating the ability of the stewards to interpret rules and to have authority over issues not specifically covered in Title 260 WAC; (3) clarifying that their authority over a race meet terminates at the direction of the executive secretary; (4) removing the penalty matrix from WAC 260-24-510 and moving it to chapter 260-84 WAC; (5) clarifying that the film list is a referral to the film analyst; (6) clarifying the reporting requirements of the stewards; (7) clarifying who may appoint a substitute steward; and (8) providing a process for an owner or trainer to challenge the decision of the board of stewards to place or maintain a horse on the stewards' list. The proposal also amends WAC 260-24-510, specifically subsection (9) to comply with the changes proposed in WAC 260-24-510 regarding substitute stewards.

Reasons Supporting Proposal: Limits the authority of the stewards, eliminates duties and responsibilities outside the authority of the stewards, and provides regulatory reform.

Statutory Authority for Adoption: RCW 67.16.020 and [67.16.]040.

Statute Being Implemented: None.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington Horse Racing Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

February 1, 2005

R. M. Leichner  
Executive Secretary

**AMENDATORY SECTION** (Amending WSR 04-17-082, filed 8/16/04, effective 9/16/04)

**WAC 260-24-510 Stewards.** (1) General authority:

(a) The stewards for each ~~((meeting))~~ race meet shall be responsible to the executive secretary for the conduct of the race ~~((meeting))~~ meet and the initial agency determination of alleged rule violations in accordance with these rules;

(b) The stewards shall enforce the rules of racing in chapters 260-12 through 260-84 WAC, excluding chapters 260-49 and 260-75 WAC;

(c) The stewards' authority includes regulation of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with these rules;

(d) All nominations, entries, declarations and scratches shall be ~~((conducted under the supervision of the stewards))~~ monitored by a steward;

(e) The stewards shall have authority to resolve conflicts or disputes related to violations of the rules of racing and to discipline violators in accordance with the provisions of these rules;

(f) The stewards shall take notice of any questionable conduct with or without complaint thereof;

(g) ~~((The stewards have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules;~~

~~(h) Should any case occur which may not be covered by these rules of racing, it shall be determined by the stewards of the race meeting in conformity with justice and in the best interest of racing; and))~~ The stewards of the meeting are hereby given authority to exercise their full power, recommending to the commission the imposition~~((s))~~ of more

severe penalties~~((, if in their judgment the penalty should be more drastic))~~ if necessary.

(2) The stewards' period of authority shall commence ~~((10))~~ ten days prior to the beginning of each race meet, or at such other time as is necessary in the opinion of the executive secretary, and shall terminate ~~((with the completion of their business pertaining to the meeting))~~ at the direction of the executive secretary. One ~~((of the three))~~ steward~~((s))~~ shall be designated as the presiding steward by the commission.

(3) Stewards ruling conference regarding violations of rules of racing:

(a) The stewards shall take notice of alleged misconduct or rule violations and initiate investigations into such matters.

(b) The stewards shall have authority to charge any licensee or other person with a violation of these rules, to make rulings and to impose penalties including the following:

(i) Issue a reprimand;

(ii) Assess a fine not to exceed \$2,500.00, except as provided in WAC 260-70-690;

(iii) Require forfeiture or redistribution of purse or award, when specified by applicable rules;

(iv) Place a licensee on probation;

(v) Suspend a license or racing privileges for not more than one year per violation;

(vi) Revoke a license; or

(vii) Exclude from grounds under the jurisdiction of the commission.

(c) ~~((Except as provided in (d) of this subsection,))~~ The stewards' imposition of reprimands, fines and suspensions shall be based on the ~~((following penalty matrixes:))~~ penalty matrix in WAC 260-84-060.

PROPOSED

((Class A & B Licensed Facilities			
Violations within calendar year	1st Offense	2nd Offense	3rd Offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$50	\$100	\$250 plus possible suspension
Disturbing the peace WAC 260-80-140	Warning—\$200 and/or suspension	Warning—\$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel (trainer's responsibility) WAC 260-28-230	\$500		
Licensing—failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing—failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120	Warning—\$50		
Licensing—providing false information on application WAC 260-36-120	\$50—\$250 or possible denial of license		

((Class A & B Licensed Facilities			
Violations within calendar year	1st Offense	2nd Offense	3rd Offense
Licensing—nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$200—\$500 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning—\$50	\$100 and recommend racing association revoke vehicle-pass	
Financial responsibility WAC 260-28-030	Resolve 30 days or before the end of the meet (whichever is sooner) to resolve or suspension		
Failure to appear—hearing WAC 260-24-510	Suspension pending appearance		
Failure to honor riding engagements (call)—agents WAC 260-32-400	\$75	\$100	\$200
Reporting incorrect weight—jockeys WAC 260-32-150	\$50	\$100	\$200
Failure to appear for films—jockeys WAC 260-24-510	\$50	\$100	\$200
Failure to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Easing mount without cause WAC 260-52-040	\$250	\$250 and/or suspension	\$500 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning—\$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning—\$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		
Possession of stimulating device (may include batteries) WAC 260-52-040, WAC 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-80-030	\$50	\$100	\$100
Arriving late to the paddock WAC 260-28-200	Warning—\$50	Warning—\$50	\$50—\$100
Failure to have registration papers on file—resulting in a scratch WAC 260-40-090	\$50—\$100	\$100	\$100
Failure to handle business properly—late equipment change, etc. WAC 260-44-010	Warning—\$50	\$100	\$100
Insufficient workouts—resulting in scratch WAC 260-40-100	\$50—\$100	\$100	\$100

Class C Licensed Facilities			
Violation within calendar year	1st Offense	2nd Offense	3rd Offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100

PROPOSED

Class C Licensed Facilities			
Violation within calendar year	1st Offense	2nd Offense	3rd Offense
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$50	\$100	\$250 plus possible suspension
Disturbing the peace WAC 260-80-140	Warning—\$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel (trainer's responsibility) WAC 260-28-230	\$100		
Licensing—failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing—failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120	Warning—\$25		
Licensing—providing false information on application WAC 260-36-120	\$50—\$250 or possible denial of license		
Licensing—nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$100—\$250 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning—\$50		
Financial responsibility WAC 260-28-030	Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension		
Failure to appear—hearing WAC 260-24-510	Suspension pending appearance		
Failure to honor riding engagements (call)—agents WAC 260-32-400	\$25	\$50	\$100
Reporting incorrect weight—jockeys WAC 260-32-150	\$25	\$50	\$100
Failure to appear for films—jockeys WAC 260-24-510	\$25	\$50	\$100
Failure to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning—\$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning—\$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		
Possession of stimulating device (may include batteries) WAC 260-52-040, WAC 260-80-100	1 year suspension plus mandatory referral to commission for revocation		

PROPOSED

Class C Licensed Facilities			
Violation within calendar year	1st Offense	2nd Offense	3rd Offense
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1-year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-80-030	\$25	\$50	\$50
Arriving late to the paddock WAC 260-28-200	Warning—\$25	\$50	\$50
Failure to have registration papers on file—resulting in a scratch WAC 260-40-090	\$50	\$100	\$100
Failure to handle business properly—late equipment change, etc. WAC 260-44-010	Warning—\$50	\$50	\$50

Class A, B & C Licensed Facilities			
Violation within calendar year	1st Offense	2nd Offense	3rd Offense
Failure to pay or default on L&I payment WAC 260-28-220	Suspension until paid plus \$25 for each quarter payment is late		
Failure to maintain employee L&I records for grooms and assistant trainers (trainer's responsibility) WAC 260-28-230	Warning—\$50		
Unlicensed person on the backside WAC 260-20-040	Report violation to the racing association))		

For any other violation not specifically listed ((above)) in WAC 260-84-060, the stewards shall have discretion to impose the penalties as provided in (b) of this subsection. ((For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year.))

(d) ((Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- (i) The impact of the offense on the integrity of the parimutuel industry;
- (ii) The danger to human and/or equine safety;
- (iii) The number of prior violations of the rules of racing or violations of racing rules in other jurisdictions; and/or
- (iv) The deterrent effect of the penalty imposed.

(e) For violations covered by chapter 260-70 WAC, Medication, the stewards shall follow the penalty guidelines as set forth in WAC 260-70-690.

(f) The stewards may ((place)) direct a jockey ((on a film list)) to the film analyst whenever a jockey is involved in questionable, unsafe or potentially dangerous riding. Jockeys referred to the film analyst ((or stewards)) shall appear when directed. Failure to appear when directed shall be considered a violation of the rules of racing for which penalties may be imposed.

((g) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a stewards' referral shall not preclude commission action in any matter. A stewards' ruling shall not prevent the commission from imposing a more severe penalty.

(h) ((e) The stewards shall have the authority to conduct a ruling conference, and the authority to:

(i) Direct the attendance of witnesses and commission employees;

(ii) Direct the submission of documents, reports or other potential evidence;

(iii) Inspect license documents, registration papers and other documents related to racing or the rule violation;

(iv) Question witnesses; and

(v) Consider all relevant evidence.

(i) The stewards shall serve notice of a conference to person(s) alleged to have committed a violation, which shall contain the following information:

(i) A statement of the time and place the conference will be held;

(ii) A reference to the particular sections of the WAC involved;

(iii) A short and plain statement of the alleged violation; and

(iv) A statement that if the person does not appear, the ruling will be made in his/her absence, and that failure to appear will be considered a separate violation of the rules of racing.

((h)) (f) Failure to appear for a ruling conference shall be considered a violation of the rules of racing for which penalties may be imposed.

((k)) (g) It is the duty and obligation of every licensee to make full disclosure to the board of stewards of any knowledge he/she possesses of a violation of any rule of racing. No person may refuse to respond to questions before the stewards on any relevant matter within the authority of the stewards, except in the proper exercise of a legal privilege, nor shall any person respond falsely before the stewards.

~~((h))~~ (h) At the ruling conference, the stewards shall allow the ~~((licensee))~~ person alleged to have committed a violation to make a statement regarding the alleged violation.

~~((i))~~ (i) All ruling conferences shall be recorded.

~~((j))~~ (j) Every ruling by the stewards must be served in writing on the person(s) found in violation within five days and shall include:

(i) Time and place the ruling was made;

(ii) Statement of rules violated;

(iii) Details of the violation;

(iv) Penalties to be imposed;

(v) Procedure for requesting a hearing before the commission to challenge the ruling; and

(vi) Plain statement of ~~((licensees'))~~ the options of the person found in violation, which shall include:

(A) Accepting the penalty imposed by the stewards; or

(B) Requesting a hearing before the commission challenging the stewards' ~~((determination))~~ ruling within seven days.

~~((k))~~ (k) The stewards' ruling shall be posted and a copy provided to the racing association.

~~((l))~~ (l) If a person does not file a request for hearing before the commission within seven days or in the format required by chapter ~~((260-88))~~ 260-08 WAC, then the person is deemed to have waived his or her right to a hearing before the commission. After seven days, if a request for hearing before the commission has not been filed, the stewards' penalty shall be imposed.

~~((m))~~ (m) "Service" of the notice of ruling conference or a stewards' ruling shall be by either personal service ~~((on the licensee))~~ to the person or by depositing the notice of ruling conference or stewards' ruling into the mail to the ~~((licensee's))~~ person's last known address in which case service is complete upon deposit in the U.S. mail.

~~((n))~~ (n) If the stewards determine that a ~~((licensee's))~~ person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, the stewards may enter a ruling summarily suspending the license and/or eject from the grounds pending a ruling conference before the board of stewards. A summary suspension takes effect immediately on issuance of the ruling. If the stewards suspend a license under this subsection, the licensee is entitled to a ruling conference before the board of stewards, not later than five days after the license was summarily suspended. The licensee may waive his/her right to a ruling conference before the board of stewards on the summary suspension.

(4) Protests, objections and complaints. The stewards shall cause an investigation to be conducted and shall render a decision in every protest, objection and complaint made to them. ~~((They shall maintain a record of all protests, objections and complaints. The stewards shall file daily with the commission a copy of each protest, objection or complaint and any related ruling.))~~ The stewards are vested with the power to determine the extent of disqualification in case of fouls. They may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last.

(5) Stewards' presence:

(a) On each racing day at least one steward shall be on duty at the track beginning three hours prior to first race post time. The full board of stewards shall sit in regular session to exercise their authority and perform the duties imposed on them by the rules of racing;

(b) Three stewards shall be present in the stewards' stand during the running of each race. In case of emergency, the ~~((stewards))~~ executive secretary may ~~((, during the meet,))~~ appoint a substitute ~~((subject to the confirmation of the commission))~~ steward.

(6) Order of finish for parimutuel wagering:

(a) The stewards shall determine the official order of finish for each race in accordance with these rules of racing;

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, shall be final for purposes of distribution of the parimutuel wagering pool.

(7) The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a parimutuel pool for a race or races, if such action is necessary to protect the integrity of parimutuel wagering.

(8) Records and reports:

(a) The stewards shall prepare a ~~((daily report, detailing their actions and observations made during each day's race program))~~ weekly report of their regulatory activities. The report shall contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, protests, objections ~~((and hearings and any unusual circumstances or conditions)),~~ complaints and conferences. The report shall be ~~((signed by each steward and be))~~ filed with ~~((the commission))~~ and approved by the executive secretary;

(b) Not later than seven days after the last day of a race meeting, the presiding steward shall submit to the ~~((commission))~~ executive secretary a written report regarding the race meeting. The report shall contain:

(i) The stewards' observations and comments regarding the conduct of the race meeting, the overall conditions of the association grounds during the race meeting; and

(ii) Any recommendations for improvement by the association or action by the commission.

(9) Stewards' list:

(a) The stewards shall maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that may endanger the health or safety of other participants in racing;

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse;

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing;

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of said horse, may be removed from the stewards' list

when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

(e) An owner or trainer who disagrees with the stewards' decision of placing or maintaining a horse on the stewards' list may request and be granted a stewards' ruling conference to challenge the decision of the stewards.

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

**AMENDATORY SECTION** (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-500 Racing officials.** (1) Officials at a race meeting include the following:

- (a) Stewards;
- (b) Racing secretary;
- (c) Horsemen's bookkeeper;
- (d) Mutuel manager;
- (e) Official veterinarian(s);
- (f) Horse identifier;
- (g) Paddock judge;
- (h) Starter;
- (i) Security director, association;
- (j) Commission security inspector(s);
- (k) Commission auditor;
- (l) Clerk of scales;
- (m) Jockey room supervisor;
- (n) Film analyst;
- (o) Clocker(s);
- (p) Race timer;
- (q) Paddock plater;
- (r) Mutuel inspector;
- (s) Outrider(s);
- (t) Any other person designated by the commission.

(2) The commission officials of a race meeting shall be designated prior to each race meeting and those commission officials shall be compensated by the commission.

The association officials of a race meeting shall include but are not limited to: Racing secretary, mutuel manager, starter, horsemen's bookkeeper, association security director, jockey room supervisor and outrider(s).

(3) Eligibility:

- (a) To qualify as a racing official, the appointee shall be:
  - (i) Of good character and reputation;
  - (ii) Familiar with the duties of the position and with the commission's rules of racing;
  - (iii) Mentally and physically able to perform the duties of the job; and
  - (iv) In good standing and not under suspension or ineligible in any racing jurisdiction.

(b) To qualify for appointment as a steward the appointee shall be an Association of Racing Commissioners International-accredited steward and be in good standing with all Association of Racing Commissioners International member jurisdictions, unless the appointee has been appointed as a substitute steward as provided in WAC 260-24-510. The commission may waive this accreditation requirement for Class C race meetings.

(4) The commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discre-

tion, may approve or disapprove any such official for licensing.

(5) While serving in an official capacity, racing officials and their assistants shall not:

(a) Participate in the sale or purchase, or ownership of any horse racing at the meeting; unless disclosed in advance and approved by the board of stewards;

(b) Sell or solicit horse insurance on any horse racing at the meeting;

(c) Be licensed in any other capacity without permission of the commission, or in case of an emergency, the permission of the stewards;

(d) Wager on the outcome of any race for which parimutuel wagering is conducted under the jurisdiction of the commission; or

(e) Consume or be under the influence of alcohol or any prohibited substances while performing official duties.

(6) Racing officials and their assistants shall immediately report to the stewards every observed violation of these rules.

(7) Complaints against officials:

(a) Complaints against any steward shall be made in writing to the commission and signed by the complainant;

(b) Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the commission by the stewards, together with a report of the action taken or the recommendation of the stewards;

(c) A racing official may be held responsible by the stewards or the commission for the actions of their assistants;

(8) Appointment:

(a) A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the commission;

(b) The commission shall appoint or approve its officials for each race meeting, the officials shall perform the duties as outlined herein and such other duties as are necessary as determined by the commission or its executive secretary.

(9) Where an emergency vacancy exists among racing officials, the ~~((stewards))~~ executive secretary or the association, ~~((with the stewards' approval,))~~ shall fill the vacancy immediately. Such appointment shall be reported to the commission and shall be effective until the vacancy is filled in accordance with these rules.

(10) Should any steward be absent at race time, and no approved alternate steward be available, the remaining stewards shall appoint a substitute for the absent steward. If a substitute steward is appointed, the commission and the association shall be notified by the stewards.

**WSR 05-04-085**

**PROPOSED RULES**

**HORSE RACING COMMISSION**

[Filed February 2, 2005, 8:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-24-041.

PROPOSED

Title of Rule and Other Identifying Information: Chapter 260-34 WAC, Drug and alcohol testing of licensees and employees.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on March 10, 2005, at 9:30 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by March 7, 2005.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 7, 2005, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Major changes are being proposed to chapter 260-34 WAC as part of the agency's effort in regulatory reform directed by Executive Order 97-02. The proposed changes to existing rules includes: (1) Eliminating the reference to "employees" from the chapter; (2) eliminating unnecessary language from the chapter; (3) adding provisions that allow commission security investigators to test applicants or licensees when reasonable suspicion exists; (4) adding a new section placing any person who exercises the privileges of their license under the jurisdiction of the commission; (5) clarifying the steps to be taken when a person refuses to test; (6) establishing standard penalties for the possession or use of illegal drugs or being under the influence of alcohol and/or drugs, and providing for a one-time opportunity to stay a penalty if a licensee or applicant can show proof of participation in a drug rehabilitation or alcohol treatment program; (7) eliminating the current rules allowing the commission to monitor and track persons found to be in violations of chapter 260-34 WAC; and repeals WAC 260-34-040, 260-34-050, 260-34-110, 260-34-120, 260-34-130, 260-34-140, 260-34-150, 260-34-160, 260-34-170, and 260-34-190.

Reasons Supporting Proposal: As part of the agency regulatory reform effort, the agency is proposing simplifying current language by eliminating unnecessary language, and by repealing ten sections no longer needed.

Statutory Authority for Adoption: RCW 67.16.020 and [67.16.]040.

Statute Being Implemented: None.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington Horse Racing Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

February 1, 2005  
R. M. Leichner  
Executive Secretary

## Chapter 260-34 WAC

### DRUG AND ALCOHOL TESTING OF LICENSEES (~~AND EMPLOYEES~~)

AMENDATORY SECTION (Amending Order 89-02, filed 6/9/89)

**WAC 260-34-010 Primary purpose.** In order to protect the integrity of horse racing in the state of Washington, and to protect the ((health and welfare of licensees and employees engaged in horse racing within the state of Washington, to prevent the exploitation of the public, licensees and/or employees engaged in horse racing in the state of Washington, to foster fairness of competition within the racing industry and in order to protect public safety within the state of Washington, the)) safety of the public and all participants, the Washington horse racing commission intends to regulate ((at all race meets licensed by it,)) the use of any illegal controlled substances ((as listed in chapter 69.50 RCW or any legend drug as defined in chapter 69.41 RCW unless such legend drug was obtained directly and pursuant to a valid prescription from a duly licensed physician or dentist acting in the course of his or her professional practice. The commission recognizes that the most effective preventive measures are also measures considered by many to be most invasive of civil liberties, and intends to limit the impact on civil liberties by implementing limited preventative measures. The commission also recognizes that there are limits to the known correlation between the use of drugs, drug levels in bodily fluids and impairment from the presence of those drugs in the body, but that the known possible impairment and detriment to the integrity of the horse racing industry from the use of drugs warrants appropriate measures to prevent such use)) and alcohol by licensees at all race meets. This chapter shall be applicable to ((any)) all licensees ((or employee who is responsible for the conduct of, or the officiating of, a race or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any association premises to participate in a horse racing meet)) while that licensee is on the grounds of any race track during its licensed race meet.

AMENDATORY SECTION (Amending Order 89-02, filed 6/9/89)

**WAC 260-34-020 Use of controlled substances and alcohol.** No licensee or ((employee of any racing association or any employee of the horse racing commission or applicant who is, or may be, responsible for the conduct of, or officiating of a race, or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any association premises to participate in a horse racing meet or on grounds licensed by the horse racing commission,)) applicant shall be under the influence of or affected by intoxicating liquor and/or drugs, or have within their body any ((drug or)) illegal controlled substance ((unless obtained directly and used pursuant to a valid medical prescription from a duly licensed physician or dentist acting in the course of his or her professional practice while within the enclosure of or on the premises managed by any association)) while on the grounds

of any licensed race meet. "Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington shall not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

AMENDATORY SECTION (Amending WSR 00-07-038, filed 3/6/00, effective 4/6/00)

WAC 260-34-030 Testing. ((The board of)) (1) A steward((s)) of the horse racing commission, a commission security investigator or the commission, acting through the executive secretary, may require any licensee((,-employee of any racing association, or employee of the horse racing commission, or applicant, who is, or may be, responsible for the conduct of, or officiating of, a race, or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any association premises to participate in a horse racing meet, or on grounds licensed by the horse racing commission;)) or applicant to provide breath blood and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

((1)) (a) When ((the board of)) a steward((s)) or commission security investigator finds that there is reasonable suspicion to believe that the ((proposed testee)) applicant or licensee has used ((any controlled substance unless such controlled substance was obtained directly and used pursuant to a valid medical prescription from a duly licensed physician or dentist acting in the course of his or her professional practice or, alcohol in excess of the limits prescribed in this chapter)) or is under the influence of alcohol and/or any drug.

((2) At the discretion of the stewards when the proposed testee has a documented history of an unexplained positive test which indicates illegal drug usage or when the proposed testee has a documented history of violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation;)) (b) When a commission security investigator decides to test any licensee as a condition of any conditional or probationary license.

(2) For licensees who are tested under the provisions in this chapter, and whose test shows the presence of controlled substances or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the commission which shall include gas chromatography/mass spectrometry (GC/MS) procedures.

(a) When the sample quantity permits, each test sample shall be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized by the licensee to obtain an independent analysis of the sample. The commission shall provide for a secure chain of custody for the sample to be made available to the licensee.

(b) All costs for the transportation and testing for the sample portion made available for the licensee shall be the financial responsibility of the requesting person. The licensee or applicant being tested shall reimburse the commission the cost of transportation and testing within thirty days of receipt of notice of the costs.

## NEW SECTION

**WAC 260-34-035 Exercising the privileges of their license.** All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaging in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

## NEW SECTION

**WAC 260-34-045 Violations of the privileges granted licensees.** While exercising the privileges of their license, a licensee shall not:

(1) Engage in the illegal sale or distribution of alcohol or a controlled substance;

(2) Possess an illegal controlled substance;

(3) Be intoxicated or under the influence of alcohol and/or any drug, or have an alcohol concentration of 0.08 percent or higher. Breath analysis for purposes of determining alcohol concentration shall be based upon standards of analysis developed by the state toxicologist as provided in Title 448 WAC;

(4) Possess on the grounds any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance;

(5) Refuse to submit to blood, breath and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030;

(6) Have illegal controlled substances in his or her body. Presence of a controlled substance in any quantity measured by the testing instrument establishes the presence of the drug for the purposes of this section;

(7) Upon request of the licensee, testing may be by a blood alcohol test. The requesting licensee shall pay the cost of a blood test.

AMENDATORY SECTION (Amending Order 89-02, filed 6/9/89)

**WAC 260-34-060 Refusal to test.** (1) When any licensee((-employee;)) or applicant is requested to submit to a test in a manner prescribed by this chapter, the person shall do so in a prompt manner. Refusal to supply such sample shall result in((=

(a) Immediate suspension of the licensee, employee, or applicant; and

(b) A hearing)) a conference before the board of stewards in accordance with WAC ((260-24-440 with written notice of the issue to be addressed prepared by the presiding steward, to be held within the next two racing days or seven calendar days, whichever is less, after service of the notice or sooner or later if the licensee, employee, or applicant and the board of stewards agree. Service shall be to the licensee,

employee, or applicant personally, by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mailing the notice to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing)) 260-24-510.

(2) If the board of stewards finds at the ((hearing that said)) conference that the refusal to test occurred without ((just)) cause, the licensee((,-employee,)) or applicant shall be suspended from racing ((for and until such time as a test has been obtained in conformance with this chapter. In the event of a finding of just cause, the licensee, employee, or applicant must submit to a test immediately once the conditions which justly prevented testing abate or can be eliminated.

(3) ~~Repeated refusal without just cause to submit to an ordered test may result in license revocation and banning from race meets in the state of Washington by the commission after a hearing pursuant to chapters 260-08 and 260-88 WAC)) and referred to the commission for revocation.~~

AMENDATORY SECTION (Amending Order 89-02, filed 6/9/89)

**WAC 260-34-070 Responsibility to report valid prescriptions.** Whenever any licensee((,-employee,)) or applicant has been directed to submit to a drug test and that licensee((,-employee,)) or applicant is taking a controlled substance pursuant to a valid prescription on order of a duly licensed physician or dentist, it shall be the licensee's((,-employee's,)) or applicant's responsibility to ((give immediately prior to testing written notice to the medical staff member designated pursuant to WAC 260-34-080 or designated representative of the Washington horse racing commission containing the following:

(1) Name of the licensee, employee, or applicant.

(2) The name, quantity, and dosage of the controlled substance prescribed.

(3) The name of the duly licensed physician or dentist prescribing same.

(4) The date the prescription was prescribed.

(5) The time and date next preceding the date of the test when the prescribed controlled substance was ingested by the licensee, employee, or applicant.

All such notices shall become part of the records of the drug test and preserved to maintain strict confidentiality of the contents)) provide to the commission a copy of the prescription or label on the container and indicate the date and time when the substance was last used.

The fact that a substance was taken pursuant to a valid prescription shall not constitute a defense to a violation if the board of stewards finds that licensee or applicant was under the influence of the substance while exercising the privileges of his/her license.

AMENDATORY SECTION (Amending WSR 00-07-038, filed 3/6/00, effective 4/6/00)

**WAC 260-34-080 Testing procedure.** ((+)) When ((the)) a licensee or applicant has been directed to provide a urine sample for drug testing ((is required as described in WAC 260-34-030,)) the following procedure will be used:

((+)) (1) The licensee((,-employee,)) or applicant will report ((as instructed by the board of stewards)) to a drug testing facility approved or certified by the ((commission. When on-site urinalysis is available the board of stewards may direct the licensee, employee or applicant to submit to drug testing done by a commission security inspector. This testing will be done in accordance with procedures which have been approved by the commission)) department of social and health services. A qualified member of the drug testing facility will supervise the sample being given.

(2) When on-site urinalysis is available, the licensee or applicant may be directed to submit to drug testing conducted by a commission security investigator. The commission security inspector or their designee will supervise the sample being given. The supervision need not include actual observance of the delivery of the sample but the sample shall be taken under such circumstances that the integrity of the sample is maintained ((without unnecessarily interfering with the individual rights of the person tested, including the right to be free from unnecessary embarrassment)).

(3) Intentional contamination of the sample by any person tested ((which is likely to prevent appropriate)) for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, shall be grounds for the suspension or revocation of the person tested.

((b) ~~The urine sample will be at least 75 ml in volume. The urine sample will be divided into two parts of at least 25 ml and 50 ml in the presence of the person tested. If the licensee, employee, or applicant is unable to provide 75 ml of urine, the licensee, employee, or applicant may waive in writing the division of the sample and preservation of an untested portion of the sample as provided in (c) of this subsection and subsection (4) of this section. If the person tested is unable to provide a sufficiently large sample, either 75 ml or 50 ml with a waiver, the person shall not be suspended, but shall not participate in racing until such time as he or she is able to provide sufficient urine and completes the test. All portions of the sample shall be placed in containers and sealed with double identification tags in the presence of the person being tested.~~

(c) The 25 ml (or more) container will be preserved pursuant to subsection (3) of this section by the medical facility obtaining the sample. Both licensee, employee, or applicant and member of the medical staff, chief of security, or designated representative of the horse racing commission will sign the tag to attest to the sealing and labeling of the sample.

(d) The 50 ml (or more) container will be prepared for transportation as follows: One portion of the container's tag bearing a printed identification number shall remain with the sealed container. The other portion of such tag bearing the same printed identification number, shall be detached in the presence of the person tested and a member of the medical staff, the chief of security or designated representative of the horse racing commission. The licensee, employee, or applicant will initial or sign the designated portion of the tag to attest witnessing such action. The member of the medical staff, the chief of security or designated representative of the horse racing commission will also sign the detached portion of the tag to attest witnessing such action. The sample will then be handled in a manner consistent with an evidentiary

chain of custody throughout the transportation and laboratory testing process. The sample and the tag identifying the sample which is to be provided to the laboratory for analysis shall not identify the person by name, but only by number assigned and recorded by the members of the medical staff, chief of security, or designated representative of the horse racing commission.

(2) When the testing is to be done as a result of reasonable suspicion or the result of mandatory testing being conducted after a positive test, the same procedure for handling the specimens shall be utilized as in subsection (1) of this section, but the sample may be taken at the track and witnessed by the chief of security or designated representative of the horse racing commission. The witness must be of the same sex as the person being tested. After the sample is taken, divided and sealed, the chief of security or designated representative of the horse racing commission will be responsible for the evidentiary chain of custody and transportation of one portion of the sample to the laboratory and storage of the other portion pursuant to subsection (3) of this section. The chief of security of the horse racing commission will maintain a checklist of procedures to implement these steps; the checklist will be marked as the steps are carried out and it will be maintained as part of security records.

(3) Each portion of the sample supplied by the person tested will be preserved by the approved laboratory, chief of security, representative of the horse racing commission, or laboratory for three days unless there is a positive test result. If there is a positive test result, the samples will be preserved for a period of one year or until released by the executive secretary of the horse racing commission after all hearings and appeals have been terminated. The samples will be preserved in a secured location by refrigeration or freezing for the first three days and thereafter by freezing.

(4) Either or both portions of the sample may be retested at the request of the licensee, employee, or applicant at either the laboratory used by the horse racing commission or a qualified laboratory designated by the licensee, employee, or applicant and approved by the horse racing commission. If the untested sample is transported for testing, transportation will be performed, at the direction of the board of stewards, by the chief of security or designated representative of the horse racing commission using an evidentiary chain of custody. None of the originally untested 25 ml portion is required to be saved after testing for retesting. The licensee, employee, or applicant is responsible for all costs of transporting and testing or retesting a sample at his or her request.)

**AMENDATORY SECTION** (Amending WSR 03-05-071, filed 2/18/03, effective 3/21/03)

**WAC 260-34-090 A positive test.** ((A drug test shall be positive when the presence of a controlled substance is confirmed by two independent tests performed on the same sample supplied by a licensee, employee, or applicant. The tests used will be the E.M.I.T. screen test, followed by a gas chromatography/mass spectrometry confirmatory test, or other tests which the scientific community recognizes are equally or more accurate and reliable. If marijuana or its

derivatives, salts, isomers, or salts of isomers are detected in a drug test, such a result will not be reported positive unless found at levels of at least fifty nanograms per milliliter.

A positive drug test shall be reported by the laboratory to the presiding steward at the track.) On receiving written notice ((from the laboratory that a specimen has been found positive for a controlled substance)) of a violation of WAC 260-34-045, the presiding steward shall initiate the following procedure:

(1) Written notice shall be given to the licensee((; employee)) or applicant, setting a ((hearing by)) conference before the board of stewards in accordance with WAC ((260-24-440 within the next two racing days or seven calendar days, whichever is less, after service of the notice. The hearing may be held within a shorter or longer period of time if the licensee, employee, or applicant named and the board of stewards agree. Service shall be to the licensee, employee, or applicant personally, by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mail to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing)) 260-24-510.

(2) ((The hearing shall be conducted before the board of stewards pursuant to WAC 260-24-440.)) At the ((hearing)) conference, the licensee((; employee,)) or applicant shall be provided an opportunity to ((explain the positive test)) respond to the evidence of the violation.

(3) ((The board of stewards' hearing shall be closed and the facts therein will be kept confidential unless for use with respect to any stewards ruling, order by the horse racing commission or judicial hearing with regard to such facts. Closure of the hearing and confidentiality of the proceedings may be waived by the licensee, employee, or applicant. The board may issue a public ruling which complies with the confidentiality requirements of this section and WAC 260-34-100.

(4) Lacking a satisfactory explanation and documentation or upon the licensee, employee, or applicant agreeing with the test results)) If the licensee or applicant is found to be in violation of WAC 260-34-045, the board of stewards shall suspend the licensee((; employee,)) or applicant ((until)) as follows:

(a) ((A negative test can be submitted by that licensee, employee, or applicant and the results reviewed by the board of stewards; and

(b) The licensee, employee, or applicant is referred to an approved agency for a drug evaluation interview and completes the evaluation.

(i) If the evaluation concludes that the licensee, employee, or applicant is not addicted or habituated, and if the board of stewards determines that the licensee's, employee's, or applicant's condition is not detrimental to the best interests of racing, the licensee, employee, or applicant shall be allowed to participate in racing provided he or she agrees that further testing may be done as described in WAC 260-34-030.

(ii) If such drug evaluation concludes that the licensee, employee, or applicant is addicted or habituated, or the board of stewards determines that the licensee's, employee's, or applicant's condition is detrimental to the best interests of racing, the licensee, employee, or applicant shall not be

allowed to participate in racing until such time as he or she can produce a negative test result and show official documentation that he or she has successfully completed a certified drug rehabilitation program approved by the board of stewards, in consultation with the executive secretary of the horse racing commission. The licensee, employee, or applicant must agree to further testing as described in WAC 260-34-030.

(5) For a second positive drug test in the calendar year, the licensee, employee, or applicant shall be suspended for the balance of the calendar year or one hundred twenty days, whichever is greater, and the person is required to complete a certified drug rehabilitation program approved by the board of stewards in consultation with the executive secretary of the horse racing commission before applying for a reinstatement of license. The licensee, employee, or applicant must agree to further testing as described in WAC 260-34-030.

(6) When any licensee, employee, or applicant has a history of more than two violations of WAC 260-34-020 or positive drug tests, the horse racing commission may, pursuant to a hearing conducted under chapter 260-08 WAC, declare such person detrimental to the best interests of racing and revoke that person's license or application. Reapplication shall not be permitted for such period of months or years as the commission determines is necessary to ensure the person's freedom from use of controlled substances and not until meeting the requirements of subsection (5) of this section.) For testing positive for the illegal use of alcohol, for being under the influence of alcohol and/or drugs, or for the possession of marijuana (nonfelony):

(i) Three days for the first violation within five years;

(ii) Thirty days for the second violation within five years;

(iii) One year for the third violation within five years; and

(iv) Revocation and referral to the commission for the fourth violation within five years.

(b) For the possession or use of any illegal drug or controlled substance, other than marijuana:

(i) One year suspension for the first violation within five years;

(ii) Revocation and referral to the commission.

(4) The board of stewards may stay one of the suspensions in subsection (3)(a) of this section if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed to participate in this program once in a five-year period. If during this time a licensee or applicant violates the provisions of this chapter, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. The licensee or applicant must also agree to the following conditions:

(a) Random drug or alcohol testing at the discretion of the board of stewards or commission security investigators for a period of twelve calendar months.

(b) Have no further incidents of violating this chapter within the next twelve calendar months.

(5) Upon successful completion of a drug or alcohol rehabilitation or treatment program, a licensee or applicant can request the board of stewards lift the suspension.

AMENDATORY SECTION (Amending WSR 00-07-038, filed 3/6/00, effective 4/6/00)

WAC 260-34-100 Confidentiality of test results. The ((executive secretary of the horse racing)) commission shall maintain all test results and records, both negative and positive, confidential ((- He or she shall document the process which will ensure the confidentiality of the handling of such results. Information contained in the test results shall remain confidential at all times)) except for use with respect to ((any)) a stewards' ((ruling, order by the horse racing)) conference, a hearing before the commission, or judicial ((hearing with regard to such an)) review of a commission order. ((Access to the reports of any test results shall be limited to the executive secretary, the board of stewards, the chief of security of the commission at the track, the physician or member of the medical staff obtaining and preserving samples, the laboratory and the person being tested, except in the instance of a contested commission hearing. The information obtained as a result of a test being required under the rules of the horse racing commission shall be considered privileged and shall be used for administrative purposes only and, further, shall be exempt from use as evidence in any criminal prosecution involving the violation of offenses listed in chapter 69.50 RCW.)) Test results will only be disclosed pursuant to chapter 42.17 RCW, however, test results may be released to the person tested or their attorney, after receiving a signed written request.

AMENDATORY SECTION (Amending Order 89-02, filed 6/9/89)

WAC 260-34-180 Testing expense. Except for ((retesting)) a blood test requested by a licensee ((-employee, or applicant)) pursuant to WAC ((260-34-080(4))) 260-34-150, all testing, whether blood, urine, or breath, ordered pursuant to this chapter shall be at the expense of the horse racing commission. All ((expense)) costs of drug and/or alcohol evaluation, treatment, reports, and fees shall be at the expense of the licensee ((-employee, or applicant)) undergoing such evaluation or treatment.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-34-040	Definitions.
WAC 260-34-050	Reasonable suspicion.
WAC 260-34-110	Consumption of alcohol.
WAC 260-34-120	Alcohol violations defined.
WAC 260-34-130	Consumption reasonable suspicion for testing.
WAC 260-34-140	Alcohol levels determined.

WAC 260-34-150	Alcohol testing.
WAC 260-34-160	Refusal to be tested.
WAC 260-34-170	Alcohol violation sanctions.
WAC 260-34-190	Severability.

**WSR 05-04-086**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed February 2, 2005, 8:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-22-014.

Title of Rule and Other Identifying Information: Chapter 260-70 WAC, Controlled medication program.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on March 10, 2005, at 9:30 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by March 7, 2005.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 7, 2005, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend chapter 260-70 WAC, Controlled medical program, to conform to the Association of Racing Commissioners International (ARCI) Racing Medication and Testing Consortium model rules.

Reasons Supporting Proposal: By adopting model medication rules, the state of Washington joins other racing jurisdictions in agreeing on a standard medication and testing procedure.

Statutory Authority for Adoption: RCW 67.16.020 and [67.16.]040.

Statute Being Implemented: None.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington Horse Racing Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

February 1, 2005

R. M. Leichner  
 Executive Secretary

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-520 Trainer responsibility.** The purpose of this subsection is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well being of horses in his/her care.

(1) The trainer is solely responsible for the condition of horses in his/her care.

(2) The trainer is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable ~~((level))~~ concentration, in ~~((such))~~ horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a commission approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible.

(3) A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(4) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(5) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

~~((e))~~ (d) Ensuring that at the time of arrival at locations under the jurisdiction of the commission a valid health certificate and a valid negative equine infectious anemia (EIA) test certificate accompany each horse in accordance with state law;

~~((e)))~~ Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) Promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

(h) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

~~((f)))~~ (j) Maintaining a knowledge of the medication record and medication status of horses in his/her care;

~~((f)))~~ (k) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

PROPOSED

~~((k))~~ (l) Ensuring the fitness to perform creditably at the distance entered;

~~((H))~~ (m) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in this chapter;

~~((m))~~ (n) Ensuring proper bandages, equipment and shoes;

~~((n))~~ (o) Presence in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

~~((o))~~ (p) Personally attending in the paddock and supervising the saddling thereof, unless excused by the stewards; and

~~((p))~~ (q) Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so.

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

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-530 Veterinarians under authority of official veterinarian.** Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the authority of the official veterinarian and the stewards. An official veterinarian shall recommend to the stewards or the commission the discipline, which may be imposed upon a veterinarian who violates the rules.

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-540 Veterinarians' reports.** (1) Every veterinarian who treats a ~~((race horse))~~ racehorse at any location under the jurisdiction of the commission shall, in writing on a form approved by the commission, report to an official veterinarian the name of the horse treated, any medication, drug or substance or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(2) The report shall be signed by the practicing veterinarian.

(3) The report shall be on file not later than the time prescribed on the next race day by the official veterinarian. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

(4) A timely and accurate filing of a veterinarian report that is consistent with the analytical results of a positive test may be used as a mitigating factor in determining the nature and extent of a violation of these rules.

AMENDATORY SECTION (Amending WSR 04-05-094, filed 2/18/04, effective 3/20/04)

**WAC 260-70-545 Prohibited practices.** The following are considered prohibited practices:

(1) The possession or use of a drug, substance or medication, specified below, on the premises of a facility under the jurisdiction of the ~~((regulatory body))~~ commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider ~~((or driver))~~; or the use of which may adversely affect the integrity of racing; or

(2) The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in human or animal is forbidden without prior permission of the commission.

(3) The possession and/or use of blood doping agents, including, but not limited to, those listed below, on the premises of a facility under the jurisdiction of the commission is forbidden:

- (a) Erythropoietin
- (b) Darbepoietin
- (c) Oxyglobin
- (d) Hemopure

~~((2) The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.~~

~~((3))~~ (4) The practice, administration or application of a treatment, procedure, therapy or method identified below, which is performed on the premises of any facility under jurisdiction of the commission and which may endanger the health and welfare of the horse, endanger the safety of the rider, or the use of which may adversely affect the integrity of horse racing:

- (a) Intermittent Hypoxic Treatment by External Device.
- (b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:

(i) Any treated horse shall not be permitted to race for a minimum of ten days following treatment;

(ii) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed to practice by the commission;

(iii) Any Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines on the association grounds must be reported to a commission veterinarian before use;

(iv) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments must be reported to a commission veterinarian on the prescribed form not later than the time prescribed by an official veterinarian.

(c) The use of a naso gastric tube (a tube longer than six inches) for the administration of any substance within twenty-four hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of an official veterinarian.

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-550 Medical (~~labelling~~) labeling.** (1) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is (~~labelled~~) labeled in accordance with this subsection.

(2) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with applicable state statutes. All such allowable medications must have a prescription label, which is securely attached and clearly ascribed to show the following:

- (a) The name of the product;
- (b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;
- (c) The name of each patient (horse) for whom the product is intended/prescribed;
- (d) The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and
- (e) The name of the person (trainer) to whom the product was dispensed.

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-560 Treatment restrictions.** (1) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) Nonveterinarians may administer the following substances, provided that, in post race testing the substances do not exceed approved quantitative levels, if any, and the substances do not interfere with post race testing:

- (a) A recognized noninjectable nutritional supplement or other substance approved by (~~the~~) an official veterinarian;
- (b) A noninjectable substance on the direction or by prescription of a licensed veterinarian; or
- (c) A noninjectable nonprescription medication or substance.

(3) No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the commission. At any location under the jurisdiction of the commission, veterinarians may use only onetime disposable needles, and shall dispose of them in a manner approved by the commission. If a person has a medical condition which makes it necessary to have a needle and syringe at any location under the jurisdiction of the commission, that person may request permission of the stewards and/or the commission in writing, furnish a letter

from a licensed physician explaining why it is necessary for the person to possess a needle and syringe, and must comply with any conditions and restrictions set by the stewards and/or the commission.

(4) Veterinarians shall not have contact with an entered horse on race day except for the administration of furosemide under the guidelines set forth in WAC 260-70-650 unless approved by an official veterinarian. The only exception is a veterinarian also licensed as a trainer. In these cases the person may have contact with an entered only horse on race day to comply with the trainer's responsibilities in WAC 260-70-520.

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-570 Physical inspection of horses.** All horses at locations under the jurisdiction of the commission shall be subject to inspections at the discretion of the stewards or (~~the~~) an official veterinarian.

(1) Every horse entered to participate in an official race shall be subject to a veterinary inspection.

(2) The inspection shall be conducted by an official veterinarian.

(3) The trainer of each horse or a representative of the trainer shall present the horse for inspection as required by (~~the~~) an official veterinarian.

(4) The veterinary inspection of a horse's racing condition (~~may~~), at a minimum shall include:

- (a) Proper identification of each horse inspected;
- (b) Observation of each horse in motion;
- (c) Manual palpation when indicated;
- (d) Observation in the paddock and saddling area, during the parade to post and at the starting gate; and
- (e) Any other inspection deemed necessary by an official veterinarian.

(5) Every horse shall be observed by an official veterinarian during and after the race.

(6) The official veterinarian shall maintain a confidential health and racing soundness record of each horse inspected.

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-580 Veterinarian's list.** (1) (~~The~~) An official veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the official veterinarian, the horse is capable of competing in a race.

(3) An official veterinarian shall maintain a bleeder list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by an official veterinarian. Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

- (a) First incident - fourteen days;

(b) Second incident within a three hundred sixty-five day period - thirty days;

(c) Third incident within a three hundred sixty-five day period - one hundred eighty days;

(d) Fourth incident within a three hundred sixty-five day period - barred from racing for life.

(4) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(5) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined in this section.

(6) A horse may be removed from the bleeder list only upon the direction of an official veterinarian, who shall certify in writing to the stewards the recommendation for removal.

(7) A horse, which has been placed on a bleeder list in another jurisdiction pursuant to this section, shall be placed on the bleeder list maintained by an official veterinarian.

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-600 Sample collection.** (1) Sample collection shall be done in accordance with guidelines and instructions provided by ~~((the))~~ official veterinarians.

(2) ~~((An official))~~ A commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the primary testing laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the primary testing laboratory shall be secured as the split sample.

(d) Blood samples must be collected at a consistent time, preferably not later than one hour post-race.

(e) At Class C race tracks the splitting of samples will be conducted by the primary testing laboratory.

**AMENDATORY SECTION** (Amending WSR 03-11-018, filed 5/12/03, effective 6/12/03)

**WAC 260-70-610 Storage and shipment of split samples.** (1) Split samples obtained in accordance with WAC 260-70-600, subsection 2b and 2c shall be secured and made available for further testing in accordance with the following procedures:

(a) A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location approved by the commission.

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be closed and locked

~~((so as))~~ to prevent access to the freezer at all times except as specifically provided by these rules.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the official veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, and the time the freezer was closed and to verify that the lock was secured prior to and after opening of the freezer.

(e) Any evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log and immediately reported to ~~((the stewards))~~ an official veterinarian or a designated commission representative.

(2) A trainer or owner of a horse may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory approved by the commission. The request must be made in writing and delivered to the stewards not later than 48 hours after the trainer of the horse receives written notice of the findings of the primary laboratory. Any split sample so requested must be shipped within an additional 72 hours.

(3) The owner or trainer requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the official veterinarian shall constitute a waiver of all rights to split sample testing. Prior to shipment, the commission shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to send results to both the person requesting the testing and the commission, and arrangements for payment satisfactory to the split sample laboratory. A split sample testing laboratory must be approved by the commission. The commission shall maintain a list of laboratories approved for testing of split samples.

(4) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and such other information as the official veterinarian may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample.

Split sample chain of custody form requirements:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number;

(c) The address where the split sample is to be sent;

(d) The name of the carrier and the address where the sample is to be taken for shipment;

(e) Verification of retrieval of the split sample from the freezer;

(f) Verification of each specific step of the split sample packaging in accordance with the recommended procedure;

(g) Verification of the address of the split sample laboratory on the split sample package;

(h) Verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and

(i) The date and time custody of the sample is transferred to the carrier.

(5) A split sample shall be removed from the split sample freezer by a commission representative in the presence of the owner, trainer or designee.

(6) A commission representative shall pack the split sample for shipment in the presence of the owner, trainer or designee, in accordance with the packaging procedures recommended by the commission. A form shall be signed by both the owner's representative and the commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

(7) The package containing the split sample shall be transported to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission approved laboratory selected by the owner or trainer.

(8) The owner, trainer or designee may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(9) The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative shall keep the original and provide a copy for the owner, trainer or designee.

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-620 Medication restrictions.** (1) No horse shall have in its body any prohibited or interfering substance, or permitted medication, except as provided in this chapter.

(2) A finding by the ~~((official chemist))~~ commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

(a) Drugs or medications for which no acceptable ~~((levels have))~~ threshold concentration has been established;

(b) Therapeutic medications in excess of ~~((acceptable levels established by the commission))~~ established threshold concentrations;

(c) Substances present in the horse in excess of ~~((levels))~~ concentrations at which such substances could occur naturally; and

(d) Substances foreign to a horse at ~~((levels))~~ concentrations that cause interference with testing procedures.

(3) ~~((No person shall administer, attempt to minister, or aid or abet in the administration of, any medication or drug to a horse entered to race within 24 hours of the race in which entered except in accordance with these rules.~~

(4) Drugs or medications in horses are permissible, provided:

~~((a) The drug or medication is included in the commission's list of quantitative medication levels;~~

~~((b) Approved nonsteroidal anti-inflammatory drugs (NSAIDS) may be administered to a horse, but not on a race day. No more than one of the NSAIDS may be used on or carried in a horse's body at any one time;~~

~~((c) The maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.~~

~~((5))~~ Except as otherwise provided by this chapter, a person may not administer or cause to be administered, or attempt to administer by any means including naso gastric tube or dose syringe, to a horse a prohibited drug, medication, chemical or other substance, including any ~~((restricted))~~ permitted medication, pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered.

**AMENDATORY SECTION** (Amending WSR 04-05-095, filed 2/18/04, effective 3/20/04)

**WAC 260-70-630 Threshold levels.** (1) The following quantitative medication levels are permissible in test samples up to the stated quantitative levels:

Procaine	25 ng/ml urine
Benzocaine	50 ng/ml urine
Mepivacaine	10 ng/ml urine
Lidocaine	50 ng/ml urine
Bupivacaine	5 ng/ml urine
Clenbuterol	<del>((5 ng/ml urine))</del> <u>25 pg/ml serum or plasma</u>
Acepromazine	25 ng/ml urine
Promazine	25 ng/ml urine
Salicylates	750 ng/ml urine
<u>Albuterol</u>	<u>1 ng/ml urine</u>
<u>Pyrilamine</u>	<u>50 ng/ml urine</u>
<u>Theobromine</u>	<u>2000 ng/ml urine</u>

The official urine test sample may not contain more than one of the above drug substances, including their metabolites or analogs, in an amount up to the specified level. Official blood test samples must not contain any of the drug substances listed ~~((in this rule))~~ above, including their metabolites or analogs.

(2) The following substances shall be considered environmental contaminants and are permissible in test samples up to the stated quantitative levels:

Caffeine	100 ng/ml <del>((urine))</del> <u>serum or plasma</u>
<u>Benzoylcegonine</u>	<u>50 ng/ml urine</u>
<u>Morphine Glucuronides</u>	<u>50 ng/ml urine</u>

~~((Official blood test samples must not contain any of the substances listed in this rule, including their metabolites or analogs.))~~

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-640 Permitted medication.** Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Failure to administer permitted medication to a horse on a program of permitted medication shall be a violation of these rules. ~~((The use of phenylbutazone, naproxen or meclufenamic acid shall be permitted under the following conditions:~~

~~(1) Phenylbutazone shall be administered in such dosage amount that the test sample shall not contain not more than 5 micrograms of phenylbutazone or oxyphenbutazone per milliliter of blood plasma.~~

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

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

(1) Non-steroidal anti-inflammatory drugs (NSAIDs).

(2) The use of one of three approved NSAIDs shall be permitted under the following conditions:

(a) Not to exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least twenty-four hours before the post time for the race in which the horse is entered:

(i) Phenylbutazone - 5 micrograms per milliliter;

(ii) Flunixin - 20 nanograms per milliliter;

(iii) Ketoprofen - 10 nanograms per milliliter.

(b) These or any other NSAID are prohibited to be administered within the twenty-four hours before post time for the race in which the horse is entered.

(c) The presence of more than one of the three approved NSAIDs or any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least forty-eight hours before the post time for the race in which the horse is entered.

Except a concentration of less than 1 mcg/ml of phenylbutazone shall be permitted.

(3) Any horse to which a NSAID has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of an official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

## NEW SECTION

**WAC 260-70-645 Anti-ulcer medications.** The following anti-ulcer medications are permitted to be administered, at the stated dosage, up to twenty-four hours prior to the race in which the horse is entered.

(1) Cimetidine (Tagamet®) - 8-20 mg/kg PO BID - TID

(2) Omeprazole (Gastrogard®) - 2.2 grams PO SID

(3) Ranitidine (Zantac®) - 8 mg/kg PO BID

AMENDATORY SECTION (Amending WSR 03-06-004, filed 2/20/03, effective 3/23/03)

**WAC 260-70-650 Furosemide.** (1) Furosemide may be administered intravenously to a horse which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a urine sample, furosemide shall be permitted only after the official veterinarian has placed the horse on the furosemide list.

(2) The use of furosemide shall be permitted under the following circumstances:

(a) Furosemide shall be administered on the grounds of the association, by a ~~((singular))~~ single intravenous injection, prior to post time for the race for which the horse is entered.

(b) The furosemide dosage administered shall not exceed 500 mg nor be less than 150 mg.

(c) The trainer of the treated horse shall cause to be delivered to ~~((the))~~ an official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission:

(i) The name of the horse, the horse's tattoo number, racetrack name, the date and time the furosemide was administered to the entered horse;

(ii) The dosage amount of furosemide administered to the entered horse; and

(iii) The printed name and signature of the attending licensed veterinarian who administered the furosemide.

(iv) The signature of the trainer or his/her representative.

(d) Failure to administer furosemide in accordance with these rules may result in the horse being scratched from the race by the stewards.

AMENDATORY SECTION (Amending WSR 03-06-004, filed 2/20/03, effective 3/23/03)

**WAC 260-70-660 Furosemide list.** (1)(a) ~~((The official veterinarian))~~ Commission veterinarians shall maintain a furosemide list of all horses eligible to race with furosemide. The list is a statewide list that applies only at Class A or Class B licensed associations and not at any other track.

(b) A horse is eligible to race with furosemide if the licensed trainer and/or veterinarian determine that it would be in the horse's best interests to race with furosemide. Notification using prescribed commission forms must be given to the commission representative, providing sufficient time to ensure public notification.

(c) If the commission so orders, horses placed on the furosemide list shall be placed in a ~~((pre-race))~~ prerace detention stall, no later than four hours prior to the scheduled post time for any race in which it is entered to start, and with oral or written notification to the trainer may be watched by commission staff. The detention stall shall be the stall regularly assigned that horse for its customary stabling. Once placed in the detention stall, a horse must remain in ~~((it's))~~ its barn or on its assigned hotwalker until it is taken to the receiving barn or to the paddock to be saddled ~~((or harnessed))~~ for the race, except that the stewards may permit horses to leave the detention stall to engage in exercise blowouts or warm-up heats.

(2) The confirmation of a horse eligible to race with furosemide must be certified in writing by an official veterinarian and entered on the furosemide list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A notice of a horse's furosemide certification shall be affixed to the horse's certificate of registration.

(3) Every horse eligible to race with furosemide, regardless of age, shall be placed on the furosemide list.

(4) A horse placed on the official furosemide list must remain on that list unless the licensed trainer and/or veterinarian submit(s) a written request to remove the horse from the list. The request must be on forms (~~prescribed~~) provided by the commission veterinarian and must be submitted to the commission designee no later than time of entry. After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of ~~((30))~~ sixty calendar days unless determined to be detrimental to the welfare of the horse, in consultation with ~~((the commission designee))~~ an official veterinarian. If a horse is removed from the official furosemide list a second time in a three hundred sixty-five day period, the horse may not be placed back on the list for a period of ninety calendar days.

(5) A horse which has been placed on a furosemide or bleeder list in another jurisdiction may be placed on the furosemide list in this jurisdiction.

(6) The specific gravity of post-race urine samples shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, quantitation of furosemide in serum or plasma shall ~~((then))~~ be performed ~~((and concentrations))~~. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of WAC ~~((260-70-700))~~ 260-84-100.

(7) A horse that has been administered furosemide that does not show a detectable concentration of the drug in the post-race serum, plasma or urine sample ~~((or it))~~ shall be ~~((considered))~~ in violation ~~((of these medication rules and subject to penalty as prescribed in this chapter))~~.

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-680 Uniform classification guidelines.**

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the official veterinarian and the racing secretary.

(1) Class 1

Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the ~~((race-horse))~~ racehorse and their pharmacological potential for altering the performance of a race is very high.

(2) Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the ~~((race-horse))~~ racehorse. Many are

products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a ~~((race-horse))~~ racehorse. The following groups of drugs are in this class:

- (a) Opiate partial agonists, or agonist-antagonists;
- (b) Nonopiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- (c) Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);
- (d) Drugs with prominent CNS depressant action;
- (e) Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- (f) Muscle blocking drugs, which have a direct neuromuscular blocking action;
- (g) Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and
- (h) Snake venoms and other biologic substances, which may be used as nerve blocking agents.

(3) Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a ~~((race-horse))~~ racehorse. The following groups of drugs are in this class:

- (a) Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);
- (b) A local anesthetic, which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);
- (c) Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;
- (d) Primary vasodilating/hypotensive agents; and
- (e) Potent diuretics affecting renal function and body fluid composition.

(4) Class 4

This category is comprised primarily of therapeutic medications routinely used in ~~((race-horses))~~ racehorses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

- (a) Non-opiate drugs which have a mild central analgesic effect;
- (b) Drugs affecting the autonomic nervous system, which do not have prominent CNS, cardiovascular or respiratory effects;
  - (i) Drugs used solely as topical vasoconstrictors or decongestants,
  - (ii) Drugs used as gastrointestinal antispasmodics,
  - (iii) Drugs used to void the urinary bladder,
  - (iv) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.
- (c) Antihistamines, which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

PROPOSED

(d) Mineralocorticoid drugs;  
 (e) Skeletal muscle relaxants;  
 (f) Anti-inflammatory drugs—those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

- (i) Nonsteroidal anti-inflammatory drugs (NSAIDs)—aspirin-like drugs;  
 (ii) Corticosteroids (glucocorticoids); and  
 (iii) Miscellaneous anti-inflammatory agents.  
 (g) Anabolic and/or androgenic steroids and other drugs;  
 (h) Less potent diuretics;  
 (i) Cardiac glycosides and antiarrhythmics including:  
 (i) Cardiac glycosides;  
 (ii) Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and  
 (iii) Miscellaneous cardiotoxic drugs.  
 (j) Topical anesthetics—agents not available in injectable formulations;  
 (k) Antidiarrheal agents;  
 (l) Miscellaneous drugs including:  
 (i) Expectorants with little or no other pharmacologic action;  
 (ii) Stomachics; and  
 (iii) Mucolytic agents.  
 (m) Substances foreign to a horse at levels that cause interference with testing procedures.

(5) Class 5

~~((a))~~ Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents, which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

~~((b) Noninterfering levels of sulfa drugs, antibiotics, anthelmintics and vitamins in a horse's post-race urine or blood test may not be considered a violation of these rules.))~~

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-720 Posterior digital neurectomy.** (1) No person shall bring onto the grounds of a racing association, or enter or cause to be entered in any race, or sell, offer for sale, or act as a bloodstock agent in the sale of, any horse ~~((which has been "nerved"))~~ that has had a posterior digital neurectomy performed, or has had any nerve removed from the leg of such horse, except as provided in this ~~((article))~~ chapter.

(2) ~~((The trainer shall promptly report to the racing secretary and the official veterinarian when a posterior digital neurectomy is performed and ensure that such fact is designated on the horse's certificate of registration.~~

(3) ~~Notwithstanding the prohibition against "nerving,"~~ A horse upon which a posterior digital neurectomy has been performed ~~((, commonly known as "heel nerving"))~~ is eligible to race, ~~((subject to the prohibitions in this article pertaining to nerving.))~~ provided that ~~((the))~~ an official veterinarian is satisfied that the loss of sensation to such horse due to the posterior digital neurectomy will not endanger the safety of any horse or rider, that the prior approval of ~~((the))~~ an official

veterinarian has been obtained if the horse is on the grounds of a racing association, that the racing secretary is notified of ~~((such nerving))~~ the posterior digital neurectomy at the time such horse is admitted to the grounds of a racing association and its registration or eligibility certificate marked to indicate ~~((such nerving))~~ that a posterior digital neurectomy was performed.

**AMENDATORY SECTION** (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-730 Postmortem examination.** (1) The commission may require a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

(2) The commission veterinarian may require a postmortem examination of any horse that expires while housed on association grounds ~~((or at recognized training facilities))~~ within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

(3) The commission veterinarian may take possession of the horse upon death for postmortem examination. The commission veterinarian may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for ~~((testing by the commission-selected laboratory or its designee))~~ analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option.

(4) The presence of a prohibited substance in a ~~((horse, found by the official laboratory or its designee in a bodily fluid))~~ specimen collected during the postmortem examination of a horse(;) may constitute a violation of these rules.

(5) The cost of commission-ordered postmortem examinations, testing and disposal shall be borne by the commission.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 260-70-670	Penalties—Guidelines.
WAC 260-70-690	Penalty recommendations (in the absence of mitigating circumstances).
WAC 260-70-700	Penalties relating to permitted medication.

WSR 05-04-087

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed February 2, 2005, 8:07 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

**Title of Rule and Other Identifying Information:** WAC 357-58-005 What is the key role and accountability for Washington Management Service employees in state government?, 357-58-010 What is the purpose of the Washington Management Service (WMS) rules?, 357-58-015 Who is authorized to adopt rules for the WMS?, 357-58-020 What are the goals of the WMS rules?, 357-58-025 Are WMS employees included in the classified service and what rules apply to WMS employees and positions?, 357-58-030 Who determines if a position is included in the WMS?, 357-58-035 What is the definition of a manager or managerial employee?, 357-58-040 Are there any manager positions or managerial employees that are not included in the WMS?, 357-58-045 Who is covered by the WMS rules?, 357-58-050 What chapters of civil service rules apply to WMS positions?, 357-58-055 What civil service rules do not apply to WMS?, 357-58-060 Do the WMS rules apply to all general government employers?, 357-58-065 Definitions for WMS, 357-58-070 What are the responsibilities of each agency for effectively managing and budgeting salaries for WMS positions?, 357-58-075 What is the requirement for agencies to develop compensation policies?, 357-58-080 How are positions assigned to the management bands?, 357-58-085 Can WMS salaries exceed the limits of an assigned band?, 357-58-090 For what reasons can an agency adjust a WMS salary?, 357-58-095 May agencies provide progression increases for WMS employees?, 357-58-100 Is there a limit for annual progression increases?, 357-58-105 When can exceptions to the progression increase limits be made?, 357-58-110 What is a promotion?, and 357-58-115 What is a voluntary demotion and what changes may occur in salary?

**Hearing Location(s):** Department of Personnel, 600 South Franklin, Olympia, WA, on March 10, 2005, at 10:00 a.m.

**Date of Intended Adoption:** March 10, 2005.

**Submit Written Comments to:** Sharon Whitehead, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by March 4, 2005. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

**Assistance for Persons with Disabilities:** Contact Department of Personnel by March 4, 2005, TTY (360) 753-4107 or (360) 586-8260.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The proposed rules address the purpose of the Washington Management Service (WMS) rules and such things as what positions are included in the Washington Management Service, what other chapters of the civil service rules apply to WMS employees, definitions of terms used in the WMS chapter of rules, salaries for WMS employees and what is a promotion or a voluntary demotion for WMS employees.

**Statutory Authority for Adoption:** Chapter 41.06 RCW.  
**Statute Being Implemented:** RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

**Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-**

**cal Matters:** Due to the passage of SHB 1268 the director of the Department of Personnel has rule-making authority regarding the Washington Management Service. The proposed rules implement this provision of the Personnel System Reform Act.

**Name of Proponent:** Department of Personnel, governmental.

**Name of Agency Personnel Responsible for Drafting:** Sharon Whitehead, 521 Capitol Way South, Olympia, WA, (360) 664-6348; **Implementation and Enforcement:** Department of Personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

February 1, 2005

E. C. Matt

Director

## Chapter 357-58 WAC

### Washington Management Service

#### NEW SECTION

**WAC 357-58-005 What is the key role and accountability for Washington Management Service employees in state government?** State managers have a crucial role in ensuring that the public receives needed government services in the most efficient and cost-effective manner possible. Managers must direct the development and implementation of policies and programs that achieve results. Managers must attract, develop, and retain a competent, productive workforce in order to successfully carry out state programs. Managers must build and sustain a workplace culture that focuses on performance and outcomes.

State managers are expected to personally commit to demonstrating excellent leadership competencies and achieving programmatic results. Also, it is essential that agency leaders hold their managers accountable for properly leading and managing their human resources - their employees. This includes hiring the best qualified; setting clear performance expectations; developing staff competencies; providing feedback and regular performance evaluations; establishing meaningful reward systems; and, holding employees accountable for successful performance.

The efficiency and effectiveness with which government services are delivered to the citizens of Washington State depends largely on the quality and productivity of state employees. Each manager has the unique and critical responsibility to foster the building of a performance-based culture that will enable workforce success.

#### NEW SECTION

**WAC 357-58-010 What is the purpose of the Washington Management Service (WMS) rules?** The purpose of chapter 357-58 WAC is to establish a system of personnel administration called the Washington Management Service (WMS) as authorized in RCW 41.06.500. Chapter 357-58

comprehensively covers the personnel matters relating to WMS positions.

The WMS embodies the concepts of a performance management work environment that recognizes competency-based appointments and compensation.

#### NEW SECTION

**WAC 357-58-015 Who is authorized to adopt rules for the WMS?** The director of the department of personnel adopts the WMS rules after consultation with state agencies.

#### NEW SECTION

**WAC 357-58-020 What are the goals of the WMS rules?** In accordance with RCW 41.06.500, the WMS rules must adhere to the following goals:

(1) Simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(2) Flexibility in setting and changing salaries and a compensation system that is consistent with RCW 41.06.500;

(3) Performance appraisal system that emphasizes individual accountability; program results and efficient management of resources; effective planning, organization, and communication skills; valuing and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(4) Strengthened management training and career development programs that build critical management competencies; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making, and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(5) Flexibility in recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate position-based competencies, leadership skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(6) Provisions that managers may only be reduced, dismissed, suspended, or demoted for cause;

(7) Facilitation of decentralized and regional administration; and

(8) Ensuring that decisions are not based on patronage or political affiliation.

#### NEW SECTION

**WAC 357-58-025 Are WMS employees included in the classified service and what rules apply to WMS employees and positions?** WMS employees are part of the classified service.

Chapter 357-58 WAC applies to classified employees and positions that meet the definition of manager in WAC 357-58-035.

#### NEW SECTION

**WAC 357-58-030 Who determines if a position is included in the WMS?** Each agency identifies all positions that fit the definition of manager. Those identified positions are WMS positions.

#### NEW SECTION

**WAC 357-58-035 What is the definition of a manager or managerial employee?** In accordance with RCW 41.06.-022, a manager or managerial employee is defined as the incumbent of a position that:

(1) Formulates state-wide policy or directs the work of an agency or agency subdivision;

(2) Administers one or more state-wide policies or programs of an agency or agency subdivision;

(3) Manages, administers, and controls a local branch office of an agency or an agency subdivision, including the physical, financial, or personnel resources;

(4) Has substantial responsibility in personnel administration, legislative relations, public information, or the preparation and administration of budgets; and/or

(5) Functions above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment.

#### NEW SECTION

**WAC 357-58-040 Are there any manager positions or managerial employees that are not included in the WMS?** Manager positions or managerial employees that are exempt from civil service and manager positions or managerial employees of institutions of higher education and related boards are not included in WMS or covered by these rules.

#### NEW SECTION

**WAC 357-58-045 Who is covered by the WMS rules?** These rules apply only to managers and do not apply to classified employees in the Washington general service.

#### NEW SECTION

**WAC 357-58-050 What chapters of civil service rules apply to WMS positions?** Other chapters of civil service rules do not apply to WMS positions or employees except for the chapters listed below. If a WMS issue is identified that the director of the department of personnel has not specifically addressed in the adoption of the WMS rules, the other civil service rules do not apply or take precedence in addressing the issue.

Except where specifically stated otherwise, the following chapters apply to positions or employees included in the WMS.

WAC 357-04 General provisions

WAC 357-07 Public records

WAC 357-22 Personnel Files

WAC 357-25 Affirmative Action Program

WAC 357-26 Reasonable Accommodation

WAC 357-31 Leave  
 WAC 357-34 Employee Training and Development  
 WAC 357-37 Performance Management  
 WAC 357-40 Discipline  
 WAC 357-43 Employee Business Units  
 WAC 357-52 Appeals  
 WAC 357-55 Combined Fund Drive

#### NEW SECTION

**WAC 357-58-055 What civil service rules do not apply to WMS?** Except where specifically stated otherwise, the following WAC chapters do not apply to positions or employees included in the Washington management service:

WAC 357-01 Definitions  
 WAC 357-13 Classification  
 WAC 357-16 Recruitment, Assessment, and Certification  
 WAC 357-19 Appointments and Reemployment  
 WAC 357-28 Compensation  
 WAC 357-46 Layoff and Separation  
 WAC 357-49 Director's Reviews

#### NEW SECTION

**WAC 357-58-060 Do the WMS rules apply to all general government employers?** The WMS rules, Chapter 357-58 WAC, apply to all general government employers.

#### NEW SECTION

**WAC 357-58-065 Definitions for WMS. In addition to those definitions included in chapter 357-01 WAC the following definitions apply to WMS:**

##### **Competencies.**

Those measurable or observable knowledge, skills, abilities, and behaviors critical to success in a key job role or function.

##### **Dismissal.**

The termination of an individual's employment for disciplinary purposes.

##### **Employee.**

An individual working in the classified service. Employee business unit members are covered by chapter 357-43 WAC and defined in WAC 357-43-001.

##### **Evaluation points.**

Evaluation points are the points resulting from an evaluation of a position using the managerial job value assessment chart.

##### **Layoff unit.**

A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

##### **Management bands.**

Management bands are a series of management levels included in the Washington management service. Placement in a band reflects the nature of management, decision-making environment and policy impact, and scope of management accountability and control assigned to the position.

##### **Performance management confirmation.**

Approval granted by the director of the department of personnel to an employer allowing the employer to link individual employee performance to compensation or layoff decisions.

##### **Premium.**

Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions, or circumstances associated with the job.

##### **Reassignment.**

A reassignment is an employer-initiated movement of:

(1) a WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(2) a WMS position and its incumbent from one section, department, or geographical location to another section, department, or geographical location.

##### **Salary standard.**

A salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

##### **Separation.**

Separation from employment for nondisciplinary purposes.

##### **Suspension.**

An absence without pay for disciplinary purposes.

##### **Transfer.**

A transfer is an employee-initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

##### **Washington management service.**

Washington management service is the system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

#### NEW SECTION

**WAC 357-58-070 What are the responsibilities of each agency for effectively managing and budgeting salaries for WMS positions?** Each agency has the overall responsibility for effectively managing and properly budgeting for salaries based on performance management and job-required competencies for its WMS positions.

#### NEW SECTION

**WAC 357-58-075 What is the requirement for agencies to develop compensation policies?** Each agency must develop salary administration policies that are consistent with this chapter and guidelines established by the department for WMS positions.

#### NEW SECTION

**WAC 357-58-080 How are positions assigned to the management bands?** Each agency must evaluate its WMS positions using a managerial job value assessment chart developed by the department of personnel. The number of points resulting from the evaluation determines the management band to which a position is assigned.

NEW SECTION

**WAC 357-58-085 Can WMS salaries exceed the limits of an assigned band?** Compensation for a WMS position must not exceed the maximum or fall below the minimum amount set by the director of the department of personnel for the assigned management band. The director of the department of personnel may approve exceptions to this rule.

NEW SECTION

**WAC 357-58-090 For what reasons can an agency adjust a WMS salary?** Salary adjustments may be made under the following conditions:

- (1) Legislatively directed general and/or special increase;
- (2) Documented recruitment and/or retention problems as approved by the agency director or designee; and/or
- (3) Documented agency and/or state internal salary relationship problems, as approved by the agency director or designee.

NEW SECTION

**WAC 357-58-095 May agencies provide progression increases for WMS employees?** Employers may grant progression adjustments to employees as follows:

- (1) In recognition of the employee's demonstrated growth and development; and/or
- (2) If the employer has received performance management confirmation, in recognition of the employee's sustained excellence.

NEW SECTION

**WAC 357-58-100 Is there a limit for annual progression increases?** Progression increases initiated by the agency normally will not exceed a total of **twenty-five percent (25%)** over the life of the position.

NEW SECTION

**WAC 357-58-105 When can exceptions to the progression increase limits be made?** Only the director of the department of personnel may grant requests for exception to the progression increase limit.

NEW SECTION

**WAC 357-58-110 What is a promotion?** A promotion is one of the following:

- (1) The assignment of additional responsibilities, which results in higher evaluation points and/or a higher salary standard for the same position, or
- (2) Movement to a different position that has a higher salary standard and/or higher evaluation points.

NEW SECTION

**WAC 357-58-115 What is a voluntary demotion and what changes may occur in salary?** A voluntary demotion is a voluntary movement by an employee to a position with

lower evaluation points. Such movement may result in a salary decrease.

**WSR 05-04-088**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed February 2, 2005, 8:07 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-120 What is a disciplinary demotion and what changes may occur in salary?, 357-58-125 What is an involuntary downward movement and how does that affect the salary?, 357-58-130 Do salary increases greater than five percent (5%) for a group of employees need approval?, 357-58-135 Who can provide lump-sum performance recognition payment to employees?, 357-58-140 Is there a limit to the amount an employee can receive for performance recognition pay?, 357-58-145 When may an agency authorize lump sum relocation compensation?, 357-58-150 For what reasons may an employee be required to pay back the relocation payment?, 357-58-155 Must the agency develop written criteria for relocation compensation?, 357-58-160 How are hours of work established for WMS employees?, 357-58-165 Do WMS employees receive leave benefits?, 357-58-170 What about other pay issues?, 357-58-175 Can an employer authorize lump-sum vacation leave or accelerate vacation leave accrual rates to support the recruitment and/or retention of an incumbent or candidate for a WMS position?, 357-58-180 Must an agency have a policy regarding authorization of additional leave to support the recruitment of a candidate or the retention of an incumbent for a WMS position?, 357-58-185 Must an agency develop a recruitment and selection policy and/or procedure for WMS positions?, 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?, 357-58-195 Are employers required to grant promotional preference when filling WMS positions?, 357-58-200 How may transfers occur?, 357-58-205 Under what conditions may an employer reassign a WMS employee?, 357-58-210 When may a WMS employee transfer to a general service position and vice versa?, 357-58-215 May a permanent employee voluntarily demote to general service?, 357-58-220 May a WMS employee accept a nonpermanent appointment in the general service?, 357-58-225 What return rights must an employer provide to a permanent WMS employee who accepts a nonpermanent appointment in the general service?, 357-58-230 May a WMS employee accept an appointment to a project position in the general service and does the employee have any return right to his/her permanent WMS position?, and 357-58-235 May employers create WMS positions in projects?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on March 10, 2005, at 10:00 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Sharon Whitehead, Department of Personnel, P.O. Box 47500, fax (360) 586-

4694, by March 4, 2005. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by March 4, 2005, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules address demotion, transfer and reassignment for Washington Management Service (WMS) employees, salary increases and relocation compensation for WMS employees, hours of work for WMS employees, leave benefits for WMS employees, recruitment and selection of WMS employees and return rights for WMS employees.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Due to the passage of SHB 1268 the director of the Department of Personnel has rule-making authority regarding the Washington Management Service. The proposed rules implement this provision of the Personnel System Reform Act.

Name of Proponent: Department of Personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Sharon Whitehead, 521 Capitol Way South, Olympia, WA, (360) 664-6348; Implementation and Enforcement: Department of Personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

February 1, 2005

E. C. Matt

Director

#### NEW SECTION

**WAC 357-58-120 What is a disciplinary demotion and what changes may occur in salary?** Demotion for cause is a disciplinary demotion. A disciplinary demotion results in the:

(1) Assignment of responsibilities which results in a lower salary standard and/or lower evaluation points for the same position, or

(2) Movement to a different position that has a lower salary standard and/or lower evaluation points.

A disciplinary demotion may result in a salary decrease. Any salary decrease must comply with the salary basis test of the Fair Labor Standards Act.

#### NEW SECTION

**WAC 357-58-125 What is an involuntary downward movement and how does that affect the salary?** An involuntary downward movement is based on a non-disciplinary reassignment of duties that results in a lower salary standard

and/or lower evaluation points for an employee's current position.

Such downward movement will not decrease the employee's current salary. The employee's current salary will be retained until such time as it is exceeded by the WMS salary structure or the employee leaves the position.

#### NEW SECTION

**WAC 357-58-130 Do salary increases greater than five percent (5%) for a group of employees need approval?** Salary changes greater than five percent (5%) proposed for any group of employees must be reviewed and approved by the director of the department of personnel.

#### NEW SECTION

**WAC 357-58-135 Who can provide lump-sum performance recognition payment to employees?** The director of the department of personnel or an agency that has received performance management confirmation for decentralized compensation administration may provide additional pay to employees on a lump sum basis. Such payment to an individual or group of employees is to recognize outstanding performance or the achievement of pre-defined work goals. Any pay granted under this section is a premium that is not part of the base salary.

#### NEW SECTION

**WAC 357-58-140 Is there a limit to the amount an employee can receive for performance recognition pay?** Performance recognition pay may not exceed fifteen percent (15%) of an employee's annual base salary unless approved by the director of the department of personnel.

#### NEW SECTION

**WAC 357-58-145 When may an agency authorize lump sum relocation compensation?** An agency director may authorize lump sum relocation compensation, within existing resources, whenever:

(1) It is reasonably necessary that a person move his or her home to accept a transfer or appointment; or

(2) It is necessary to successfully recruit or retain a qualified candidate or employee who will have to move his or her home in order to accept the position.

#### NEW SECTION

**WAC 357-58-150 For what reasons may an employee be required to pay back the relocation payment?** If the employee receiving the relocation payment terminates or causes termination with the state within one year of the date of the appointment or transfer, that employee may be required to pay back the lump sum payment. Termination as a result of layoff, disability separation, or other good cause as determined by the agency director will not require the employee to repay the relocation compensation.

NEW SECTION

**WAC 357-58-155 Must the agency develop written criteria for relocation compensation?** An agency must develop written criteria prior to authorizing lump sum relocation compensation. The criteria must include:

- (1) A description of the circumstances for which relocation compensation will be granted; and
- (2) The method that will be used to determine the amount of relocation compensation.

NEW SECTION

**WAC 357-58-160 How are hours of work established for WMS employees?** Agencies must assign each WMS position to one of the overtime eligibility designations identified in the compensation plan and determine the position's work week.

For overtime-eligible employees, compensation must be in accordance with the following sections of chapter 357-28 WAC:

WAC 357-28-245  
 WAC 357-28-250  
 WAC 357-28-255  
 WAC 357-28-260  
 WAC 357-28-265  
 WAC 357-28-275  
 WAC 357-28-280  
 WAC 357-28-285

NEW SECTION

**WAC 357-58-165 Do WMS employees receive leave benefits?** Leave accrual, leave usage, and paid holidays for WMS employees must be in accordance with chapter 357-31 WAC.

NEW SECTION

**WAC 357-58-170 What about other pay issues?** Each agency may establish policies and practices for additional compensation such as shift differential, call back pay, and standby pay in accordance with the provisions of chapter 357-28 WAC.

NEW SECTION

**WAC 357-58-175 Can an employer authorize lump-sum vacation leave or accelerate vacation leave accrual rates to support the recruitment and/or retention of an incumbent or candidate for a WMS position?** In addition to the vacation leave accruals as provided in WAC 357-31-165, an employer may authorize additional vacation leave as follows to support the recruitment and/or retention of an incumbent or candidate for a specific WMS position:

- (1) Employers may authorize an accelerated accrual rate for an incumbent or candidate; and/or
- (2) Employers may authorize a lump-sum accrual of up to 80 hours of vacation leave for the incumbent or candidate.

Vacation leave accrued under this section must be used in accordance with the leave provisions of chapter 357-31

WAC and cannot be used until the employee has completed six continuous months of service.

NEW SECTION

**WAC 357-58-180 Must an agency have a policy regarding authorization of additional leave to support the recruitment of a candidate or the retention of an incumbent for a WMS position?** In order to authorize additional leave for the recruitment and/or retention of a candidate or incumbent for a WMS position, an agency must have a written policy that:

- (1) Identifies the reasons for which the employer may authorize additional leave; and
- (2) Requires that lump sum accruals only be granted after services have been rendered in accordance with express conditions established by the employer.

NEW SECTION

**WAC 357-58-185 Must an agency develop a recruitment and selection policy and/or procedure for WMS positions?** Each agency must develop a recruitment and selection policy and/or procedure that will best meet client, employee, management, and organizational needs. The policy and/or procedure must address filling positions and employee movement.

The policy and procedures for recruitment and selection must be inherently flexible and permit methods and strategies to be varied and customized for each recruitment and selection need.

NEW SECTION

**WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?** An agency's WMS recruitment and selection policy must:

- (1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;
- (2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;
- (3) Support workforce diversity and affirmative action goals;
- (4) Consider the career development of the agency's employees and other state employees;
- (5) Ensure that hiring decisions are not based on patronage or political affiliation;
- (6) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;
- (7) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency.

NEW SECTION

**WAC 357-58-195 Are employers required to grant promotional preference when filling WMS positions?** Agencies are not required to grant promotional preference

when recruiting and selecting for WMS positions. However, an agency may determine, on an individual position basis, if it is in the organization's best interest to limit the candidate pool to promotional candidates. The agency defines who qualifies as a promotional candidate.

#### NEW SECTION

**WAC 357-58-200 How may transfers occur?** At any time, an employee and the affected agency or agencies may agree to the transfer of a WMS employee within an agency or between agencies.

#### NEW SECTION

**WAC 357-58-205 Under what conditions may an employer reassign a WMS employee?** At any time, an agency may reassign an employee or a position and it's incumbent to meet client or organizational needs. If the new location is within a reasonable commute, as defined by the agency, the employee must accept the reassignment.

If the reassignment is beyond a reasonable commute and the employee does not agree to the reassignment, the employee has layoff rights in accordance with this chapter.

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

#### NEW SECTION

**WAC 357-58-210 When may a WMS employee transfer to a general service position and vice versa?** A permanent employee may transfer from a WMS position to a Washington general service position if his/her salary is within the salary range of the Washington general service position.

A permanent employee may transfer from a Washington general service position to a WMS position if his/her salary is within the management band assigned to the Washington management service position.

#### NEW SECTION

**WAC 357-58-215 May a permanent employee voluntarily demote to general service?** A permanent employee may voluntarily demote from a WMS position to a Washington general service position at a lower pay level than his/her current position.

#### NEW SECTION

**WAC 357-58-220 May a WMS employee accept a nonpermanent appointment in the general service?** A permanent WMS employee may accept a nonpermanent appointment to a general service position as provided in chapter 357-19 WAC.

#### NEW SECTION

**WAC 357-58-225 What return rights must an employer provide to a permanent WMS employee who accepts a nonpermanent appointment in the general ser-**

**vice?** When a permanent WMS employee has accepted a nonpermanent appointment in the general service and the nonpermanent appointment ends, the agency must at a minimum provide the employee the layoff rights of his/her permanent WMS position. The agency may provide additional return rights such as returning the employee to a permanent position without invoking the employee's layoff rights.

If the appointment is within the same agency, the agency must provide the employee the right to return at anytime. If the appointment is to a different agency, the agency must provide the employee the right to return for six (6) months from the time the employee is appointed. Any return right after six (6) months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment.

Upon return to a permanent position, the employer will determine the employee's salary.

#### NEW SECTION

**WAC 357-58-230 May a WMS employee accept an appointment to a project position in the general service and does the employee have any return right to his/her permanent WMS position?** A permanent WMS employee may accept an appointment to a project position in the general service as provided in chapter 357-19 WAC. Any right to return to the employee's permanent WMS position is negotiable between the employer and employee and must be agreed to prior to the employee accepting the project position. If no return right is agreed to, the employee has the rights provided by chapter 357-46 WAC upon layoff from the project.

#### NEW SECTION

**WAC 357-58-235 May employers create WMS positions in projects?** Employers may designate project positions that meet the definition of manager as WMS project positions.

WSR 05-04-089

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed February 2, 2005, 8:08 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-240 What are the notification requirements for appointing an employee to a project WMS position?, 357-58-245 Must an employee appointed to a project position serve a review period?, 357-58-250 Must an employee who transfers or voluntarily demotes to a project WMS position serve a review period? WAC 357-58-255 May a permanent WMS employee accept a project appointment within WMS and does the employee have any return rights to his/her permanent WMS position?, 357-58-260 What happens to employees in WMS project positions at the conclusion of the

project?, 357-58-265 When may an agency make an acting WMS appointment and what actions are required?, 357-58-270 Does time in an acting appointment count as time in the review period?, 357-58-275 May a permanent WMS employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment?, 357-58-280 What is the review period?, 357-58-285 When must a WMS employee serve a review period?, 357-58-290 How long does the review period last?, 357-58-295 May a review period be extended beyond the initial time period?, 357-58-300 Does the employee's use of leave without pay or shared leave extend the review period?, 357-58-305 When does a WMS employee attain permanent status?, 357-58-310 When may a WMS employee who transfers or voluntarily demotes be required to serve a WMS review period?, 357-58-315 When may an employee, who is promoted to another WMS position, in a different agency, while serving a review period, be required to serve a WMS review period?, 357-58-320 What happens when a WMS employee promotes to a new WMS position within the same agency while serving in a review period?, 357-58-325 When may a probationary or trial service period be served concurrently with the WMS review period?, 357-58-330 What happens when a general service employee serving a probationary or trial service period is appointed to a WMS position in a different agency?, 357-58-335 When a WMS employee is promoted in the same position as a result of additional new duties, is a review period required?, 357-58-340 When does reversion take place during a review period?, 357-58-345 When a permanent WMS employee does not complete the review period, what reversion rights does the employee have?, 357-58-350 When a permanent general service employee does not complete the review period for a WMS position, what reversion rights does the employee have?, 357-58-355 Can an employee voluntarily revert during a review period?, 357-58-360 May a reverted employee and an agency come to mutual agreement on reversion placement?, 357-58-365 What are reversion rights for a WMS employee who has no permanent status?, 357-58-370 Are there any appeal rights for reversion or separation during the review period?, 357-58-375 When permanent WMS employees promote or demote to positions in the general service and fail to complete the trial service period what reversion rights do permanent WMS employees?, 357-58-380 How does a WMS employee return from an exempt appointment?, 357-58-385 What is the responsibility of general government employers to provide training and development to WMS employees?, 357-58-390 What is the responsibility of WMS managers?, 357-58-395 What will be the role of the department of personnel?, and 357-58-400 How does each agency deal with developmental needs of managers?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on March 10, 2005, at 10:00 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Sharon Whitehead, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by March 4, 2005. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by March 4, 2005, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules address project position within the Washington Management Service (WMS), acting appointments within WMS, review periods for WMS employees, reversion rights of WMS employees and training and development issues for WMS employees.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Due to the passage of SHB 1268 the director of the Department of Personnel has rule-making authority regarding the Washington Management Service. The proposed rules implement this provision of the Personnel System Reform Act.

Name of Proponent: Department of Personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Sharon Whitehead, 521 Capitol Way South, Olympia, WA, (360) 664-6348; Implementation and Enforcement: Department of Personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

February 1, 2005

E. C. Matt

Director

#### NEW SECTION

**WAC 357-58-240 What are the notification requirements for appointing an employee to a project WMS position?** An employee appointed to a project WMS position must be notified, in writing, of the status of the appointment and the expected ending date of the position.

#### NEW SECTION

**WAC 357-58-245 Must an employee appointed to a project position serve a review period?** An employee who does not have permanent status in classified service must serve a review period when appointed to a project position. The employee gains permanent status upon completion of the review period.

Permanent employees who promote to a WMS project position must serve a review period.

#### NEW SECTION

**WAC 357-58-250 Must an employee who transfers or voluntarily demotes to a project WMS position serve a review period?** An appointing authority may require an

employee who transfers or voluntarily demotes to a project WMS position to serve a review period.

#### NEW SECTION

**WAC 357-58-255** May a permanent WMS employee accept a project appointment within WMS and does the employee have any return rights to his/her permanent WMS position? A permanent WMS employee may accept an appointment to a WMS project position. Any right to return to the employee's permanent WMS position is negotiable between the employer and employee and must be agreed to prior to the employee accepting the project position. If no return right is agreed to, the permanent employee has the rights provided by WAC 357-58-260 (layoff rule) upon layoff from the project.

#### NEW SECTION

**WAC 357-58-260** What happens to employees in WMS project positions at the conclusion of the project?

(1) At the conclusion of an appointment to a project WMS position, the layoff provisions of this chapter apply.

(2) In addition to the layoff rights provided by this chapter:

A permanent status employee who left a permanent general service position to accept appointment to a project position without a break in service has the additional rights provided by WAC 357-19-340; and

A permanent status employee who left a permanent WMS position may have additional rights negotiated under WAC 357-58-255 (Permanent WMS employees return rights following a project appointment).

#### NEW SECTION

**WAC 357-58-265** When may an agency make an acting WMS appointment and what actions are required?

An agency may make acting appointments in WMS when necessary to meet organizational needs. Prior to the appointment, the appointing authority will communicate in writing to the employee the anticipated length, intent, salary, and other conditions of the appointment.

#### NEW SECTION

**WAC 357-58-270** Does time in an acting appointment count as time in the review period?

When an individual who is in an acting WMS appointment is subsequently appointed to a permanent WMS position, time spent in the acting appointment may count towards the review period for the permanent WMS position at the discretion of the appointing authority.

#### NEW SECTION

**WAC 357-58-275** May a permanent WMS employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment? Permanent WMS employees may accept acting appointments to WMS positions. When the acting

appointment ends, the agency must at a minimum provide the employee the layoff rights of his/her permanent WMS position. The agency may provide additional return rights such as returning the employee to a permanent position without invoking the employee's layoff rights.

If the appointment is within the same agency, the agency must provide the employee the right to return at anytime. If the appointment is to a different agency, the agency must provide the employee the right to return for six (6) months from the time the employee is appointed. Any return right after six (6) months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

Upon return to a permanent position, the employer will determine the employee's salary.

#### NEW SECTION

**WAC 357-58-280** What is the review period? The review period is a period of time that allows the employer an opportunity to ensure the WMS appointee meets the requirements and performance standards of the position.

#### NEW SECTION

**WAC 357-58-285** When must a WMS employee serve a review period? A permanent employee who promotes to a permanent WMS position and an employee who does not have permanent status in the classified service must serve a review period when appointed to a permanent position.

#### NEW SECTION

**WAC 357-58-290** How long does the review period last? Based on the nature of the job and the skills of the appointee, the review period will be between twelve (12) and eighteen (18) months as determined by the appointing authority. At the time of the appointment, the appointing authority will inform the appointee in writing of the length of the review period.

#### NEW SECTION

**WAC 357-58-295** May a review period be extended beyond the initial time period? Employers may extend the review period for an individual employee as long as the extension does not cause the total period to exceed 18 months. The employer must notify the employee in writing of the extension.

#### NEW SECTION

**WAC 357-58-300** Does the employee's use of leave without pay or shared leave extend the review period? If an employee uses leave without pay or shared leave for an entire work shift while serving a review period, the review period must be extended by one work day for each work day

of leave without pay or shared leave. The granting of leave shall be in compliance with chapter 357-31 WAC and the Fair Labor Standards Act.

#### NEW SECTION

**WAC 357-58-305** When does a WMS employee attain permanent status? Upon successful completion of the review period, the employee will attain permanent status in the position.

**Reviser's note:** The unnecessary strikethrough in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 357-58-310** When may a WMS employee who transfers or voluntarily demotes be required to serve a WMS review period? An appointing authority may require an employee who transfers or voluntarily demotes to serve a review period.

#### NEW SECTION

**WAC 357-58-315** When may an employee, who is promoted to another WMS position, in a different agency, while serving a review period, be required to serve a WMS review period? An employee who is promoted to a different WMS position in a different agency during the review period will begin a new review period for the new position. The new employer may allow for some or all of the time served in the review period for the prior position to count towards the review period. The employee will not attain permanent status in the original position in the former agency unless agreed to in writing by the appointing authorities in both agencies.

#### NEW SECTION

**WAC 357-58-320** What happens when a WMS employee promotes to a new WMS position within the same agency while serving in a review period? If a WMS employee is promoted to a different WMS position in the same agency during the review period, the following applies:

(1) Time served in the initial review period counts towards the review period of the new position if the employer determines the positions are closely related.

(2) The review period starts over if the employer determines the positions are not closely related.

#### NEW SECTION

**WAC 357-58-325** When may a probationary or trial service period be served concurrently with the WMS review period? An employee who is appointed to a WMS position from a Washington general service position in the same agency while serving a probationary or trial service period in the same or similar occupational field may serve the trial service or probationary period concurrently with the review period. At the discretion of the employer, the employee may attain permanent status in the previous job

classification once the original probationary or trial service period concludes.

The new employer may allow for some or all of the time served in the review period for the prior position to count towards the review period. The employee will not attain permanent status in the original position in the former agency unless agreed to in writing by the appointing authorities in both agencies.

#### NEW SECTION

**WAC 357-58-330** What happens when a general service employee serving a probationary or trial service period is appointed to a WMS position in a different agency? A WGS employee who is appointed to a WMS position in a different agency while serving in a probationary or trial service period will not attain permanent status in the original position in the former agency unless agreed to in writing by the appointing authorities in both agencies.

#### NEW SECTION

**WAC 357-58-335** When a WMS employee is promoted in the same position as a result of additional new duties, is a review period required? The agency may require a review period when the employee remains in the same position and receives a promotion as a result of additional new duties.

#### NEW SECTION

**WAC 357-58-340** When does reversion take place during a review period? During the review period, the appointing authority may separate or revert the employee from the position with written notification of the effective date.

#### NEW SECTION

**WAC 357-58-345** When a permanent WMS employee does not complete the review period, what reversion rights does the employee have? When a WMS permanent employee is appointed to a WMS position and reverted during the review period, the current employing agency at the time of reversion must place the employee in a vacant funded WMS position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the last WMS appointment. If no vacant funded positions are available, the agency must place the employee in a WMS position for which the employee is qualified and which is similar to the employee's previous position and salary. If the reversion of the employee causes the total number of employees to exceed the total number of positions to be filled, the employer may implement a layoff.

#### NEW SECTION

**WAC 357-58-350** When a permanent general service employee does not complete the review period for a WMS position, what reversion rights does the employee have? When a permanent Washington general service employee is

appointed to a WMS position and is reverted during the review period, the employee has reversion rights with the current employer at the time of reversion in accordance with WAC 357-19-115, 357-19-117, and 357-19-120.

#### NEW SECTION

**WAC 357-58-355 Can an employee voluntarily revert during a review period?** Within the first 30 calendar days of any review period, an employee may voluntarily revert. The employee's reversion rights are as provided in WAC 357-58-345 and WAC 357-58-350 as appropriate. Voluntary reversion after 30 days is at the discretion of the employer.

#### NEW SECTION

**WAC 357-58-360 May a reverted employee and an agency come to mutual agreement on reversion placement?** Nothing in this section precludes agencies and the reverted employee from reaching mutual agreement on placement of a reverted employee within the WMS or within the Washington general service if permitted by the respective rules.

#### NEW SECTION

**WAC 357-58-365 What are reversion rights for a WMS employee who has no permanent status?** An appointee to a WMS position from outside state service, who is separated prior to completion of the review period, will not attain permanent status. The employee will not have reversion rights to any position within the WMS or within the Washington general service.

#### NEW SECTION

**WAC 357-58-370 Are there any appeal rights for reversion or separation during the review period?** Employees may not appeal reversion or separation from the review period.

#### NEW SECTION

**WAC 357-58-375 When permanent WMS employees promote or demote to positions in the general service and fail to complete the trial service period what reversion rights do permanent WMS employees?** Permanent employees who promote or voluntarily demote from the Washington management service to the Washington general service and who are either voluntarily or involuntarily reverted during the trial service period have reversion rights as provided in WAC 357-58-350.

#### NEW SECTION

**WAC 357-58-380 How does a WMS employee return from an exempt appointment?** Return from an exempt appointment will be accomplished as provided in WAC 357-19-195 and 357-19-200.

#### NEW SECTION

**WAC 357-58-385 What is the responsibility of general government employers to provide training and development to WMS employees?** In addition to those responsibilities identified in chapter 357-34 WAC, general government employers must provide WMS development and training opportunities specifically designed to refine and broaden managerial knowledge and leadership competencies. Diversity, performance management, and education for managing employees in a civil service system must be part of this training. WMS employees must complete the core curriculum on leadership competencies as determined by the department of personnel within eighteen (18) months of being appointed to a WMS position.

#### NEW SECTION

**WAC 357-58-390 What is the responsibility of WMS managers?** In addition to those responsibilities identified in chapter 357-34 WAC, WMS employees are responsible for seeking out and fully participating in opportunities to enhance their managerial knowledge and leadership competencies to implement and emphasize performance management, model efficient leadership in changing work situations, reduce potential liability claims and manage in a civil service environment.

#### NEW SECTION

**WAC 357-58-395 What will be the role of the department of personnel?** The department of personnel shall assist state agencies by providing a quality developmental and leadership training program and consultative and technical assistance to help agencies address the development needs of their managers.

#### NEW SECTION

**WAC 357-58-400 How does each agency deal with developmental needs of managers?** Each agency must ensure that the development needs of managers are incorporated into the agency's development and training plan. Each agency is responsible for periodic evaluations of its plan.

WSR 05-04-090

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed February 2, 2005, 8:09 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-500 May an employee request withdrawal of his/her resignation?, 357-58-505 Does a WMS employee have appeal rights?, 357-58-510 Can the agency's decision regarding which WMS position to eliminate in a layoff action be appealed?, 357-58-515 When a WMS employee disagrees with an employer's action, can the employee request the

employer review the action that was taken?, 357-58-520 What requirements must be included in the agency's WMS review procedures?, 357-58-525 How does the employee request an action review?, 357-58-530 What is the agency's responsibility for analyzing records of informal reviews?, 357-58-535 What are the agency's responsibilities for records of reviews?, 357-58-540 What type of records are agencies required to keep and report for WMS employees?, and 357-58-545 Does the director of the department of personnel have rights to review agencies' WMS actions?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on March 10, 2005, at 10:00 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Sharon Whitehead, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by March 4, 2005. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by March 4, 2005, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules address appeal rights for Washington Management Service (WMS) employees, action reviews for WMS employees, and withdrawal of a WMS employee's resignation.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Due to the passage of SHB 1268 the director of the Department of Personnel has rule-making authority regarding the Washington Management Service. The proposed rules implement this provision of the Personnel System Reform Act.

Name of Proponent: Department of Personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Sharon Whitehead, 521 Capitol Way South, Olympia, WA, (360) 664-6348; Implementation and Enforcement: Department of Personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

February 1, 2005

E. C. Matt

Director

#### NEW SECTION

**WAC 357-58-505 Does a WMS employee have appeal rights?** Any permanent WMS employee who is laid off, dismissed, suspended, demoted, separated, whose position has been reassigned beyond a reasonable commute without agreeing to the reassignment, or whose base salary is reduced may appeal in accordance with chapter 357-52 WAC.

#### NEW SECTION

**WAC 357-58-510 Can the agency's decision regarding which WMS position to eliminate in a layoff action be appealed?** The agency's decision regarding which WMS position to eliminate in a layoff is not subject to appeal.

#### NEW SECTION

**WAC 357-58-515 When a WMS employee disagrees with an employer's action, can the employee request the employer review the action that was taken?** Each agency will develop procedures for conducting an informal review of agency actions at the request of the employee. The agency's procedure must identify those actions for which an employee may request an informal review. At a minimum, the agency's procedure must allow an employee to request a review of the following:

(1) Salary adjustment (or lack thereof) when the responsibilities of the permanent employee's position have been changed.

(2) Placement following reversion of a permanent employee.

(3) Decisions about whether or not a position is included in the Washington management service. For reviews of decisions concerning inclusion in WMS the following apply:

(a) The final agency-internal review must be conducted by the agency director or designee.

(b) If the incumbent disagrees with the agency director/designee's decision, he/she may request a director's review by the director of the department of personnel, as long as such request is made within fifteen (15) calendar days of notification of the decision. Such review will be limited to relevant documents and information and will be final.

#### NEW SECTION

**WAC 357-58-520 What requirements must be included in the agency's WMS review procedures?** In developing and administering the agency's WMS review procedures, the agency will adhere to the following:

(1) Informal reviews must be limited to a maximum of three (3) levels of consideration within the agency.

(2) Informal reviews may be limited to an examination of documentation and other relevant information. Agency decisions should be prompt.

(3) The agency director or designee will conduct the informal review.

#### NEW SECTION

**WAC 357-58-500 May an employee request withdrawal of his/her resignation?** An appointing authority or employing official may permit withdrawal of a resignation at any time prior to the effective date.

NEW SECTION

**WAC 357-58-525 How does the employee request an action review?** Employee requests for an review of an action must be in writing and requested within fifteen (15) calendar days of the action or notification or awareness (whichever was first) of the action to be reviewed.

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

NEW SECTION

**WAC 357-58-530 What is the agency's responsibility for analyzing records of informal reviews?** Each agency is responsible for identifying and acting upon patterns or trends that signal problems or development or training needs among its managers.

NEW SECTION

**WAC 357-58-535 What are the agency's responsibilities for records of reviews?** Each agency must maintain a record of the number, nature, and outcome of informal reviews requested and conducted.

NEW SECTION

**WAC 357-58-540 What type of records are agencies required to keep and report for WMS employees?** Each agency will maintain records of employees in the WMS. The records will identify employees as members of the WMS, including position numbers and position titles and will track all personnel actions related to them. Agencies will be responsible for collecting statistical information on WMS personnel regarding diversity, applicant flow, and appointments following each selection.

NEW SECTION

**WAC 357-58-545 Does the director of the department of personnel have rights to review agencies' WMS actions?** The director of the department of personnel retains the right to review any informal review decision rendered by agency heads or designees or any actions taken under the WMS.

WSR 05-04-091

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed February 2, 2005, 8:10 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-405 In addition to the requirements of chapter 357-37 WAC, what must the performance management process focus on for WMS employees?, 357-58-410 When and how often must performance feedback be provided to a WMS

employee through the formal evaluation process?, 357-58-415 What is the role of the director of the department of personnel in the performance evaluation system?, 357-58-420 May employers supplement the standardized performance evaluation procedures and forms?, 357-58-425 Can an employer factor performance into compensation and layoff decisions for WMS employees?, 357-58-430 How does an employer receive performance management confirmation which enables them to factor performance into compensation and layoff decisions for WMS employees?, 357-58-435 What elements will the director of the department of personnel evaluate to determine if an employer should be granted performance management confirmation?, 357-58-440 How may an employer layoff WMS employees and what notice is required?, 357-58-445 What are the reasons for layoff?, 357-58-450 How are employees returned from exempt positions to WMS positions?, 357-58-455 How does an employer implement a layoff action?, 357-58-460 What must be included in the employer's layoff procedure?, 357-58-465 What option does a permanent WMS employee have to take a position when the employee is scheduled for layoff?, 357-58-470 How does an employer determine an employee's employment retention rating?, 357-58-475 Does a veteran receive any preference in layoff?, 357-58-480 What provisions governs separation due to disability for WMS employees?, 357-58-485 What provisions governs nondisciplinary separation for WMS employees?, 357-58-490 What provisions governs separation for unauthorized absence for WMS employees?, and 357-58-495 What process is used by employees who wish to resign?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on March 10, 2005, at 10:00 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Sharon Whitehead, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by March 4, 2005. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by March 4, 2005, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules address the performance management process for Washington Management Service (WMS) employees, layoff for WMS employees, and separation of WMS employees.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Due to the passage of SHB 1268 the director of the Department of Personnel has rule-making authority regarding the Washington Management Service. The proposed rules implement this provision of the Personnel System Reform Act.

Name of Proponent: Department of Personnel, governmental.

PROPOSED

Name of Agency Personnel Responsible for Drafting: Sharon Whitehead, 521 Capitol Way South, Olympia, WA, (360) 664-6348; Implementation and Enforcement: Department of Personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

February 1, 2005

E. C. Matt  
Director

(5) Preparation of a performance management and development plan.

#### NEW SECTION

**WAC 357-58-425 Can an employer factor performance into compensation and layoff decisions for WMS employees?** A general government employer may factor an employee's performance into compensation and layoff decisions if the employer has received performance management confirmation.

#### NEW SECTION

**WAC 357-58-430 How does an employer receive performance management confirmation which enables them to factor performance into compensation and layoff decisions for WMS employees?** Employers may request performance management confirmation from the director of the department of personnel for WMS employees. The director of the department of personnel will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor performance into compensation, recognition leave and layoff decisions. If the director of the department of personnel determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted performance management confirmation.

#### NEW SECTION

**WAC 357-58-435 What elements will the director of the department of personnel evaluate to determine if an employer should be granted performance management confirmation?** The director of the department of personnel will evaluate the following elements to determine if an employer should receive performance management confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures, and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based compensation;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

#### NEW SECTION

**WAC 357-58-405 In addition to the requirements of chapter 357-37 WAC, what must the performance management process focus on for WMS employees?** For WMS employees, the performance management process must satisfy the requirements of chapter 357-37 WAC and focus on:

- (1) Fostering employee competence, leadership and productivity,
- (2) Supporting achievement of organizational goals and objectives, and
- (3) Holding managers accountable for achieving programmatic results and helping to build a performance based culture that will enable workforce success.

#### NEW SECTION

**WAC 357-58-410 When and how often must performance feedback be provided to a WMS employee through the formal evaluation process?** Employers must provide feedback and formally evaluate the performance of WMS employees during the review period and annually thereafter.

#### NEW SECTION

**WAC 357-58-415 What is the role of the director of the department of personnel in the performance evaluation system?** The director of the department of personnel will provide a standardized performance evaluation system which will be used by each state agency for evaluation of its managers.

#### NEW SECTION

**WAC 357-58-420 May employers supplement the standardized performance evaluation procedures and forms?** Agencies may tailor or supplement the managerial evaluation system to fulfill agency-unique needs, provided the emphasis is placed on:

- (1) Assessment of those leadership competencies that are critical to an effective managerial performance-based environment;
- (2) Planning for development and training in leadership competencies;
- (3) Collaboration and communication between the supervisor and managerial employee during the performance planning and evaluation process;
- (4) Planning for and assessment of results; and

**NEW SECTION**

**WAC 357-58-440 How may an employer layoff WMS employees and what notice is required?** WMS employees may be separated without prejudice due to layoff in accordance with the statutes and the agency's layoff procedure.

Permanent WMS employees must receive at least fifteen (15) calendar days' written notice of layoff, except when the employer and employee agree to waive the fifteen-day notice. Notice of layoff must include the reason or basis for layoff and the employee's right to appeal the layoff.

WMS employees without permanent status must receive with at least one (1) calendar day's written notice of layoff.

**NEW SECTION**

**WAC 357-58-445 What are the reasons for layoff?** Employees may be laid off without prejudice according to layoff procedures that are consistent with these rules.

(1) The reasons for layoff include, but are not limited to, the following:

- (a) Lack of funds
- (b) Lack of work; or
- (c) Organizational change.

(2) Examples of layoff actions due to lack of work may include, but are not limited to:

- (a) Termination of a project or special employment;
- (b) Availability of fewer positions than there are employees entitled to such positions;

(c) Elimination of a position when the work of the position has been competitively contracted; or

(d) Employee's ineligibility to continue in a position which has been reallocated to the Washington general service.

**NEW SECTION**

**WAC 357-58-450 How are employees returned from exempt positions to WMS positions?** When exempt employees have statutory rights to return to the Washington management service, such employees first must be returned to the classified service in accordance WAC 357-04-030. If such return causes the total number of employees to exceed the total number of positions to be filled, the agency may implement a layoff in accordance with the layoff provisions of this chapter.

**NEW SECTION**

**WAC 357-58-455 How does an employer implement a layoff action?** The employer is required to have a layoff procedure. When an employer determines a layoff is necessary, the layoff procedure must be followed. The layoff procedure must be available either electronically or in writing to employees subject to layoff.

**NEW SECTION**

**WAC 357-58-460 What must be included in the employer's layoff procedure?** The employer's layoff procedure must:

(1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;

- Employers may establish separate and exclusive layoff units for project employment or special employment programs.

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay;

(3) Require the appointing authority to provide written notice of layoff to employees in accordance with WAC 357-58-440.

(4) Provide layoff options for permanent employees being laid off in accordance with WAC 357-58-465. Only employers who have performance confirmation can consider performance in determining layoff options;

(5) Address the timeframe in which employees must select a layoff option;

(6) Define what the employer considers when determining the comparability of a position;

(7) Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-58-465;

- Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

(8) Describe how employment retention ratings will be calculated, including options for factoring performance into ratings; and

(9) Specify how the employer will break ties when more than one employee has the same employment retention rating.

**NEW SECTION**

**WAC 357-58-465 What option does a permanent WMS employee have to take a position when the employee is scheduled for layoff?** (1) Within the layoff unit, a permanent WMS employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

(a) The employee has the required competencies for the position.

(b) The WMS position is at the same salary standard and/or evaluation points. If no option to a position with the same salary standard and/or evaluation points is available, the employer must consider other WMS positions with a lower salary standard and/or evaluation points, or general service positions in classes in which the employee has held permanent status, in descending salary order. At the agency's discretion, the employee may be offered a vacant position at higher evaluation points.

(c) The position is funded and vacant, or if no vacant position is available, the position is occupied by the employee with the lowest retention rating.

(2) What if the employee has no option under subsection (1) of this section?

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an acting position in the layoff unit for which the employee is qualified.

#### NEW SECTION

**WAC 357-58-470 How does an employer determine an employee's employment retention rating?** The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055. Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.

#### NEW SECTION

**WAC 357-58-475 Does a veteran receive any preference in layoff?** (1) An eligible veteran receives a preference by having his/her seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five (5) years, to his/her unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty (20) or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The unmarried widow/widower of an eligible veteran is entitled to veteran's seniority preference for up to five (5) years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one (1) year of active military service.

#### NEW SECTION

**WAC 357-58-480 What provisions governs separation due to disability for WMS employees?** WMS employees may be separated due to disability in accordance with WAC 357-46-160, 357-46-165, 357-46-170, and 357-46-175.

#### NEW SECTION

**WAC 357-58-485 What provisions governs nondisciplinary separation for WMS employees?** Employers may separate WMS employees for nondisciplinary reasons in

accordance with WAC 357-46-195, 357-46-200, and 357-46-205.

#### NEW SECTION

**WAC 357-58-490 What provisions governs separation for unauthorized absence for WMS employees?** Employers may separate WMS employees for unauthorized absence in accordance with WAC 357-46-210, 357-46-215, 357-46-220 and 357-46-225.

#### NEW SECTION

**WAC 357-58-495 What process is used by employees who wish to resign?** An employee who intends to resign from state service should provide his/her resignation to the appointing authority or employing official at least fifteen (15) calendar days before the effective date of the resignation.

**WSR 05-04-092  
PROPOSED RULES  
APPRENTICESHIP AND  
TRAINING COUNCIL**

[Filed February 2, 2005, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-22-108.

Title of Rule and Other Identifying Information: WAC 296-05-316 Apprenticeship agreements—Standards, this rule making proposes to clarify that apprenticeship program sponsors must demonstrate need for geographical expansion.

Hearing Location(s): Department of Labor and Industries, 12806 Gateway Drive, Tukwila, WA, on March 8, 2005, 9:00 a.m.; and at the Department of Labor and Industries, 901 North Monroe Street, Suite 100, Spokane, WA, on March 9, 2005, at 11:00 a.m.

Date of Intended Adoption: May 4, 2005.

Submit Written Comments to: Christine Swanson, 7273 Linderson Way S.E., Olympia, WA 98504-4400, e-mail copc235@lni.wa.gov, fax (360) 902-5292, by March 15, 2005.

Assistance for Persons with Disabilities: Contact Christine Swanson, 902-6411 or copc235@lni.wa.gov, by March 1, 2005, TTY (360) 902-5797 or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes to clarify in WAC 296-05-316 Apprenticeship agreements, that apprenticeship program sponsors must demonstrate need for geographical expansion.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 49.04.010.

Statute Being Implemented: RCW 49.04.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Labor and Industries, governmental.

Name of Agency Personnel Responsible for Drafting: Christine Swanson, Tumwater, Washington, (360) 902-6411;

Implementation: Nancy Mason, Tumwater, Washington, (360) 902-5321; and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Washington State Apprenticeship and Training Council (WSATC) has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the proposed rules are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements.

A cost-benefit analysis is not required under RCW 34.05.328. Significant rule-making criteria does not apply to these rule changes because the exempt criteria outlined in RCW 34.05.328(5) was met.

February 2, 2005

Pete Crow  
Chair

**AMENDATORY SECTION** (Amending WSR 02-10-083, filed 4/29/02, effective 6/1/02)

**WAC 296-05-316 Apprenticeship agreements—Standards requirements.** The WSATC shall have the authority to develop, administer, and enforce program standards for the operation and success of an apprenticeship and training program.

The sponsor's proposed program standards must include a list of duties and responsibilities of the program sponsor reasonably consistent with other approved program standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which must not be less than two thousand hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee.

EXCEPTION: This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be at least three times per year, be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Conference call meetings may be conducted in lieu of regular meetings but must not exceed the number of attended meetings and no disciplinary action shall be taken at conference call meetings.

(c) Determine the program sponsor's need for apprentices in the area covered by the apprenticeship standards established under these rules. ((f))

The following are some examples of ways the program sponsor can demonstrate that the need for apprentices exists:

• Statistical analysis of workload projections((:));

• Demographics((-and));

• Information relating to expected workload growth (~~(are examples of ways the sponsor may demonstrate that the need for apprentices exists.))~~).

(d) Establish minimum standards of education and skilled occupational experience required of apprentices.

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker.

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards.

EXCEPTION: This does not apply to plant programs.

(g) Recommend competent instructors and related/supplemental instruction in accordance with local vocational requirements.

(h) Recommend a course outline for related/supplemental instruction, as well as coordinate related/supplemental instruction with on-the-job work experience.

(i) Hear and adjust all complaints of violations of apprenticeship agreements.

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules.

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period.

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules. (See WAC 296-05-318.)

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex, color, religion, national origin, age, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an affirmative action plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in collective bargaining agreement, if any. The ratio must be described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, hours of study per year (which shall be a minimum of one hundred forty-four hours per year).

(7) An attendance policy which includes a provision that if the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the apprenticeship agreement. A provision that time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not paid for the classroom time. A provision that the hours of actual attendance by the apprentice in related supplemental instruction classes must be reported to the department on a quarterly basis for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the department.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including:

- Certificate of completion;
- Additional credit;
- Suspension;
- Military service;
- Reinstatement;
- Cancellation; and
- Corrections.

(11) A provision for advancing an apprentice's standing based on previous experience in the skilled trade or in some other related capacity.

(12) A provision for the transfer of an apprentice from one training agent to another training agent or the sponsor in order to provide as much as possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04, 34.05 RCW, and these rules.

(15) A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related/supplemental instruction which instruction shall be not less than one hundred forty-four hours per year.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than sixteen years of age. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established trade procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement, it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.

(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

- Withhold periodic wage advancements;
- Suspend or cancel the apprenticeship agreement;
- Take further disciplinary action; or
- The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal, of the committee's action, to the WSATC.

(22) A provision for an initial probation which the WSATC or the supervisor of apprenticeship may terminate an apprenticeship agreement at the written request by any affected party. The initial probation must not exceed twenty percent of the term of apprenticeship unless an exemption has been granted for longer probationary periods as specified by Civil Service or law. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause. An appeal process is available to apprentices who have completed the initial probationary period.

(23) Provisions prohibiting discrimination on the race, sex, color, religion, national origin, age, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure adequate records of the selection process are kept for a period of at least five years and are available to the WSATC or its representative on request. ("Adequate records" means at least a brief summary of any interviews and the conclusions reached on each of the specific factors which are part of the total judgment concerning each applicant.)

(25) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

(26) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry, craft or trade in question taking into account the WSATC's determination of the apprenticeship needs of the trade and geographic area. (Statistical analysis of workload projections, demographics, and information relating to expected workload growth are examples of ways the sponsor may demonstrate that the need for apprentices exists.) The goal is to achieve general statewide uniformity of standards in each industry, trade or craft. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the United States Department of Labor for a trade, craft, or occupation. If the United States Department of Labor has not established a minimum number of hours for a trade, craft, or occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must be achieved. In addition, the course content and delivery method must be

designed to achieve the same levels of skills as existing standards within the state for that industry, trade, or craft.

(27) A provision to ensure that the progressively increasing wage scales based on specified percentages of journey-level wage, which must be submitted, at least annually, to the WSATC. These may be submitted on a form provided by the department.

A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

**WSR 05-04-105**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed February 2, 2005, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-08-077.

Title of Rule and Other Identifying Information: Chapter 18.185 RCW; chapter 308-19 WAC, Bail bond agents and bail bond recovery agents.

Hearing Location(s): Department of Licensing, Conference Room 209, 405 Black Lake Boulevard, Olympia, WA 98507, on March 22, 2005, at 10:00 a.m.

Date of Intended Adoption: March 25, 2005.

Submit Written Comments to: Mary Haglund, Program Manager, 405 Black Lake Boulevard, Olympia, WA 98507, e-mail mhaglund@dol.wa.gov, fax (360) 664-6624, by March 18, 2005.

Assistance for Persons with Disabilities: Contact Mary Haglund, Program Manager, by March 18, 2005, TTY (360) 664-8885 or (360) 664-6624.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule establishes licensing procedures and minimum training and testing requirements for becoming licensed as a bail bond recovery agent. The rule also changes the expiration date for bail bond agency licenses to expire one year from the date of issuance replacing the current language that all bail bond agency licenses expire on December 31 of each year. Also, the rule contains revisions that are solely for the purpose of making the rule easier to read and understand.

Reasons Supporting Proposal: Legislation passed in the 2004 legislative session requires that the Department of Licensing establish licensing procedures and minimum training and testing requirements to regulate bail bond recovery agents and bail bond agents that perform the duties of a bail bond recovery agent.

Statutory Authority for Adoption: Chapter 18.185 RCW.

Statute Being Implemented: Chapter 18.185 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Haglund, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-6624.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW does not apply to Department of Licensing.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to Department of Licensing.

February 1, 2005  
 Andrea C. Archer  
 Assistant Director

AMENDATORY SECTION (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-010 Promulgation—Authority.** The director of the department of licensing, state of Washington, pursuant to the authority vested in the director by chapter 18.185 RCW, does hereby promulgate the following rules and regulations relating to the licensing of bail bond agencies and bail bond agents and bail bond recovery agents.

AMENDATORY SECTION (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-020 Organization.** The department of licensing administers the Washington bail bond license law, chapter 18.185 RCW. Submissions and requests for information regarding bail bond agency licenses and bail bond agent and bail bond recovery agent licenses may be sent in writing to the Bail Bond Program, Business and Professions Division, Department of Licensing, P.O. Box 9649, Olympia, Washington 98507-9649.

AMENDATORY SECTION (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-030 Definitions.** (1) Words and terms used in these rules shall have the same meaning as each has under chapter 18.185 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning. Also see RCW 18.185.010 for other definitions.

(2) "Principal partner" means the partner who is the qualified agent of a bail bond agency and who exercises operational control over the agency.

(3) "Bail bond" means the contract between the defendant, the surety and/or the court to insure the appearance of the accused before the court(s) at such time as the court may direct. These bonds may require annual renewal.

(4) "Property bond agent" means a surety that posts security in the form of personal or real estate for compensation to assure the appearance of a defendant.

(5) "Surety" as it relates to bail bonds, means the depositor/owner of cash if a cash bail bond, the property owner(s) if a property bond, the insurance company if a corporate surety bond, that guarantees performance of the bail bond contract for compensation.

(6) "Principal/defendant" means the accused, for whom a bail bond may be obtained.

(7) "Exonerate" means the discharging of the bail bond by the court.

(8) "Indemnitor" means the person placing security with an agency/agent, to secure the agency against loss for the release of a defendant(s) on a bail bond.

(9) "Clients" means defendants and indemnitors.

(10) "Affidavit" means a written statement made under oath as provided in RCW 10.19.160.

(11) "Indemnity agreement" means the contract signed by the indemnitor that states the obligations the indemnitor(s) is/are assuming.

(12) "Collateral receipt" means an accurate description of the security given to an indemnitor by the receiving agency's agent, in its fiduciary capacity, listing all collateral given as security for a bail bond and held by the agency/agent until the bail bond is exonerated by the court or a forfeiture occurs. The receipt shall name the owner of the collateral, the defendant, and the bond number, and specify the terms for redemption of the collateral including any fees charged for storage.

(13) "Surrender form" means the form used to return to custody a defendant for violation of bond conditions, and the indemnitor's withdrawal from a bail bond with an affidavit in accordance with RCW 10.19.160, or a letter of forfeiture from a court in accordance to the bail contract.

(14) "Letter of forfeiture" means a notice in varied forms, sent to a bail bond agency/branch office, advising the agency/branch office that a defendant who has secured a bail bond with that agency has failed to appear on a given date in a given court in accordance with RCW 10.19.090. The court has made a demand for the surrender of the defendant, or payment of the face amount of the bond by a given date.

(15) "Letter of demand" means any form of notice to the indemnitor/defendant that the collateral placed in trust has come under jeopardy because of a failure to appear or violation of bail.

(16) "Corporate surety bail bonds" means a bail bond contract that is guaranteed by a domestic, foreign or alien insurance company which has been qualified to transact surety insurance business in Washington state by the insurance commissioner.

(17) "Build-up fund" (also known as "BUF fund" or "escrow fund" or "trust fund") means that percentage of money obtained from collected premiums paid by the agent to the corporate surety company for the purpose of indemnifying the corporate surety from loss caused by the agent.

(18) "Endorsement" means that a bail bond agent or bail bond qualified agent licensee has met all licensing requirements for a bail bond recovery agent license and is authorized to perform the duties of both a bail bond agent and a bail bond recovery agent. Such licenses shall be issued by the department and will clearly state the dual purpose of the license.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-100 ((How do I apply)) Applying for a bail bond agent license((?)), ((An applicant for a bail bond agent license must first meet the requirements stated in the bail bond agents law, RCW 18.185.020.))** After the applicant meets the requirements of RCW 18.185.020 he/she shall:

(1) Complete an application for a license on a form provided by the department of licensing.

(2) Inform the department if he/she has an insurance surety license and with what company he ((or)) she is affiliated.

(3) Pay a fee or fees as listed in WAC 308-19-130.

#### NEW SECTION

#### **WAC 308-19-101 Applying for a bail bond recovery agent license or endorsement to a bail bond agent license.**

An applicant for a bail bond recovery agent license endorsement must first meet the requirements stated in the bail bond agents law, RCW 18.185.020, and be in good standing with the department. The following materials must be submitted by all applicants for a bail bond recovery agent license or endorsement:

(1) A bail bond recovery agent license or endorsement application completed in full;

(2) Proof that the applicant directly submitted the completed fingerprint card and fees to the Washington state patrol;

(3) A copy of high school diploma or GED or proof of three years experience in the bail industry;

(4) If applicant is retired or separated from a local or state police department, or a branch of the armed forces trained to carry out the duties of a peace officer within the last six years, submit proof to the department describing length of service, duties and date of retirement or separation or; if applicant is not retired or separated from a local or state police department, or a branch of the armed forces trained to carry out the duties of a peace officer within the last six years, the applicant must submit a certificate or transcript showing the applicant has completed a course consisting of not less than four hours of study which includes the following:

(a) Civil and criminal law;

(i) State statutes relating to bail regulations;

(ii) Constitutional law;

(iii) Procedures for exoneration and surrendering defendants into custody;

(iv) Civil liability;

(v) Civil rights of persons who are detained in custody.

The knowledge in law may be accomplished through self-study. Self-study applicants must submit a written statement attesting to their knowledge in the subjects as stated in this section.

(b) Procedures for field operations, including, but not limited to:

(i) Use of force and degrees of force;

(ii) Safety techniques;

(iii) Entering and searching buildings;

(iv) Custody and transportation of prisoners including persons who are mentally ill or under the influence of alcohol or drugs;

(v) Defensive tactics;

(vi) Power of arrest;

(vii) Contracts;

(viii) Powers of a bail bond recovery agent;

(c) The basic principles of identifying and locating defendants. Public records and confidentiality; surveillance.

(5) Proof of firearm training or applicants who carry a firearm while engaging in the business of bail bond recovery agent, or while traveling to or from such business must provide proof of firearm certification issued by the criminal justice training commission.

(6) Proof of training certification in the following tools: Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units.

(7) Return completed applications to:

Department of Licensing

Bail Bond Program

P.O. Box 9048

Olympia, WA 98507-9048

(8) Pay a fee or fees as listed in WAC 308-19-130.

(9) After the department receives the completed application and fees, a notification regarding examination dates and times will be mailed to the address of the applicant by the department.

#### NEW SECTION

**WAC 308-19-102 Submitting fingerprint cards to the Washington state patrol for a criminal history background check.** Every applicant for a bail bond recovery agent license or endorsement shall have a fingerprint criminal history background check conducted.

(1) The department shall provide fingerprint cards to all applicants.

(2) Applicants shall be fingerprinted by a law enforcement agency on a fingerprint card provided by the department and pay any fees required by the law enforcement agency providing the fingerprinting service.

(3) Applicants shall submit the completed fingerprint card to the Washington state patrol with the appropriate fees charged under WAC 446-20-600, Fees. Checks or money orders made payable to the Washington state patrol, identification and criminal history section, shall be mailed with the fingerprint card to P.O. Box 42633, Olympia, Washington 98504-2633.

(4) Results of the background checks will be sent directly to the department.

(5) If the fingerprint card is rejected by Washington state patrol or the Federal Bureau of Investigation, the applicant will be notified by the department that the applicant must be reprinted and resubmit the fingerprint card to the Washington state patrol with the rejected cards and the attached reject slip.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-105 ((How do I apply)) Applying for a bail bond agency license((?)).** To qualify for a bail bond agency license ((you must)) the applicant shall:

((1) Meet and)) Complete the requirements of the bail bond agent license and; ((prove your))

(1) Submit to the department proof of work experience as required under RCW 18.185.030 (1)(b).

(a) Work related experience shall include: Bail bonds, insurance, trust accounts, receiving collateral in a fiduciary capacity, and forms of underwriting.

~~((If you))~~ (b) Applicants who do not have the required work experience ((you must)) shall train and pass an examination ((that shall follow the training and examination requirements)) as stated under Part D, WAC 308-19-300.

(2) Complete an application for an agency license on a form provided by the department of licensing.

(3) Pay a fee or fees as required by WAC 308-19-130.

(4) Obtain a bond for the main office as required by RCW 18.185.070.

(5) The applicant shall disclose the surety(s) name, address, the attorney in fact, and whose name the build-up fund is in.

If the applicant changes their corporate surety, the applicant shall immediately advise the department.

(6) If the applicant provides security in the form of real property, the applicant shall advise the department of the names of the court(s) that have given approval for the placing of property bonds.

(7) Sole proprietorships shall act as the qualified agent of the agency without the payment of additional license fees.

(8) Partnerships or limited partnership applicants shall each apply, qualify and furnish their addresses to the director.

When a license is issued to a partnership, the principal partner shall act as the qualified agent of the agency without the payment of additional license fees.

(9) Applicants representing a corporation shall furnish a copy of the articles of incorporation, and a list of officers and departments and their addresses to the director.

When an agency license is issued to a corporation, the manager, officer, or chief operating officer shall act as the qualified agent of the agency without the payment of additional license fees.

(10) If the applicant represents a foreign corporation, he/she shall furnish a copy of its articles of incorporation, and a list of its officers and departments and their addresses to the department.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-107 ((What are the requirements and)) Responsibilities of the qualified agent((?)).** The qualified agent shall be responsible for all transactions, recordkeeping, and the employees of each office he or she is licensed as the qualified agent.

~~((If the agency or branch agency is to be a corporate surety or property agency, the agency, or branch agency qualified agent shall disclose the surety(s) name, address, the attorney in fact, and in whose name the build-up fund is in.~~

~~If an agency changes or takes another corporate surety, the director shall be advised immediately by the qualified agent.~~

~~If the agency provides security in the form of real property, the qualified agent shall advise the director of the names of the court(s) that have given approval for the placing of property bonds.~~

If the applicant for qualified agent represents a corporation, he or she shall furnish a copy of the articles of incorporation, and a list of officers and directors and their addresses to the director.

If the applicant for a qualified agent represents a foreign corporation, he or she shall furnish a copy of its articles of incorporation, and a list of its officers and directors and their addresses to the director.

If the applicant is a partnership or limited partnership, each partner shall apply, qualify and furnish their addresses to the director.

When an agency license is issued to a sole proprietorship, the owner shall act as the qualified agent of the agency without the payment of additional license fees.

When an agency license is issued to a corporation, the manager, officer, or chief operating officer shall act as the qualified agent of the agency without the payment of additional license fees.

When a license is issued to a partnership the principal partner shall act as the qualified agent of the agency without the payment of additional license fees.)) Under 18.185.010 (5), a qualified agent is "an owner, sole proprietor, partner, manager, officer, or chief operating officer of a corporation who meets the requirements set forth in this chapter for obtaining a bail bond agency license." The qualified agent essentially serves as "manager" of the bail bond agency, and is responsible for all bail bond transactions conducted by the bail bond agents employed by the agency. See RCW 18.185.100 (qualified agent shall keep required records and ensure safekeeping of collateral or security); RCW 18.185.-220 (every branch office must have a qualified agent serving as manager);

Each branch office must be managed by a qualified agent. A qualified agent may serve as a qualified agent of multiple offices. Although the qualified agent remains ultimately responsible for bail bond transactions, a qualified agent is permitted to delegate managerial functions to licensed bail bond agents. However, a qualified agent may not delegate managerial or supervisory functions to unlicensed staff because such functions necessarily involve participation in the sale or issuance of bail bonds.

Allowing unlicensed staff to participate in the sale or issuance of bail bonds could lead to charges of aiding or abetting unlicensed activity in violation of RCW 18.185.110(10) and 18.235.130(9).

Any agency going out of business in the state of Washington shall continue to be obligated on all outstanding bonds until the director receives notification from the jurisdiction in which the agency/branch offices are located that all bonds have been exonerated and the department of licensing has received no complaints from indemnitor about the return of collateral. The director may require an audit of the closing agency at any time upon notification of the closing of the agency.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-110 ((How do I apply)) Applying for a bail bond agency branch office license((?)).** A licensed bail

bond agency may establish a branch office by meeting the following requirements.

- (1) Each branch office shall have a licensed qualified agent.
- (2) Complete an application form provided by the department of licensing.
- (3) Pay the fee or fees as required under WAC 308-19-130.

**AMENDATORY SECTION** (Amending WSR 93-21-053, filed 10/18/93, effective 11/18/93)

**WAC 308-19-120 Bail bond recovery agent, bail bond agency, branch office and agent license applications—Conditions.** Any person desiring to obtain a bail bond recovery agent, bail bond agency, bail bond branch office or bail bond agent license shall make application on a form prescribed by the director and pay a fee as prescribed by WAC 308-19-130.

**AMENDATORY SECTION** (Amending WSR 02-07-067, filed 3/18/02, effective 7/1/02)

**WAC 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees.** The following fees for a one-year period shall be charged by business and professions division of the department of licensing:

<b>Title of Fee</b>	<b>Fee</b>
<b>Bail bond agency/branch office:</b>	
Application	\$1,000.00
License renewal	800.00
Late renewal with penalty	1,000.00
((Certification of records	25.00))
<b>Bail bond agent:</b>	
Original license	400.00
License renewal	250.00
Late renewal with penalty	350.00
((Certification of records	25.00))
Change of qualified agent	200.00
<u>Original endorsement to the bail bond agent</u>	<u>50.00</u>
<u>license</u>	
<u>Endorsement renewal</u>	<u>65.00</u>
<u>Endorsement renewal with penalty</u>	<u>100.00</u>
<b>Bail bond recovery agent license:</b>	
<u>Original license</u>	<u>300.00</u>
<u>License renewal</u>	<u>350.00</u>
<u>Late renewal with penalty</u>	<u>450.00</u>
<b>Examinations:</b>	
<u>Reexamination fee</u>	<u>25.00</u>

**AMENDATORY SECTION** (Amending WSR 04-01-021, filed 12/8/03, effective 1/12/04)

**WAC 308-19-140 ((When will my license expire and how do I renew my license?)) Renewal and expiration of**

PROPOSED

**licenses and endorsements.** (1) Licenses and endorsements issued to bail bond agents, bail bond agencies, branch offices, or bail bond recovery agents expire one year from the date of issue.

(2) (~~Licenses issued to bail bond agencies expire on December 31 each year.~~) Licenses and endorsements must be renewed each year on or before the date (~~established herein~~) of expiration and a renewal (~~license~~) fee as prescribed by the director in WAC 308-19-130 must be paid.

(3) If the application for a license or endorsement renewal is not received by the director on or before the renewal date, a penalty fee as prescribed by the director in WAC 308-19-130 shall be paid. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

(4) A license or endorsement shall be (~~cancelled~~) **cancelled** if an application for a renewal of that license or endorsement is not received by the director within one year from the date of expiration. A person may obtain a new license or endorsement by satisfying the procedures and qualifications for licensing, including the successful completion of any current examination and education requirements.

(5) No bail bond agent, bail bond recovery agent or bail bond agency shall engage in the sale or issuance of bail bonds or perform the duties of a bail bond recovery agent if their license has expired.

(6) When the director receives verification that a bail bond agency license has expired or has been revoked or suspended, the director shall advise correction centers.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-150** (~~What happens to my agent license when I leave the bail bond agency I work for?~~) **Cancellation of employment.** (1) A person licensed as a bail bond agent may perform duties and activities as licensed only under the direction and supervision of a licensed qualified agent and as a representative of a bail bond agency.

(2) Either the agency or agent may cancel this relationship. The agency's qualified agent must send a written notice of the cancellation to the department of licensing immediately and include the agent's license held by the agency. Notice of cancellation shall be provided by signature of the agency's qualified agent on the surrendered license. The cancellation date shall be the postmark date or date the license is hand delivered to the department. If the license held by the agency cannot be surrendered to the department because the license has been lost, the qualified agent shall complete and submit an affidavit of lost license on a form approved by the department explaining why the license has been lost and for how long the license has not been on display.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-160** (~~What happens to my bail bond agent license when I am not working?~~) **Inactive licenses.**

(1) Any license issued under chapter 18.185 RCW, and not otherwise revoked or suspended shall be deemed "inactive" at any time it is delivered to the director. Until reissued, the

holder of an inactive license shall be deemed to be unlicensed.

(2) An inactive license may be placed in an active status upon completion of an application as provided by the director and upon compliance with chapter 18.185 RCW.

(3) An inactive license may not be renewed. The inactive license will be (~~cancelled~~) **cancelled** if not activated by the expiration date. To obtain a new license the person must satisfy the procedures and qualifications for initial licensing, including the successful completion of any examination and education requirements.

(4) The provisions of chapter 18.185 RCW relating to the denial, suspension, and revocation of a license shall be applicable to an inactive license as well as an active license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-200** (~~Where do I keep the agency and agent licenses for my bail bond business?~~) **Location of license documents.** Licenses and endorsements of all bail bond agency and bail bond agents shall be kept in the office located at the address appearing on the license.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-210** (~~What do I need to do if I move my business?~~) **Change of address.** The qualified agent of a bail bond agency shall notify the department of any change of location and mailing address of the agency office within ten working days by filing a completed change of address form approved or provided by the department.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-220** (~~What are my~~) **Responsibilities as a licensee in addition to the other obligations and responsibilities outlined in chapter 18.185 RCW and chapter 308-19 WAC(?).** It is the responsibility of each and every licensee to obtain a copy of and be knowledgeable of and keep current with the rules implementing chapter 18.185 RCW.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-230** (~~What if my bail bond agency or a bail bond agent is the subject of a~~) **Criminal complaint or action(?).** Every licensee shall notify in writing, within twenty days after service or knowledge thereof, the office of the bail bond program, business and professions division, department of licensing of any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

**AMENDATORY SECTION** (Amending WSR 02-07-067, filed 3/18/02, effective 7/1/02)

**WAC 308-19-240** (~~What records are a~~) **Bail bond agency and branch office required** (~~(to keep?)~~) **records.**

The following requirements and prohibitions apply to all records and documents required to be maintained by chapter 18.185 RCW, or in these rules:

(1) They shall be maintained in accordance with generally accepted accounting practices.

(2) No person shall make any false or misleading statement, or make false or misleading entry, or willfully fail to make any entry required to be maintained or made, in any such record or document.

(3) No person shall willfully fail to produce any such record or document for inspection by the department.

(4) The minimum records the qualified agent or principal partner of a bail bond agency shall be required to keep are:

- (a) Bank trust account records;
- (b) Duplicate receipt book or receipt journal;
- (c) Prenumbered checks;
- (d) Check register or cash disbursement journal;
- (e) Validated bank deposit slips;
- (f) Reconciled bank monthly statement (client liability vs bank statement);

(g) All (~~cancelled~~) cancel checks;

(h) All voided checks;

(i) "Client information" which includes defendant's name, application, dates of transactions, amount received, amount disbursed, current balance, check number, item(s) covered, indemnitor's agreement, and indemnity agreements, premium receipts, collateral receipt(s), letter(s) of forfeiture or surrender form(s), letter(s) of demand and affidavit(s), if surrendered before a forfeiture has occurred, and any written information or communication that may have influence on the bail bond or collateral placed for the bail bond;

(j) A transaction folder or file containing a copy of all agreements, invoices, billings, and related correspondence for each transaction;

(k) Records or description of all collaterals, securities, or monetary instruments received or held in the bail bond business transactions;

(l) Records of training and/or continuing education for each bail bond agents employed in that agency;

(m) Records of exoneration of all bail bond transactions which include: (i) Court, citation or case number (ii) date of issuance of the bail (iii) the defendant's name, address and telephone number (iv) amount of the bond (v) name of the court (vii) date of exoneration of the bond.

(5) The above records shall be maintained for a minimum period of three years.

(6) All funds and monetary instruments received by the agency from customers or clients in business transactions shall be deposited into the trust account within three working days of receipt.

(7) All money spent on behalf of a client must be deposited in and disbursed from the agent's collateral trust account, including advances, loans or money from the agency's business account to the collateral trust account to pay expenses.

(8) The bail bond agent must secure an invoice or billing from any party who provides a service on behalf of the defen-

dant and must include the cost for the service, a description of the service provided, and the service provider's name, address, telephone number, and UBI number (Uniform Business Identifier).

(9) Bail bond agents must secure an affidavit from any party who purchases or takes possession of collateral being liquidated. The affidavit must state the name, address and telephone number of the party(ies) acquiring the property along with a complete description of the property, serial number or other unique identifying number, and the dollar value of the collateral being liquidated with an explanation of how the dollar value was estimated.

(10) If the bail bond agent or agency provides other services to the indemnitor or client, the firm must provide full disclosure in writing of the agent's relationship with any persons providing such services, and prior disclosure of fees charged. The written disclosure must be maintained in the client's transaction file for a minimum period of three years. For purposes of this section, "other services" shall mean services unrelated to the issuance and posting of bail.

(11) The bail bond agent must provide each indemnitor or client a receipt for all personal property. The bail bond agent shall keep a duplicate of all receipts. The receipt will include:

(a) Date of receipt;

(b) Complete description of the property to include serial numbers or other unique identifying numbers;

(c) Signature of the bail bond agent; and

(d) A file or case number the receipt relates to.

(12) The bail bond agent shall maintain an individual ledger card to post all bank charges of any nature, including credit card charges. Accrued interest shall be posted to the individual ledger card. If bank charges exceed the interest earned, causing the trust account to be lower than client liability, the bail bond agent shall immediately deposit funds into the trust account to bring the trust account into balance. For purposes of this subsection, "immediately" shall mean within one banking day after the bail bond agent receives notice that the trust account is lower than client liability. All interest accruing on the trust bank account must be withdrawn at least once monthly.

(13) Contracts as described in RCW 18.185.270(2) between the bail bond agent and the bail bond recovery agent.

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

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-250** (~~Is a bail bond agency subject to~~) **Bail bond agency audits and inspections**(~~(?)~~). All records required to be maintained by a qualified agent of a bail bond agency by chapter 18.185 RCW, or these rules, together with any other business or other types of records of a licensee which may be related to the bail bond activity, together with any personal property which may be the subject of, or related to, a bail bond business transaction shall be subject to inspection and audit at any reasonable time, with or without notice upon demand by the department of licensing, for the purposes

of determining compliance or noncompliance with the provisions of chapter 18.185 RCW, and these rules.

If records requested by the department are not immediately available because they are not physically present upon the premises at the time the demand is made, they shall be procured and produced to the department as soon as possible, but in any event within twenty-four hours, by the licensee.

A reasonable time for the conduct of such inspection and audit shall be:

(1) If the records or items to be inspected or audited are located anywhere upon a premise any portion of which is open for business or to the public (or members and guests), then at any time the premises are so open, or at which they are usually open; or

(2) If the records or items to be inspected or audited are not located upon a premise set out in subsection (1) of this section, then any time between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-300** (~~What are the~~) **Prelicense training and examination requirements for bail bond agents, bail bond agency, and qualified bail bond agent license applicants**(?) (1) The training and examination requirements for bail bond agent license applicants under RCW 18.185.060, shall include, at a minimum:

(a) Four hours of training in the following subjects:

- (i) Bail bond licensing laws;
- (ii) Court procedures relating to bail bonds;
- (iii) Criminal procedure, Title 10 RCW;
- (iv) Contracts and bail bond agreements;
- (v) Preparation of promissory notes, mortgages, deeds of trust, assignments and other documents affecting property;
- (vi) Care and storage of personal property;
- (vii) Forfeiture of collateral, judgements and collection;
- (viii) Washington Insurance Code, Title 48 RCW;
- (ix) Laws relating to notary publics, chapter 42.44 RCW;
- (x) Contact with clients, courts and law enforcement;
- (xi) Sexual harassment.

(b) A licensed qualified agent shall certify on each bail bond agent's license application that the training required in this section has been completed.

(2) The examination requirement for bail bond agency or qualified bail bond agent license applicants under RCW 18.185.030 (1)(a), shall include, as a minimum:

(a) All of the subjects as listed in subsection (1)(a) of this section; and

(b) At a minimum, the following subjects:

- (i) Recordkeeping and filing;
- (ii) Business licensing, taxation and related reporting and recordkeeping requirements.
- (iii) Personnel management;
- (iv) Laws relating to employment;
- (v) The Americans with Disabilities Act;

(3) The examination for bail bond agency or qualified bail bond agent license applicants shall consist of a minimum of fifty questions covering the subjects listed above in subsection (2)(a) and (b) of this section. A score of eighty-five

percent must be achieved in order to pass the examination. Applicants who fail to achieve an eighty-five percent score will be required to wait a minimum of fourteen days before reexamination.

(4) The director will certify training and examination programs for bail bond qualified agents and bail bond agents license applications.

(5) Every bail bond agent shall present to the director a letter stating training they have received while working as a trainee for an agency, including the name of the principal instructor before the director issues the person a bail bond license. This letter shall be signed by the qualified agent and shall also include a statement that the qualified agent is aware that they are taking responsibility for the agent.

### NEW SECTION

**WAC 308-19-305 Minimum prelicense training requirements and exceptions for bail bond recovery agents.** (1) Applicants for a license or an endorsement as a bail bond recovery agent must complete not less than four hours of a course of self-study, training and/or certification in the following subjects, except as otherwise provided in this section.

(a) Prelicense training in civil or criminal law can be achieved through public or private instruction or self-study and must include the following training topics:

- (i) State statutes relating to bail regulations;
- (ii) Constitutional law;
- (iii) Procedures for surrendering defendants into custody;
- (iv) Procedures for exoneration;
- (v) Civil liability;
- (vi) Civil rights of persons who are detained in custody;
- (vii) Basic principles of identifying and locating defendants to include public records and confidentially, and surveillance;
- (viii) Contracts;
- (ix) Powers of a bail bond recovery agent;

(b) Prelicense training in procedures for field operations can be achieved through public or private instruction and must include the following training and certifications:

(i) Training in use of force and degrees of force, including verbal, Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units.

(ii) Certification in the following defensive tools, Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units within twelve months of applying for a license or endorsement;

- (iii) Safety techniques;
- (iv) Entering and searching buildings;
- (v) The custody and transportation of prisoners including persons who are violent, emotionally disturbed or under the influence of alcohol, or drugs;
- (vi) Defensive tactics;
- (vii) Application of restraints/handcuffing procedures;
- (viii) All applicants shall obtain firearm training from an approved trainer, or applicants intending to carry a firearm as

a bail bond recovery agent shall obtain and keep current fire-arm certification from the criminal justice training commission.

(2) In place of completing the prelicense training in procedures for field operations established in subsection (1) of this section required under RCW 18.185.260, an applicant may submit proof to the department that he/she has completed a course of training required by a municipal, state or federal law enforcement agency or a branch of the armed forces to carry out the duties of a peace officer within the past six years.

(3) Applicants may submit proof of previously meeting prelicense training requirements in procedures for field operations in subsection (1) of this section between May 1, 2005, and July 1, 2005. The purpose of this rule is to allow applicants advance notice whether or not the applicant will be required to take additional training before the license requirements are in effect on January 1, 2006. The proof must be submitted in writing and include: The applicant's name, address and telephone number, the name, address, and telephone number of the training facility attended, a copy of the training curriculum which the applicant received training in, including the number of hours devoted to each topic, and documentation of certification of training accomplishments related to the training requirements set forth in subsection (1) of this section. The department will issue written notification to the applicant, stating acceptance of the prelicense training received, or a written notification and explanation for the department's denial of the prelicense training received.

(4) The training the applicant receives should prepare the applicant to achieve a passing score on the written examination administered under chapter 18.185 RCW.

#### NEW SECTION

**WAC 308-19-310 Prelicense examination requirements for bail bond recovery agents.** Each applicant for a bail bond recovery agent license or endorsement shall pass an examination demonstrating their knowledge and proficiency in all of the training requirements set forth in WAC 308-19-305. The examination shall consist of fifty questions. Applicants shall correctly answer thirty-five examination questions to pass the examination. Applicants who fail to achieve a passing score will be required to wait a minimum of seven days before reexamination and pay the required reexamination fee.

#### NEW SECTION

**WAC 308-19-315 Study guide for the prelicense bail bond recovery agent examination.** All of the information listed below can be found on the internet. Public libraries offer free access to the use of the internet. Applicants may also access this study guide on the department's internet website and will link directly to the study resource material.

(1) Chapter 18.185 RCW.

(2) Chapter 9.73 RCW Privacy.

(3) Chapter 42.17 RCW (sections 250 through 348) Public disclosure.

(4) Title 9A RCW (chapters 04, 08, 16, 36, 40, 42, 46, 50, 52, 56, 60, 68, 72, 76, 82) Washington state criminal code.

(5) Chapter 10.19 RCW Appearance bonds.

(6) Chapter 10.88 RCW Uniform Criminal Extradition Act.

(7) Chapter 9.41 RCW Firearms and dangerous weapons.

(8) Federal Privacy Act (5 U.S.C. 552A).

(9) Freedom of Information Act (5 U.S.C. 552).

(10) Fair Credit Reporting Act (15 U.S.C. 1681).

(11) Federal Wiretapping Act (18 U.S.C.).

(12) Gramm-Leach-Bliley Act.

(13) Title 28 of the U.S. Code.

(14) Chapter 35.20 RCW Municipal courts.

(15) Title 2 RCW Courts of records.

(16) Title 3 RCW District courts/courts of limited jurisdictions.

(17) Title 4 RCW Civil procedures.

(18) Taylor vs. Taintor.

(19) Washington criminal justice training commission use of force continuum.

#### NEW SECTION

**WAC 308-19-320 Minimum education requirements for bail bond recovery agents.** All applicants for a bail bond recovery agent license or endorsement shall have a minimum of a high school education or GED or a minimum of three years of full-time, verifiable experience in the bail bond industry.

AMENDATORY SECTION (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-400 ((What is a)) Brief adjudicative proceeding((?)).** The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request, and/or at the discretion of the director pursuant to RCW 34.05.482, for the categories of matters set forth below. Brief adjudicative proceedings will be limited to a determination of one or more of the following issues:

(1) Whether an applicant for a license meets the minimum criteria for a license to practice as a bail bond recovery agent, bail bond agency, qualified agent, branch office or bail bond agent in this state and the department proposes to deny the application;

(2) Whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the department;

(3) Whether an education course or curriculum meets the criteria for approval when approval by the department is required or authorized by statute or rule;

(4) Whether a license holder requesting renewal has submitted all required information and whether a license holder meets minimum criteria for renewal; and

(5) Whether a license holder has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-410** (~~What~~) **Records** (~~are~~) **used in a brief adjudicative proceeding** (~~(?)~~). (1) The preliminary record with respect to an application for an original or renewal license or for approval of an education course or curriculum shall consist of:

(a) The application for the license, renewal, or approval and all associated documents;

(b) All documents relied upon by the department in proposing to deny the license, renewal, or approval; and

(c) All correspondence between the applicant for license, renewal, or approval and the department regarding the application.

(2) The preliminary record with respect to determination of compliance with a previously issued final order or agreement shall consist of:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the department regarding compliance with the final order or agreement; and

(d) All documents relied upon by the department showing that the license holder has failed to comply with the previously issued final order or agreement.

(3) The preliminary record with respect to the determination of nonpayment or default by the license holder on a federally or state-guaranteed educational loan or service-conditional scholarship shall consist of:

(a) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed educational loan or service-conditional scholarship; or

(b) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-420** (~~How is~~) **Conducting a brief adjudicative proceeding** (~~(conducted?)~~). (1) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the director. The presiding officer for brief adjudicative proceedings shall not have personally participated in the decision, which resulted in the request for a brief adjudicative proceeding.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ department expertise as a basis for the decision.

(6) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.

**AMENDATORY SECTION** (Amending WSR 00-01-061, filed 12/13/99, effective 1/13/00)

**WAC 308-19-430 False or misleading advertising.** (~~(1) The department has authority to discipline bail bond agents for advertising that is false, fraudulent or misleading, RCW 18.185.110(5). Every advertisement by a licensee that solicits or advertises business shall contain the name of the business exactly as stated on the bail bond agency license, the physical address of the business as stated on the bail bond agency license and, the bail bond agency license number. For purposes of providing the business name and telephone number only, single line telephone directory listings are not required to include the license number.~~)

(2) ~~No bail bond agency shall use fictitious names in any advertising, or telephone directory.~~ (1) Every advertisement by a licensee that solicits or advertises business shall contain the name of the business exactly as stated on the bail bond agency license, and the physical address of the business as stated on the bail bond agency license, and the bail bond agency license number. A licensed bail bond agency may advertise under a registered trade name of the licensee provided that the registered trade name is stated exactly as documented with the state of Washington master license service. Licensees under this chapter must notify the department in writing, of any registered trade names intended for use in future advertising.

(2) Telephone book directory listings that are for the purpose of providing the business name, address, and telephone number only, are not required to include the license number.

(3) The department has authority to discipline bail bond agents for advertising that is false, fraudulent or misleading, RCW 18.185.110(5) and 18.235.130(3).

**NEW SECTION**

**WAC 308-19-445 Contract requirements between the bail bond agent and the bail bond recovery agent.** The purpose of the contract as required in RCW 18.185.270 is to provide information to the public and law enforcement officers to clarify authority and to identify the parties involved during the act of locating and apprehending a fugitive. The contract is to administrate the transfer of information regarding the identity of the fugitive.

(1) There shall be an individual contract on a form provided by the department between the bail bond agent and the bail bond recovery agent for each fugitive.

(2) A bail bond agent shall provide a bail bond recovery agent a copy of each individual contract on a form provided by the department.

(3) The contract form provided by the department shall not prevent a bail bond agent or a bail bond recovery agent

from having additional contracts or agreements for conducting the course of their business transaction.

(4) The bail bond agent shall provide to the bail bond recovery agent a photograph of the fugitive if one is available.

(5) The original signed contract shall be kept by the bail bond agency for at least three years and be made available upon request by the department.

(6) Facsimile signatures shall be as effective as if originals.

#### NEW SECTION

**WAC 308-19-450 Planned forced entry—Procedure requirements.** When the apprehension of a fugitive defendant meets the definition of RCW 18.185.010(12) Planned forced entry, the bail bond recovery agent shall follow the procedure requirements in RCW 18.185.300.

In addition to the minimum notification requirements of RCW 18.185.300, the notification to law enforcement must provide any prior known risk factors of which the bail bond recovery agent is aware including knowledge regarding any warrants.

#### NEW SECTION

**WAC 308-19-455 Bail bond recovery agent badge.** The approved badge for bail bond recovery agents is a round gold star burst with a round blue ribbon with gold letters stating bail bond recovery agent. The center of the badge displays a picture of the liberty bell and lady justice. If the license number is attached beneath the badge, the department issued license number shall be used.

#### NEW SECTION

**WAC 308-19-460 Firearms certification procedure through criminal justice training commission.** Individuals licensed as a bail bond recovery agent who carry a firearm while performing the duties of a bail bond recovery agent shall be required to successfully complete a prescribed course of instruction from a certified instructor of the Washington State Criminal Justice Training Commission located at 19010 1st Avenue South, Burien, Washington 98140 - Telephone: 206-835-7300.

### WSR 05-04-108

#### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Order 04-14—Filed February 2, 2005, 10:11 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 04-23-042.

Title of Rule and Other Identifying Information: Amendment to chapter 173-503 WAC, Lower and Upper Skagit water resources inventory area (WRIA 3 and 4).

Hearing Location(s): **Darrington**, on March 8, 2005, at 7:00 p.m., at the Darrington Community Center, 570 Sauk

Avenue; at **Bellingham**, on March 9, 2005, at 1:00 p.m., at the Bellingham Public Library, Fairhaven Branch, Northwest Room, 1117 12th Street; and at **Mt. Vernon**, on March 9, 2005, at 7:00 p.m., at the Skagit Station Community Room, 105 East Kincaid Street, Suite 101.

Date of Intended Adoption: April 30, 2005.

Submit Written Comments to: Geoff Tallent, Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, e-mail gtal461@ecy.wa.gov, fax (425) 649-7098, by March 18, 2005.

Assistance for Persons with Disabilities: Contact Christine Corrigan by February 23, 2005, TTY (800) 833-6388 or (360) 407-6607.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments would reserve a limited amount of ground water for future domestic uses and the human health requirements of businesses. In addition, a reservation of water will be provided for future livestock watering. The amendments also establish closures for certain tributaries, and clarify how future water right permits may be obtained. The stream flows set in the current rule would not be altered, nor would the current maximum water allocation limits for the Skagit River basin.

Reasons Supporting Proposal: Minimum instream flows established in the current chapter 173-503 WAC create a water right with a priority date as of the date the rule was established (April 14, 2001). All water rights, including permit-exempt groundwater withdrawals under RCW 90.54-050, are junior in priority date to the instream flow and may be subject to interruption when instream flows are not met. A rule amendment is necessary to create a new administrative framework to allow new domestic water uses and limited stock watering, including those uses exempt from water right permitting, be used without interruption from the senior instream flow right. This is done in support of the goal of RCW 90.54.020(5) which requires that adequate and safe supplies of water be preserved and protected in potable conditions to satisfy human needs.

Statutory Authority for Adoption: Chapter 90.54 RCW, Water Resources Act of 1971; chapter 90.22 RCW, Minimum water flows and levels; chapter 173-500 WAC, Water resources management program; chapter 173-503 WAC, Instream resources protection program—Lower and Upper Skagit water resources inventory area (WRIA 3 and 4).

Statute Being Implemented: Chapters 90.22, 90.44, and 90.54 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Geoff Tallent, Northwest Regional Office, Department of Ecology, (425) 649-4318; Implementation and Enforcement: Dan Swenson, Northwest Regional Office, Department of Ecology, (425) 649-7270.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

## Small Business Economic Impact Statement

Prepared by: Washington State Department of Ecology  
(Pub. No. 0511004) February 2005.

**BACKGROUND:** The Washington State Department of Ecology's (ecology) water resources program is proposing to amend an instream resources protection and water resources program for the Skagit River basin to:

- Retain perennial rivers, streams, and lakes in the Lower and Upper Skagit River basin with instream flows and levels necessary to protect and preserve instream values, and instream flows. Closures are proposed for specific water sources.
- Provide for an adequate and safe supply of potable water to satisfy the domestic needs of households and small businesses and for stockwatering via the establishment of two reservations of water.
- Clarify ecology's policies to guide the protection, utilization and management of Skagit River basin surface water and interrelated groundwater resources for use in future water allocation decisions.

The Skagit River basin is designated as Water Resource Inventory Areas 3 and 4 (WRIA 3 & 4) in chapter 173-500 WAC. The existing rule is chapter 173-503 WAC. Ecology is developing and issuing this small business economic impact statement (SBEIS) as part of its rule adoption process. It is not legally resolved if an SBEIS is required for this rule making pursuant to chapter 19.85 RCW. However, ecology elected to perform an SBEIS and will use the information developed in the SBEIS to ensure that the proposed rule is consistent with legislative policy. Moreover, the existing rule has been challenged in *Skagit County v. Washington State Department of Ecology* based, at least in part, on the fact that an SBEIS was not completed during the original rule making. Ecology recognizes that conducting an SBEIS is a faster and more cost-effective approach as part of this rule-making amendment than continuing litigation over whether an SBEIS was or is necessary.

**DESCRIPTION AND PURPOSE OF THE SBEIS:** The objective of this SBEIS is to identify and evaluate the various requirements and costs that the proposed rule might impose on business. In particular, the SBEIS examines whether the costs on businesses that might be imposed by the proposed rule impose a disproportionate impact on the state's small businesses. Through this examination, ecology also examines the expected impacts from the existing instream flows that remain in this rule. The specific purpose/required contents of the SBEIS is in RCW 19.85.040.

#### **1. DISCUSSION OF COMPLIANCE COSTS FOR WRIA 3&4 BUSINESSES**

**INTRODUCTION:** Existing chapter 173-503 WAC, Instream resources protection program—Lower and Upper Skagit water resources inventory area (WRIA 3 and 4) is the subject of this rule amendment. The evaluation of the impacts of the proposed rule is based on analysis and comparison of water right management before and after the effective date of the rule. The current water right administration is based on an extensive and complex legal and administrative framework and existing chapter 173-503 WAC. The frame-

work includes instream flows, administrative procedures for applications for both new water rights and changes to exiting water rights, and the use of water by permit-exempt wells (RCW 90.44.050). Implementation of chapters 90.22 and 90.54 RCW are also part of this legal baseline. In proposing reservations of water, and closing certain tributary basins, the rule amendment creates new conditions that must be considered when making future water right decisions. A brief description of compliance requirements is provided below. A detailed description of water management under the existing and proposed rules can be found in Appendix B.

**WATER RIGHT ADMINISTRATION UNDER THE RULE:** The proposed future water right management program will establish tributary subbasins and reserve specific quantities of groundwater in each subbasin, for the year-round future domestic uses of households and businesses. The rule also closes certain tributary basins to future appropriations, sets a reservation for future stockwatering and establishes eligibility conditions for use of the reservations. Expected impacts to water management include the following:

*Surface Water:* For basins not subject to closures, the decision process will be the same as prior to the rule amendment. Ecology will condition a water right in such a way that flows are protected and a permit would be approved granting an interruptible right. Under the proposed rule, all new surface water rights, that do not use the reservations as their source, will continue to be "junior" to the instream flow levels in the rule and will be required to stop withdrawing water when minimum flows are not met in the surface water source. In general, this is not likely to represent a significant change for future proposed surface water withdrawals.

Applications for new consumptive surface water rights from closed sources would be denied, unless the applicant proposes, and ecology accepts, mitigation of the water use. If the basin is closed for an entire year, then mitigation is possible but generally not practical. The use may also be approved if it is "clear that overriding considerations of the public interest will be served," RCW 90.54.020 (3)(a).<sup>1</sup> For areas currently administratively closed under ecology's surface water source limitations (SWSL) list, this would represent no change from the current situation. For areas that are not currently closed, this may represent a change because applications for new surface water rights would be denied unless impacts on instream flows can be offset.

*Groundwater:* The decision process is the same as prior to the rule. Groundwater applications in hydraulic continuity with the Skagit River would still be subject to the instream flows unless they are eligible for the domestic reservation. Applications for new consumptive ground water rights from closed sources would be denied, unless the applicant proposes, and ecology accepts, mitigation of the water use or the applicant shows that the withdrawals will not affect surface water. If the basin is closed for an entire year mitigation is possible but not generally practical. A use may be approved if it is "clear that overriding considerations of the public interest will be served," RCW 90.54.020 (3)(a). For areas currently administratively closed under ecology's SWSL list, this would represent no change from the current situation. However, for areas that are not currently closed, this may represent a change because applications for new ground water

rights would be likely denied by ecology unless impacts could be completely mitigated.

In the amended rule, based on the hydrogeology of the basin, and the location and depth where groundwater withdrawals generally occur, future groundwater withdrawals have a high likelihood of capturing water that would result in impacts to surface water flows and levels in the Skagit River basin. The rule does not create the need for, and does not change the standards for, the analysis regarding whether these impacts cause impairment. This may result on an impact to future users of new wells in the basin. For example, in basins not subject to closures, businesses that initiate new agricultural, commercial, or manufacturing projects relying on wells for process water will be required to suspend water use during periods of low flows, develop storage mechanisms or to develop mitigation strategies acceptable to ecology that allow them to mitigate their impacts. This is the case under the current rule and does not represent an impact of the rule amendment. Businesses in closed basins will be required to mitigate their impacts.

**Permit Exempt Groundwater:** A reservation of ground water for future domestic uses provides a management framework for these types of withdrawals. One significant factor influencing the impacts of the rule is whether the local governments implement an administrative action or ordinance to effectuate the reservation. If an administrative action or an ordinance is not put in place, the reservation will not be available to new uses until such time as these actions are taken. The analysis below assumes the local governments act to make the reservations available within their jurisdictions. Appendix C discusses the case where action is not taken.

For businesses interested in using an exempt well, there would be several alternatives. Applicants could solicit a hydrogeologist to certify that a well would not cause impairment of a water right in areas where hydraulic continuity between the surface water and groundwater is not likely. This would allow an applicant to develop a well as though the rule was not in place, but at the additional cost of the analysis. For some wells in basins that drain groundwater to saltwater bodies, this cost would likely be very small and is currently the case. For wells that would be drilled in areas where they are likely to be in hydraulic continuity with closed basins or streams with instream flows, and impairment would result, options include obtaining water from the reservation or accepting an interruptible water right with corresponding curtailment or with storage.

The reservation requires that an applicant be located more than five hundred feet from an existing water system. If an applicant is closer to the water system than this, they will be required to connect to the system when the connection can be made in a timely and reasonable manner. This may result in increased costs, including connection charges, construction charges and monthly water rates.

**Changes or Transfers of Water Rights:** Existing water rights will continue to be changed or transferred as permitted by chapters 90.03 and 90.44 RCW and the process is the same as before the proposed rule amendment. Changes for surface water rights are still evaluated considering the instream flow right. Requirements related to changes in the

point of diversion from a surface point to a ground water point, if it is from the same water source, is the same in the existing rule and the proposed rule amendment. Transfers that are restricted because they are not in the same source will also be treated the same after the rule amendment as under the existing rule. Transfers of water rights may become part of mitigation strategies used by businesses to offset their new water needs.

**Reservations of Water:** The reservations of water, use of water under the reservations, and associated conditions for that use, are all part of the rule proposal. In large measure, the domestic reservation will allow residential and some business development to continue as before with the benefit of having a continuous, reliable source of water during low flow periods, except for a few restrictions. These restrictions include a limit on outside lawn watering, a requirement to connect to public water systems under certain circumstances, and the finite quantity of the reservation. Domestic water use must also meet efficiency standards and outdoor uses will be limited.

**Closures of Water Sources in WRIA 3 and 4:** The rule would include the current limitations and administrative closures for surface water sources, and add to them for applicants who cannot access the reservations. Ecology anticipates that applications for consumptive uses from closed sources will be denied unless the applicant can acceptably mitigate for the impacts (the same as prior to adoption of the rule) or take advantage of the reservation.

**IMPACTS TO BUSINESSES IN WRIA 3 AND 4:** Several potentially significant impacts to businesses in WRIA 3 and 4 are likely and are described below:

**1. Closures in subbasins:** Some subbasins that are currently open to new interruptible withdrawals will be closed. For other than domestic uses (human needs of a household or business) and stockwatering authorized under the reservations, this requirement will generally eliminate new water withdrawals. New withdrawals may still be available when nonconsumptive, fully mitigated, or from groundwater shown to not affect surface water. In these areas, water uses not eligible for the reservation will be required to obtain water from an existing water purveyor, through leases or transfers or through other methods. Domestic uses will be allowed in these closed areas through the proposed reservation but only for human needs.<sup>2</sup> For those businesses that require water for irrigation or for agricultural/industrial processes, this might be an impact on future withdrawals since the closure will result in continual mitigation, not just during low flow periods as was the case under the previous rule. This could require water leasing or transfers of existing water rights or could lead to a change in the proposed location of a commercial industry or agricultural use. The magnitude of the impact will be determined by the proposed location and use of future water permit applicants. For those businesses that need water for toilets, washrooms, etc., the establishment of the reservation should be a benefit (see below). The East Fork Nookachamps basin will be opened to a limited amount of new water use. This may be a net benefit to some water users.

**2. Creation of the reservations:** Currently any groundwater withdrawal, including those via exempt wells in conti-

nity with the Skagit River or its tributaries, is legally required to curtail use during low flow periods. Under the reservation, the future domestic needs of some businesses could be met even during low flow periods. However, only domestic uses will be allowed year around. For businesses that would typically use a relatively small amount of process water (up to 5,000 GPD), an interruptible right could still be available in an open basin, and domestic needs of the business could be met from the reservation. This process water use would not be allowed in a closed basin. For businesses developing land for residential construction or needing domestic water only, the ability to use water during low flows should be a net benefit from this rule making.

The creation of the stockwatering reservation will likely provide year-around access to water for new stockwatering uses, except for feedlots and other activities which are not related to normal grazing uses. Currently, water accessed via permitted or permit-exempt wells are legally required to curtail use during low flows. The change in the rule should be a net benefit to stock-related businesses.

**3. Connection requirements:** Applicants within a public water system service area who desire water from the reservation or an interruptible water right will be required to connect to a public water system if connection is timely and reasonable. In general, this will impact those desiring to use water for domestic needs. However, current users that would use a permit exempt well are legally required to curtail use during low flows. It is unlikely most businesses would consider the current water supply condition to be a sufficient water source and so they would likely have been required to have back-up storage or mitigate in some other way as a consequence of instream flows. As such, this connection requirement is unlikely to impact many businesses. Moreover, the Skagit County critical areas ordinance requires connections under specific conditions. An exception might be a business that doesn't require water during low flow periods, but this is likely to be a small subset of future businesses in the watershed.

**4. Impacts to businesses depending on instream flows:** As mentioned above, a reservation is to be created from which those seeking a domestic water source and meeting the requirements will be able to obtain water in the future. Accessing the reservation will allow entities to use water for domestic purposes during low flow periods. This will slightly reduce the amount of water in the river during these low flow periods and could potentially indirectly impact instream benefits such as ecosystem services, recreation, etc. Offsetting this will be reduced future withdrawals in closed basins. For businesses that provide guide services such as rafting, fishing and bird watching, or those dependent on dilution for waste removal, there could be a very minor impact. Discussions with firms that use the river indicate little, if any, impact from the proposed flow reduction from the reservation.

**COST TO FIRMS AND REQUIRED PROFESSIONAL SERVICES:** Some costs are required of firms required to comply. The following cost and professional services analysis (as required in chapter 19.85 RCW) is provided:

**Reporting and Recordkeeping:** No additional reporting or record keeping required.

**Additional Professional Services:** Closures in basins may lead some to transfer water rights or lease from others. This will likely require increased use of professionals including hydrogeologists, biologists, engineers, and attorneys. The exact requirements would depend on the basin, change, etc. Other mitigation options might involve construction of storage tanks and associated piping requiring engineering design services. Some may save the costs associated with these services if access to the reservation allows them to avoid these requirements. Anyone required to connect to a public water system would likely require additional engineering design and surveying.

**Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** Increased equipment associated with pipeline and tank construction may be required for mitigation options but is included in the descriptions below. Some may save these same costs if they can make use of the uninterruptible reservations.

**Other Compliance Requirements:** Basin closures will impact those that would have applied for an interruptible water right. In general, it is difficult to determine the cost impact of this requirement since it depends on the number of surface water withdrawals or wells proposed to be installed in the closed basins, required quantity of water, and options and prices for purchase or leases of existing rights. For businesses that require water for location specific activities, this might change the highest-valued use of the land. Water users in these locations are already required to curtail use during low flow periods making irrigation difficult without transfers of uninterruptible rights or the expense of supplemental storage. Evaluation of past permitted uses by businesses indicates that the predominant uses are for multiple domestic systems and irrigation.<sup>3</sup> In these areas, domestic uses can still be served by individual wells through the reservation. Future irrigation uses would likely not be impacted too much under the proposed rule amendments since permits under the existing rule would already be interruptible during what is likely the most important irrigation periods. The rule will simply preclude use during the other periods when irrigation water is not as valuable.

Creation of the reservation should be a net benefit for most businesses that need water for human domestic needs. Water that is not available during low flow periods is damaging to any business that needs it for its own use or are looking to develop residential properties. In order to have water available during low flow periods under the existing rule, water would have to be obtained through leases, transfers or on-site storage. On-site storage for a low flow period can cost approximately \$25,000-\$30,000<sup>4</sup> and the proposed rule amendments will allow this cost to be avoided for those that utilize the domestic use reservation. The stockwatering reservation could yield the same avoided cost.

Connection requirements could be a cost to some businesses. However, as mentioned previously, most businesses that require reliable water supply for domestic uses are likely to already connect, have a well and on-site storage or obtain water in other ways. The cost of connection to an existing system can range from \$8,000 to \$35,000 depending on the complexity. However, some of that cost (all, in some cases) will likely be returned via latecomer agreements. A well with

storage can easily cost \$40,000 to \$50,000 depending on the depth of the well, geology and tank type making connecting to the system the less expensive alternative.

For those that do not require water for domestic needs during low flow periods, an interruptible right in open subbasins remains an option under both the current and proposed rule. In closed subbasins, where interruptible rights would not be available under the proposed rule, a reservation may provide for domestic needs. For those requiring more than domestic uses in closed basins, purchase or lease of existing water, construction of a deep well or another option would be required.

**2. REVENUE IMPACTS AND DISTRIBUTION OF COSTS**

**INTRODUCTION:** RCW 19.85.040 requires that additional analysis of impacts be provided. Specifically, the analysis should include whether compliance with this rule will cause businesses to lose sales or revenue and whether the proposed rule will have a disproportionate impact on small business. It is the purpose of this section to evaluate the proposed rules to consider these requirements.

**REVENUE IMPACTS:** As noted previously, some firms could experience an increased cost associated with this rule. For those businesses located in subbasins closed by the rule, the cost of obtaining future water in another way may be an impact. Those with existing water rights will not be impacted by these closures. Those required to connect to water systems to obtain new or additional water could also experience an increased cost although this is likely to be a limited number of entities since connection may already be the preferred alternative. To the extent that increased costs yield increased prices for firms, gross revenues could be reduced. Offsetting this is the net benefit to firms that will now be able to get water during periods of low flows via the reservation and avoid expensive on-site storage or other mitigation alternatives. This will likely lower costs to some potential water users and to that extent, may increase revenues.

**DISTRIBUTION OF COMPLIANCE COSTS:** The distribution of compliance costs can be analyzed by evaluating previous water right permits and existing business-owned developable parcels. In the past, permitted business water uses have been predominately small firms as defined by chapter 19.85 RCW.<sup>5</sup> However, all permits issued previously except one were issued prior to the existing instream flow rule. Permitted uses must now restrict use or mitigate during low flow periods making them relatively less desirable than before the existing rule was put in place. Therefore, the historical rate of permits may overstate the expected number of future permits. However, it is reasonable to anticipate that a majority of future applications will also be from small firms.<sup>6</sup> The reservation will yield a net benefit to any business-owned parcels in the watershed since on-site storage will no longer have to be provided. The exact amount will depend on the size of parcels, ownership, firm size and zoning and yields the distribution of costs in Table 2.1.

**Table 2.1. Distribution of Compliance Benefits (Avoided Costs) for Business-Owned Exempt Well Development<sup>7</sup>**

	Number of Firms <sup>8</sup>	Average Employment (No. of Employees)	Average Benefit per Employee <sup>9</sup> (\$1000)	Median Benefit per Employee (\$1000)
Small Firms	45	6-15	497.0	55.5
Large Firms	12	273-699	16.4	16.4

The numbers in Table 2.1 represent the average avoided storage costs (net benefits) for small and large firms. As can be seen the median avoided cost for small firms exceeds that for large firms by a factor of 3.4. It is important to note that the large avoided costs is based [on] the assumption of full development of all parcels. If a firm (small or large) developed only a portion of their parcels, then the avoided cost would be smaller. Regardless, the data suggests that the impacts of the proposed rule will be disproportionately beneficial to small businesses.

**CONCLUSIONS:** Some firms located in closed subbasins may experience a cost impact from the proposed rule and this will likely be disproportionately borne by small firms given the past history of water rights issued predominately to small firms. However, all firms of all sizes that elect to use the reservation are likely to experience a negative cost (net benefit) from the rule and it appears the benefit will disproportionately benefit small businesses.

**3. ACTIONS TAKEN TO REDUCE THE IMPACT ON SMALL BUSINESS**

In its pending Superior Court challenge to the current rule, Skagit County alleges that ecology should have conducted a small business economic impact statement when proposing instream flows for the Skagit River. Ecology continues to dispute this assertion. Regardless, in an exercise of caution, and in an attempt to minimize the issues that may arise if this rule making is challenged, ecology, in evaluating the instream flow impacts as part of this SBEIS examination finds reason to believe that the impacts on small businesses might have been disproportionate in the current rule. The exact impact is difficult to determine, but based on preliminary analyses in other basins and what is known about the existing rule, it appears likely that, in hindsight, the existing rule had disproportionate impacts on small businesses that should be addressed in this rule making. These potential impacts are mitigated to some extent by the proposed amendments. In general, the disproportionate benefits for exempt well development found in Table 2.1 would simply be considered the costs of the existing rule to exempt well development since the rule created the need for storage or other mitigation alternatives evaluated previously. The estimated impacts of instream flow requirements on permit exempt uses in WRIA 3 and 4 would be as provided in Table 3.1.

PROPOSED

**Table 3.1. Distribution of Compliance Costs for Business-Owned Exempt Well Development for the Existing Rule (chapter 173-503 WAC)**

	Number of Firms <sup>10</sup>	Average Employment (No. of Employees)	Average Cost per Employee <sup>11</sup> (\$1000)	Median Cost per Employee (\$1000)
Small Firms	45	6-15	(\$497.0)	(\$55.5)
Large Firms	12	273-699	(16.4)	(\$16.4)

As can be seen in Table 2.1, it appears likely that most businesses will benefit from the proposed rule and that small businesses will benefit disproportionately. There are no additional recordkeeping or reporting requirements or inspections and compliance timetables and fine schedules are not altered by the proposed rule amendment.

**4. HOW WAS SMALL BUSINESS INVOLVED IN THE DEVELOPMENT OF THIS RULE?**

The proposed rule has been developed relatively quickly under a court order and is based on conversations during the past two years with governmental and tribal stakeholders. After the filing of the CR-102, official public hearings will be held to consider the rule and allowing small businesses to provide additional input.

**5. LIST OF INDUSTRIES REQUIRED TO COMPLY**

No industries are required to comply with the proposed rule amendment unless they seek to obtain new water rights in the covered area. However, requirements affecting water use are likely to translate into changes in property values based on impacts to the highest valued uses in the watershed. As such, existing business owners of undeveloped property are likely to be the industries that will be required to "comply" either directly in terms of attempting to acquire water or indirectly in terms of changes in asset values. Therefore, the following list is provided indicating standard industrial codes (SIC) codes for existing developable properties in the Skagit watershed.<sup>12</sup>

**Table 5.1. Industries Likely Required to Comply with the Rule**

SIC Code	Description	SIC Code	Description
0181	Ornamental Nursery Products	5143	Dairy Products, nec. dried or canned
0191	General Farms, Primarily Crop	5148	Fresh fruits and vegetables
0241	Dairy Farms	5154	Livestock
0652	Unassigned	5172	Petroleum products, nec.
0783	Ornamental Shrub and Tree Services	5191	Farm supplies
1521	Single-family housing construction	5193	Flowers and florists' supplies
1611	Highway and Street Construction	5221	Unassigned
1794	Excavation work	5261	Retail nurseries and garden stores
2011	Meat packing plants	5271	Mobile Home Dealers
2015	Poultry Slaughtering and Processing	5399	Misc. general merchandise stores

SIC Code	Description	SIC Code	Description
2411	Logging	5431	Fruit and vegetable markets
2421	Sawmills and planing mills, general	5499	Miscellaneous food stores
2441	Nailed Wood Boxes and Shook	5541	Gasoline service stations
2653	Corrugated and solid fiber boxes	5941	Sporting goods and bicycle shops
2951	Asphalt Paving Mixtures and Blocks	6021	National commercial banks
4011	Railroads, line-haul operating	6162	Mortgage banks and correspondents
4213	Trucking, Exceptional	6515	Mobile home site operators
4222	Refrigerated Warehousing and Storage	6531	Real estate agents and managers
4225	General Warehousing and Storage	6552	Subdividers and developers, nec.
4492	Towing and Tugboat Service	6792	Oil royalty traders
4812	Radiotelephone Communications	7032	Sporting and recreational camps
4899	Communication Services, nec.	7033	Trailer parks and campsites
4924	Natural Gas Distribution	7992	Public golf courses
4925	Mixed, manufactured or liquefied petroleum gas production	7999	Amusement and recreation, nec.
4941	Water supply	8322	Individual and family services
5031	Lumber, plywood, and millwork	8641	Civic and social organizations
5032	Brick, stone and related materials	8661	Religious organizations
5099	Durable goods, nec.		

Note: Due to size limitations relating to the filing of documents with the code reviser, the SBEIS does not contain the appendices that further explain ecology's analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request.

- <sup>1</sup> This is also true in basins not subject to closure.
- <sup>2</sup> Currently, permit-exempt well users can use up to 5,000 GPD during all periods except low flow periods assuming they meet the other requirements of chapter 90.44 RCW.
- <sup>3</sup> Since 1985, ecology annually issues approximately two permits to business entities with the majority of those issued prior to 1992. All but one permit was issued prior to the existing rule.
- <sup>4</sup> Cost assumes two-15,000 gallon underground potable-water rated tanks.
- <sup>5</sup> Since 1985, approximately thirty-seven permits have been issued to businesses or private owners for irrigation. Of those permits only two have been for large farms.
- <sup>6</sup> As noted previously, no cost is provided due to the situation specific nature of permitted water uses.
- <sup>7</sup> Costs assume full development of all business-owned developable parcels.
- <sup>8</sup> The total number of firms represents all businesses located in the county listed as owner of the parcel and where employment security data could be located.
- <sup>9</sup> Cost comparisons use the largest 10% of firms required to comply.

PROPOSED

<sup>10</sup> The total number of firms represents all businesses located in the county listed as owner of the parcel and where employment security data could be located.

<sup>11</sup> Cost comparisons use the largest 10% of firms required to comply.

<sup>12</sup> The table was constructed based on data provided by the Skagit County assessor and by the Washington State Employment Security Department.

A copy of the statement may be obtained by contacting Geoff Tallent, Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, phone (425) 649-4318, fax (425) 649-7098, e-mail gtaal461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Geoff Tallent, Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, phone (425) 649-4318, fax (425) 649-7098, e-mail gtaal461@ecy.wa.gov.

January 27, 2005

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 173-503-020 Purpose.** The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Lower and Upper Skagit water resources inventory area (~~and~~) including the Cultus Mt. Tributaries with instream flows and levels necessary to provide for the protection and preservation of wildlife, fish, scenic, aesthetic, and other environmental values, and navigational values, as well as recreation and water quality.

Chapter 90.54 RCW (Water Resources Act of 1971) requires that utilization and management of waters of the state be guided by a number of fundamentals, including:

Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial. (RCW 90.54.020(1))

The quality of the natural environment shall be protected and, where possible, enhanced, as follows:

Perennial rivers and streams of the state shall be retained with base flows necessary to provide for the protection and preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(a))

This chapter creates both a reservation of adequate and safe supplies of potable water to satisfy human domestic needs and a reservation for stock watering needs. It establishes closures for tributaries, and sets forth conditions for future water right permitting.

Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(b))

In administering and enforcing this regulation, the department's actions shall be consistent with the provisions of chapter 90.54 RCW. In addition, all agencies of state and local government, including counties and municipal and public corporations, shall, whenever possible, carry out powers vested in them in manners which are consistent with the provisions of this chapter (RCW 90.54.090).

#### NEW SECTION

**WAC 173-503-025 Definitions.** For the purposes of this chapter, the following definitions shall be used:

"**Allocation**" means the designating of specific amounts of water for specific beneficial uses.

"**Appropriation**" means the process of legally acquiring the right to use specific amounts of water for beneficial uses, as consistent with the ground and surface water codes and other applicable water resource statutes. This term refers to both surface and ground water right permits and to ground water withdrawals otherwise exempted from permit requirements under RCW 90.44.050.

"**Consumptive use**" means a use of water that reduces the amount of water in the water source.

"**Department**" means the Washington state department of ecology.

"**Domestic water use**" means, for the purposes of administering WAC 173-503-073 and 173-503-074, potable water to satisfy the human domestic needs of a household or business, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental uses. Outdoor watering shall be limited to an area not to exceed a total of 1/12th of an acre, or three thousand six hundred thirty square feet, for all outdoor uses for each individual domestic water use. Under all circumstances, total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre.

"**Instream flow**" means a stream flow level set in rule that is required to protect and preserve fish, wildlife, scenic, aesthetic and other environmental values, and navigational values. The term "instream flow" means a base flow under chapter 90.54 RCW, a minimum flow under chapter 90.03 or 90.22 RCW, or a minimum instream flow under chapter 90.82 RCW.

"**Mitigation plan**" means a scientifically sound plan voluntarily submitted by a project proponent to offset the impacts of a proposed water use and approved by the department. A mitigation plan can be submitted to the department for a stream, basin, reach, or other area. A mitigation plan must show that the withdrawal with mitigation in place will

not impair senior water rights, including instream flow rights, nor will the withdrawal or mitigation diminish water quality. The plan must provide mitigation for the duration of the water use as needed.

"**Nonconsumptive use**" means a use of water that does not reduce the amount of water or the quality of water in the water source.

"**Permit-exempt withdrawals**" or "**permit exemption**" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but which is otherwise subject to the ground water code.

"**Public water system**" means any system established under RCW 43.20.260 which provides water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. This term includes group domestic systems.

"**Reservation**" means an allocation of water for future beneficial uses. The priority date of a given allocation from the reservation is the same as the effective date of the reservation.

"**Stream management unit**" means a stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular instream flow level applies. Most of these units contain a control station.

"**Subbasin management unit**" means a stream segment or basin, including ground water hydraulically connected to the surface water, defined for the purposes of administering the reservation established in WAC 173-503-073 and 173-503-074.

"**Timely and reasonable manner**" means potable water service can be provided by a purveyor within one hundred twenty days of a purveyor's written approval of the request for service, to a property located within the public water system and five hundred feet of the purveyor's water pipe line. The department may determine that water service is unreasonable if the applicant for service provides sufficient information to show that the cost of connection with an appropriate public water system would be more than twice the cost of an individual alternative source.

"**Withdrawal**" means the physical movement of ground water from a public ground water body for beneficial use, or the diversion or use of surface water from a public surface water body for beneficial use.

#### NEW SECTION

**WAC 173-503-051 Stream closures.** (1) The department determines that, based on historical and current low flows and uses, no water is available for year-round appropriation from the tributary subbasins of the Skagit River identified as closed in WAC 173-503-074. Therefore, the department closes those tributary subbasins identified as closed to any further consumptive appropriations. All unappropriated water within the closed subbasins is hereby appropriated for purposes of protecting and preserving fish and wildlife and other instream values, as of the date of this rule.

(2) Exceptions to the closures and instream flow requirements are provided in WAC 173-503-060, 173-503-073, 173-503-074 and 173-503-075.

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 173-503-060 ((Ground water.)) Future permitting actions.** ~~((If the department determines that there is hydraulic continuity between surface water and the proposed ground water source, a water right permit or certificate shall not be issued unless the department determines that withdrawal of ground water from the source aquifer would not interfere with stream flows during the period of stream closure or with maintenance of minimum instream flows. If such findings are made, then applications to appropriate public ground waters may be approved subject to the flows established in WAC 173-503-040(2).))~~ (1) Before the department can approve a water right application for a new public water system, the applicant must demonstrate that there are no other public water systems in the same proposed retail service area that can provide water in a timely and reasonable manner. If domestic potable water can be provided in a timely and reasonable manner by some other public water system, the department shall reject the water right application.

(2) Surface and ground water permits may be issued that are not subject to the instream flows established in WAC 173-503-040 and closures established in WAC 173-503-051 if any of the following situations apply:

(a) The proposed use is nonconsumptive, and compatible with the intent of this chapter.

(b) The water use qualifies for the reservations established in this chapter. The proposed use from the reservation must be consistent with all the conditions outlined in WAC 173-503-073 and 173-503-074 or WAC 173-503-075. If an application for water use from a reservation is approved, the department shall deduct the permitted amount from its record of water available from the reservation.

(c) The applicant elects to submit a scientifically sound mitigation plan and it is approved by the department. A mitigation plan may be approved if it can show that the withdrawal will not impair senior water rights, including instream flow rights, nor will the withdrawal or mitigation diminish water quality. If monitoring of a mitigation plan shows the mitigation is not effective, use of water under the permit shall then be subject to the instream flows. In the case of a closed basin the use shall cease until a more effective mitigation plan is put in place.

(d) A proposed ground water use will not impair senior water rights. Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, future ground water withdrawals have a high likelihood of capturing water that would result in impacts to surface water flows and levels in the Skagit River basin. Therefore, a ground water permit that is not subject to the instream flows or closures may only be approved if an applicant can demonstrate, through additional studies and technical analysis, and to the satisfaction of the department, that the proposed use will not cause impairment to existing water rights, including the instream flows set in this chapter.

(3) Surface and ground water permits may be issued in the East Fork Nookachamps, Gilligan, Salmon/Stevens, Upper Skagit, Middle Skagit, and Lower Skagit subbasins identified in WAC 173-503-074 that are subject to the instream flows and subject to the maximum water availability determination of two hundred cubic feet per second pursuant to WAC 173-503-050. The applicant must adequately demonstrate to the satisfaction of the department that the proposed withdrawal can be managed to avoid impairment of the instream flows established in WAC 173-503-040. The project proponent must also describe how their water needs will be met when water is curtailed. This option is not available for projects requiring a long-term, reliable and predictable water supply. The water right holder shall accept the risks associated with the interruption of supply when the applicable instream flows are not met.

(4) No right to withdraw, divert or store the public surface or ground waters of the Skagit River basin that conflicts with the provisions of this chapter will hereafter be granted, except in cases where such rights will clearly serve overriding considerations of the public interest, as stated in RCW 90.54.020 (3)(a).

(5) All future surface and ground water permit holders shall be required to install and maintain measuring devices (water source meters), in accordance with specifications provided by the department, and report the data to the department in accordance with the permit requirements. In addition, the department may require the permit holder to monitor stream flows and ground water levels.

(6) Any authorization for new beneficial uses must require development on a timeline that shows reasonable progress and due diligence.

#### NEW SECTION

**WAC 173-503-071 Lakes and ponds.** RCW 90.54.020 (3)(a) requires, in part, that the quality of the natural environment shall be protected, and where possible, enhanced, and lakes and ponds shall be retained substantially in their natural condition. Future withdrawals that would not be consistent with this requirement shall be denied.

#### NEW SECTION

**WAC 173-503-073 Domestic ground water reservation.** (1) The department has weighed the public interest supported by providing a limited amount of water for domestic uses, as defined in WAC 173-503-025, with the potential for negative impact to instream flow resources. The department finds that the public interest advanced by this limited reservation clearly overrides the small potential for negative impacts on instream resources. (RCW 90.54.020 (3)(a))

Based on this finding, the department hereby reserves specific quantities of ground water for each subbasin established in WAC 173-503-074, to provide adequate and safe supplies of water for year-round future domestic uses. This reservation of ground water is not subject to the instream flows established in WAC 173-503-040 or closures established in WAC 173-503-051. Use of the water under the reservation is available only if all the conditions set forth in this section are fully complied with.

(2) Conditions for use of the reserved domestic water are as follows:

(a) The ground water reservation shall be only for the purpose of domestic water uses, as defined in WAC 173-503-025. It is available to single or group domestic users exempt from the permitting process and to permitted public water systems, as outlined in WAC 173-503-060.

(b) This reserve of ground water shall be allocated based on the subbasin management units established in WAC 173-503-074.

(c) Domestic water use shall meet or exceed the local and state water use efficiency and conservation standards. Existing public water systems requesting water from the reservation for domestic use shall demonstrate, to the department's satisfaction, that conservation and efficiency measures have been successfully implemented in their existing system.

(d) This reservation shall only be applicable in areas where all of the following conditions exist:

(i) An ordinance or other administrative action is established by the appropriate city or county that provides that the same requirements as (a), (b), (c), (e), (f) and (g) of this subsection shall be conditions within a building permit or subdivision approval if the water adequacy finding for such permit or approval is based upon the reservation contained herein;

(ii) It shall be the responsibility of an applicant for a building permit or subdivision approval seeking water under the reservation to comply with the conditions in (a), (b), (c), (e), (f) and (g) of this subsection and all other conditions of this chapter. Once this chapter is adopted, the department will promptly notify the appropriate county or counties, water well contractors and the public of the restriction on future permitted and permit-exempt water withdrawals, availability of water from the reservation and the specific requirements that an applicant obtaining a building permit or subdivision approval must comply with; and

(iii) As part of an ordinance or other administrative action, the appropriate city or county acknowledges that withdrawals from the East Fork Nookachamps, Gilligan, Salmon/Stevens, Upper Skagit, Middle Skagit, and Lower Skagit subbasins identified in WAC 173-503-074, that are exempt from the requirements for a water right permit and that are not using water from this reservation, are interruptible and junior to the instream flows established in WAC 173-503-040, and furthermore acknowledges that an interruptible ground water withdrawal may not constitute evidence of an adequate water supply for year-round domestic water use for the purposes of obtaining a building permit or subdivision approval.

(e) A new water withdrawal under this reservation is not allowed in those areas where a public water system has been established, and where the connection can be provided in a timely and reasonable manner, as defined in WAC 173-503-025.

(f) Outdoor water use is limited to the watering of an outdoor area not to exceed a total of 1/12th of an acre for all outdoor uses under each individual domestic water use, as defined in WAC 173-503-025. Under all circumstances, total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre.

(g) The department reserves the right to require metering and reporting of water use for single domestic users, if more accurate water use data is needed for management of the reservation and water resources in the area of the reservation. Public water system providers will be required to meter, as consistent with the state department of health's requirements.

(3) The reservation is a one-time, finite resource. Once the reservation is fully allocated, it is no longer available. New water sources may be available only under the provisions in WAC 173-503-060, 173-503-081, 173-503-100 and 173-503-110.

The department shall notify the appropriate county, in writing, when it determines that fifty percent, seventy-five percent, and one hundred percent of the reservation for each subbasin management unit has been allocated. The department shall also issue a public notice annually in a newspaper of general circulation for the region that shows the amount of reserved water for each subbasin management unit that has been allocated, remains unallocated, and any subbasin management units that have been fully allocated and from which water is no longer available under this reservation.

(4) If a water use is not in compliance with any condition of this reservation, the department may take action consistent with WAC 173-503-090.

(5) If existing county and city land use decisions, including zoning changes and building permit and subdivision approvals, allow for uses inconsistent with this chapter or for increased densities that adversely affect small tributaries and other flow-sensitive areas, the department may limit or restrict the further use of the reservation. The department will promptly notify the appropriate county or counties, water well contractors and the public of any changes to use of the reservation.

(6)(a) A record of all ground water withdrawals from the reservation shall be maintained by the department. The record will readily show both the allocated and unallocated quantities of ground water that are in reserved status.

(b) The department may account for water use under the reservation based on the best available information contained in well logs, water availability certificates issued by the counties, water rights issued by the department, public water system approvals or other documents. When other sources of information are not readily available, the department may account for water use at a rate of three hundred fifty gallons per day (gpd) per residence or business. This figure may be adjusted down to one hundred seventy-five gpd if the residence or business is served by an on-site septic system. The department may revise its accounting based on actual measured water use if available, or other information.

(c) If a water user under this reservation subsequently abandons the withdrawal and notifies the department of the abandonment, the actual amount of water used and debited from the reservation for the abandoned use may be credited back to the reservation.

**NEW SECTION**

**WAC 173-503-074 Establishment of subbasin management units and reservation quantities by subbasin management unit.** The department hereby establishes the

following subbasin management units. The boundaries of the management units are shown on the maps in WAC 173-503-120. Table 1 shows the approximate location and maximum average daily use of reserved ground water that can be withdrawn for each management unit.

**Table 1**

Subbasin management unit *Denotes closed basin under WAC 173-503-051	Location Approximate point where the stream meets a connecting water body	Reservation quantity Maximum average daily use in gallons
Alder Creek*	NE 1/4, SW 1/4, Sec. 18, T35N, R7E (RM 41.7)	10,000
Anderson/Parker/Sorenson creeks*	Sec. 26, T35N, R5E (flows into slough on south side of Skagit River)	14,000
Careys Creek*	NE 1/4, SW 1/4, Sec. 14, T35N, R6E	4,500
Carpenter Creek*	NE 1/4, Sec. 30, T33N, R4E	6,000
Childs/Tank creeks*	Sec. 13, T35N, R5E (flows into Minkler Lake)	18,000
Coal Creek*	NW 1/4, SE 1/4, Sec. 21, T35N, R5E (flows into Skiyou Slough)	18,500
Cumberland Creek*	SW 1/4, SE 1/4, Sec. 14, T35N, R6E (RM 39.9)	1,000
Day Creek*	NE 1/4, Sec. 20, T35N, R6E	23,500
Fisher Creek*	NE 1/4, Sec. 30, T33N, R4E	2,500
Gilligan Creek	SE 1/4, SE 1/4, Sec. 27, T35N, R5E (RM 28.4)	10,000
Grandy Creek*	NE 1/4, SE 1/4, Sec. 15, T35N, R7E (RM 45.6)	30,000
Hansen Creek*	SE 1/4, Sec. 30, T35N, R5E (RM 24.2)	38,000
Jones Creek*	SE 1/4, NE 1/4, Sec. 17, T35N, R6E (RM 35.1)	14,000
Loretta Creek*	SW 1/4, Sec. 22, T35N, R6E	1,500
Mannser Creek*	SE 1/4, NE 1/4, Sec. 17, T35N, R6E	10,500
Morgan Creek*	NE 1/4, NE 1/4, Sec. 25, T35N, R5E (flows into slough on south side of Skagit River)	10,000
Muddy Creek*	SW 1/4, NW 1/4, Sec. 14, T35N, R6E (flows into Davis Slough)	7,000
Nookachamps Creek - East Fork	Sec. 10, T34N, R4E	12,000
Nookachamps Creek - Upper*	Sec. 10, T34N, R4E	8,500
O'Toole Creek*	NW 1/4, NW 1/4, Sec. 21, T35N, R7E (RM 43.6)	1,500
Red Cabin Creek*	NW 1/4, NW 1/4, Sec. 15, T35N, R6E (flows into Jims Slough)	5,000
Salmon/Stevens creeks	SE 1/4, SE 1/4, Sec. 28, T35N, R5E	3,500

PROPOSED

PROPOSED

Subbasin management unit *Denotes closed basin under WAC 173-503-051	Location Approximate point where the stream meets a connecting water body	Reservation quantity Maximum average daily use in gallons
Skagit - Lower	From the Skagit River at the east edge of Sec. 30, T35N, R5E downstream to the mouth	308,000
Skagit - Middle	From the Skagit River at the west edge of Sec. 29, T35N, R5E to the Skagit River at the east edge of Sec. 21, T35N, R7E	88,000
Skagit - Upper	Water Resource Inventory Area 4 (Upper Skagit) excluding Grandy Creek subbasin management unit	416,500
Wiseman Creek*	NW 1/4, SW 1/4, Sec. 23, T35N, R5E	7,000

**NEW SECTION**

**WAC 173-503-075 Stock watering reservation.** (1) The department reserves one hundred thirty thousand gallons per day of water for future stock watering. This reserved water can be accessed either from surface water sources or from wells exempted from permit requirements.

(a) Use of water from the reservation shall not be available for feedlots and other activities which are not related to normal grazing land uses.

(b) Appropriation or use of water from the reservation for stock watering shall be limited to the land base and carrying capacity of the grazing lands.

(c) The department will maintain an estimate of the amount of water used from the reservation, and reserves the right to require reporting of water use to ensure compliance with the conditions of use for this reservation.

(2) This section does not affect existing riparian stock water rights. The department encourages existing and future riparian stock water right holders to prevent livestock access to streams for the purpose of protecting water quality and stream habitat. Under these circumstances, no change application is required, as long as the amount of water diverted to nearby stock water tanks for consumption by livestock is consistent with the historic use of water by that stock consistent with WAC 173-503-075 (1)(b).

**NEW SECTION**

**WAC 173-503-081 Future changes and transfers.** Changes to, or transfers of, existing surface and ground water rights in the Skagit River basin shall hereafter be granted if they are consistent with the purpose of this chapter and applicable state law, including no impairment of instream flows.

**AMENDATORY SECTION** (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 173-503-090 ((Enforcement)) Compliance and enforcement.** ((In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate

~~under authorities vested in it, including, but not limited to, the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 43.83B.335, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.)) (1) To obtain compliance with this chapter, the department shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.~~

~~(2) When the department determines that a violation has occurred, it shall first attempt to achieve voluntary compliance. One approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law if such means exist.~~

~~(3) To obtain compliance and enforce this chapter, the department may impose such sanctions as appropriate under authorities vested in it, including, but not limited to, issuing regulatory orders under RCW 43.27A.190; and imposing civil penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.~~

**AMENDATORY SECTION** (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 173-503-100 ((Regulation review)) Alternative sources of water.** ((Review of the rules in this chapter may be initiated by the department of ecology whenever new information is available, a change in conditions occurs, or statutory modifications are enacted that are determined by the department of ecology to require review.)) Water supply and availability around the state are becoming increasingly limited, particularly during summer and fall months and dry years when demand is greatest. Growth and prosperity have significantly increased the competition for this limited resource. This chapter provides limited, finite exceptions for new uses in the Skagit River basin. However, there is a continuing need for ongoing and reliable sources for new water uses. This need dictates the continued development and use of alternative sources of water, such as:

- Reuse of reclaimed water;
- Artificial recharge and recovery;
- Multipurpose water storage facilities;
- Conservation and efficiency measures applied to existing uses and the transfer of saved water;
- Acquisition of existing water rights; and
- Establishment of a trust water rights program.

Alternative sources of water of equal or better quality than the proposed source can be used to improve stream flows for fish, offset impacts of withdrawals on stream flows and provide sources of water for future out-of-stream uses.

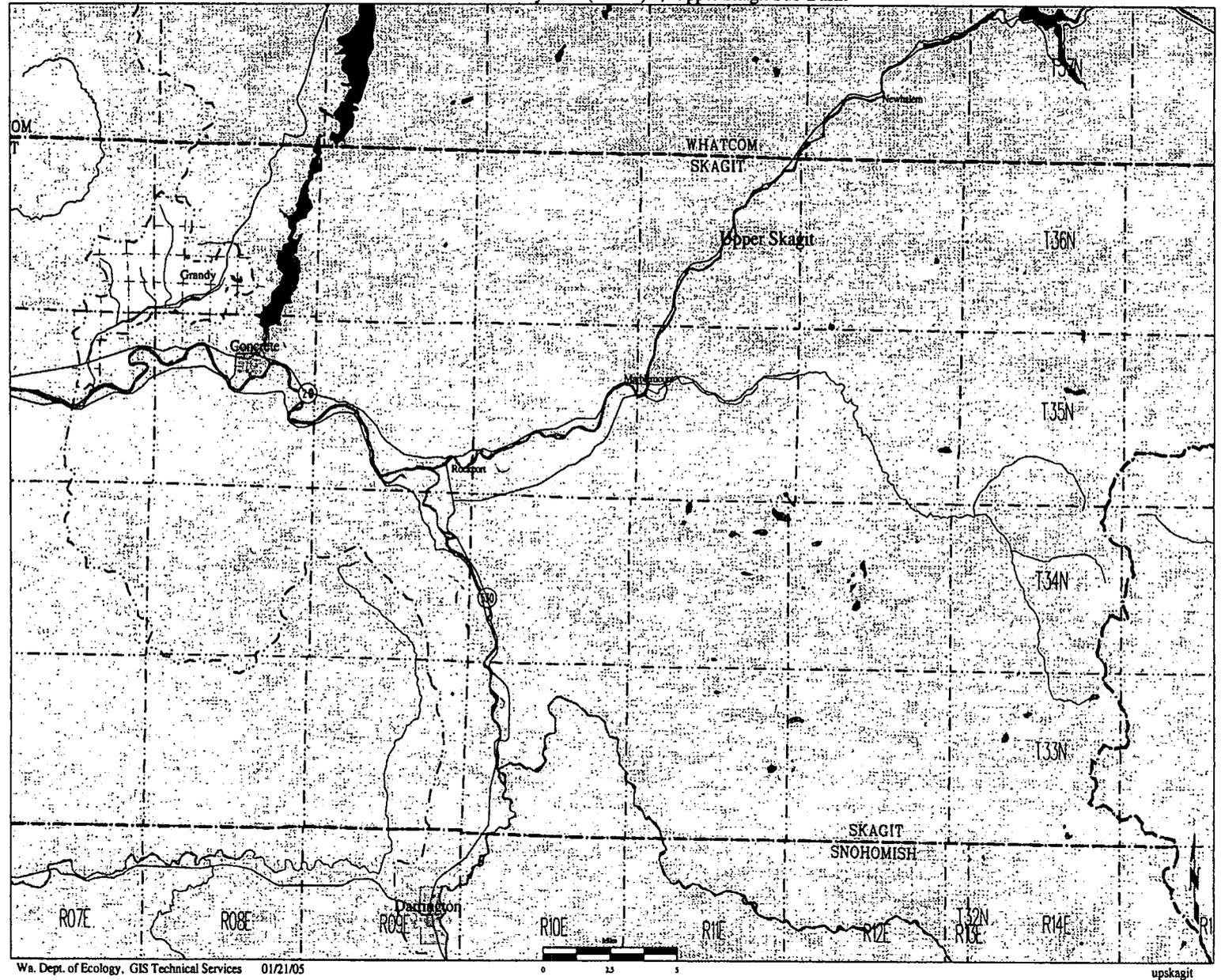
**NEW SECTION**

**WAC 173-503-110 Establishment of trust water rights program.** (1) The department will establish a trust water right program to facilitate the acquisition of existing water rights through purchases, long-term leases, donations



Figure 5

Water Resource Inventory Area (WRIA) 4, Upper Skagit Sub-Basin



Wa. Dept. of Ecology, GIS Technical Services 01/21/05

upskagit

NEW SECTION

**WAC 173-503-130 Appeals.** All final written decisions of the department pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter can be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

**WAC 173-503-140 Regulation review.** Review of the rules in this chapter may be initiated by the department whenever new information is available, a change in conditions occurs, or statutory modifications are enacted that are determined by the department to require review.

NEW SECTION

**WAC 173-503-150 Water rights subject to instream flows predating the reservations.** All water rights commenced prior to this amendment but subsequent to the original establishment of instream flows in WAC 173-503-040 shall be subject to the provisions of this chapter as they existed prior to this amendment. All water rights commenced after this amendment shall be subject to the provisions of this chapter as now amended. Water rights commenced prior to the effective date of the reservations contained in WAC 173-503-073, 173-503-074 and 173-503-075 may participate in the appropriate reservation provided they agree to change their priority date to that of the reservation and comply with all of the conditions of WAC 173-503-073 (2)(a), (b), (c), (e), (f), and (g), or WAC 173-503-075.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-503-080 Policy statement for future permitting actions.

**WSR 05-04-111****PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed February 2, 2005, 10:21 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 04-19-121.

Title of Rule and Other Identifying Information: Chapter 16-218 WAC, Hops—Certification analyses—Fees, this proposal:

- (1) Increases the fee for submitted sample inspections and certifications;
- (2) Provides for negotiated fees when the lab receives a request for a service for which a fee has not been established;
- (3) Clarifies that fees for chemical analysis apply to all types of hop samples;
- (4) Adds language regarding how the department will handle delinquent accounts and billings; and

(5) Rewrites the entire chapter to make it easier to read and understand.

Hearing Location(s): Washington State Department of Agriculture, 21 North 1st Avenue, Conference Room 238, Yakima, WA 98902, on March 10, 2005, at 1:00 p.m.

Date of Intended Adoption: March 23, 2005.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by March 10, 2005.

Assistance for Persons with Disabilities: Contact Henri Gonzales by March 2, 2005, TTY (360) 902-1996.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend the existing rules by: (1) Increasing the fee above the fiscal growth factor for submitted sample inspections and certification during the 2003 legislative session, the Washington state legislature authorized the Washington State Department of Agriculture to increase fees in excess of the OFM fiscal growth factor in order to ensure that fees charged for services covered the full cost of operating department programs (see chapter 25, Laws of 2003 1st sp.s. (ESSB 5404)); (2) adding language providing for negotiated fees for inspection or certification in the case of alternative methods of packaging hops or other services for which a fee has not been established; (3) clarifying that fees for chemical analysis apply to all types of hop samples; (4) adding language regarding billing for services performed and penalties for delinquent account balances; and (5) rewriting the chapter to increase its readability and clarity.

Reasons Supporting Proposal: The production and marketing of hops has, and will continue to change as new technologies make the industry more efficient. It has become necessary to meet the changing needs of the hop industry by amending the current rule governing hop certification and inspection.

Statutory Authority for Adoption: Section 309(2), chapter 25, Laws of 2003 1st sp.s.; chapters 22.09 and 34.05 RCW.

Statute Being Implemented: Chapter 22.09 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Hop Liaison Committee, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Royal Schoen, 21 North 1st Avenue, Suite 106, Yakima, WA 98902, (509) 225-2621.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) directs an agency to prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department's rule proposal increases the fee charged for submitted sample testing beyond the Office of Financial Management fiscal growth rate factor. Currently, there are six hop producers in the state that request this service from the department. The department polled all six producers regarding the proposed fee increase. Five producers indicated that they supported the increase; one producer opposes it. Based

upon these results the department has concluded that the proposed submitted sample testing fee increase does not impose a more than minor cost on the regulated community and, therefore, is not required to prepare a formal SBEIS.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington State Department of Agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

February 2, 2005

Mary A. Martin Toohey

Assistant Director

PROPOSED

**NEW SECTION**

**WAC 16-218-015 What fees does the department charge for the certification of hops?** (1) Based upon standards established by the Federal Grain Inspection Service of the United States Department of Agriculture, the Washington state department of agriculture's (department) fees for the certification of hops are:

Type of Inspection and Other Service	Fee Charged for Inspection and Other Service
(a) Official lot inspections and certification for baled hops.	One dollar and twenty-five cents per bale with a minimum charge of thirty dollars per lot for official inspection and grading with certification.
(b) Official lot inspection and/or certification for alternative methods of packaging hops, or other services for which no fee has been established.	A contract fee may be negotiated, based on the agency's costs to furnish the services.
(c) Submitted sample inspections and certification.	One hundred fifty dollars for an unofficial sample submitted for grading with certification of a quantity not to exceed 100,000 lbs. of dried hops.
(d) Appeal inspections.	The Federal Grain Inspection Service in Portland, Oregon establishes the charges for appeal inspections, and payments for such inspections must be made to them. Department time for sampling, handling and administration regarding appeal inspections will be assessed at the sampler hourly rate.

(2)(a) Before official sampling of baled hops takes place, each and every bale in a lot of hops must be readily accessible so that:

- (i) Each bale can be properly stenciled; and
- (ii) Samples can be drawn from the bales selected by the inspector.
- (b) Official samples drawn from baled hops must be brought back to the laboratory by the inspector for grading analysis.
- (3) The department may perform official lot inspection and/or certification of hops packaged by alternative methods (e.g., hops not baled prior to processing) subject to conditions specified in a written agreement between the department and the person(s) requesting the service.
- (4)(a) Submitted samples provided by a grower or dealer for grading analysis must be representative of the lot(s) and the hop material.
- (b) Submitted samples are delivered to the laboratory.

**NEW SECTION**

**WAC 16-218-025 What does the department charge for chemical analysis regarding brewing values and additional constituents in raw hops, hop extract, hop pellets and hop powder?** (1) Before official sampling of baled hops takes place, each and every bale in a lot of hops must be readily accessible so that:

- (a) Each bale can be properly stenciled (not done for brewing value only sampling); and
- (b) Samples can be drawn from the bales selected by the inspector.
- (2) Official samples drawn from baled hops must be brought back to the laboratory by the inspector for chemical analysis, simultaneous with grading analysis.
- (3) Brewing value samples are obtained from a representative composite of the official samples drawn for grade analysis.
- (4) Brewing value samples not sampled simultaneously for grade analysis will be charged at the same fee per bale.
- (5) When department personnel officially sample hops, a brewing value certificate will be issued when the chemical analysis is done.
- (6)(a) Submitted brewing value samples provided by a grower or dealer for chemical analysis must be representative of the lot(s).
- (b) Submitted samples are delivered to the laboratory.
- (7) Submitted brewing value certificates will be issued for submitted samples when the chemical analysis is done.
- (8) Department fees for the chemical analyses of officially sampled raw hops are:

Type of Analyses	Fee	Minimum Fee
(a) ASBC spectrophotometric with moisture	\$0.35 per bale	\$30.00 per sample
(b) ASBC spectrophotometric/conductometric or EBC conductometric without moisture	\$0.30 per bale	\$30.00 per sample
(c) Mebak, Zurich, Verzele, Ganzlin, or conductometric	\$0.60 per bale	\$60.00 per sample

(9) Department fees for chemical analyses of submitted raw hops, hop extract, hop pellets or hop powders are:

Type of Analyses	Fee
(a) ASBC spectrophotometric	\$30.00
(b) ASBC conductometric	\$30.00
(c) EBC conductometric	\$30.00
(d) EBC conductometric (Wollmer, Zurich, Mebak, Verzele, Ganzlin, or Resins (hard or soft))	\$60.00
(e) Spectrophotometric of tannins, Wollmer, etc.	\$55.00
(f) Methylene chloride	\$80.00
(g) Tannin	\$55.00
(h) Ash	\$20.00
(i) SO <sub>2</sub>	\$25.00
(j) H <sub>2</sub> O	\$10.00
(k) HPLC	\$100.00
(l) Total oil	\$25.00
(m) Oil constituents analysis	\$145.00
(n) Wort test, particle size	\$10.00

(10)(a) The department will assess hourly charges for analytical chemistry work if no other fee has been established.

(b) Hourly charges are set by written agreement and shall be based on the costs incurred to conduct the analysis, such as:

- Labor
- Laboratory equipment
- Chemicals and materials
- Administration and overhead.

**NEW SECTION**

**WAC 16-218-035 What does the department charge for issuing export certificates for hops and hop products?** The department charges the following fees for issuing certificates related to hops and hop products:

Type of Certificate	Fee for Each Certificate
(1) State phytosanitary certificates	\$25.00
(2) Other certificates attesting to origin, compliance with standards of other states or nations or specifications of contracts, or conditions of production or processing	\$20.00

**NEW SECTION**

**WAC 16-218-040 When are the fees and charges required by this chapter due to the department?** (1) The department will bill you for the services it renders. (2) The fees and charges billed to you are due to the department within thirty days of the statement date.

- (3) If the department does not receive your payment within thirty days of the statement date, the department may:
- (a) Withhold its services from you until your delinquent account is paid; and
  - (b) Accept only cash payments from you for future services rendered.
- (4) The department assesses a penalty of twelve percent per annum on all delinquent account balances.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 16-218-010 Schedule of fees for physical grading.
- WAC 16-218-02001 Schedule of charges for chemical analyses of hops, hop extract, hop pellets or hop powder.
- WAC 16-218-030 Schedule of fees for certificates.

**WSR 05-04-113  
PROPOSED RULES  
STATE BOARD OF HEALTH  
DEPARTMENT OF HEALTH**

[Filed February 2, 2005, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-09-126.

Title of Rule and Other Identifying Information: WAC 246-100-166 immunization of child care and school children against certain vaccine-preventable diseases.

Hearing Location(s): Washington State Department of Health, Point Plaza East, Rooms 152 and 153, 310 Israel Road S.E., Tumwater, WA 98501, on March 9, 2005, at 11:20 a.m.

Date of Intended Adoption: March 9, 2005.

Submit Written Comments to: Karen Arbogast, <http://www3.doh.wa.gov/policyreview>, e-mail Karen.Arbogast@doh.wa.gov, fax (360) 236-3590, by March 2, 2005.

Assistance for Persons with Disabilities: Contact Desiree Robinson by March 1, 2005, TTY (800) 833-6388 or (360) 236-4107.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule has been reviewed and redrafted to improve its clarity, note changes in reporting, and update ACIP recommendations to 2004. In 2003, the State Board of Health determined that current language could be made more clear. Since 1997, the year the current rule was adopted, new technology makes it possible to consider a single reporting date and electronic filing for schools, preschools, and childcare centers. The Advisory Committee on Immunization Practice (ACIP) publishes a schedule every year which lists recommended childhood vaccinations according to ages and intervals. The current rule

PROPOSED

still refers to 1995 and proposed language would refer to the current 2004 ACIP childhood immunization schedule.

Reasons Supporting Proposal: Clarifying rule language is intended to increase its readability and thus to reduce confusion. This WAC has not been rewritten since 1997 and since then new technology has enhanced the process for reporting immunization status of children from schools, pre-schools, and childcare centers to the Department of Health. ACIP has also changed its recommendations since 1997. These changes are not reflected in the current rule.

Statutory Authority for Adoption: RCW 28A.210.140.

Statute Being Implemented: RCW 28A.210.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington State Board of Health, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Arbogast, Department of Health, NewMarket Campus, Building 1, Tumwater, Washington, (360) 236-3540; Implementation and Enforcement: Janna Bardi, Department of Health, NewMarket Campus, Building 1, Tumwater, Washington, (360) 236-3568.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required under chapter 19.85 RCW because the proposed rule does not impose more than minor costs on any business or industry. The changes clarify and update the rule language.

A cost-benefit analysis is not required under RCW 34.05.328. Does not apply under RCW 34.05.328(5) since the proposal only clarifies the language of the rule without changing its effect.

February 2, 2005  
Craig McLaughlin  
Executive Director

AMENDATORY SECTION (Amending WSR 96-04-079, filed 2/7/96, effective 3/9/96)

**WAC 246-100-166 Immunization of child care and school children against certain vaccine-preventable diseases.** (1) ~~((Definitions for purposes of this section:~~

~~(a) "Certificate of immunization status (CIS) form" means a form provided by the department labeled DOH 348-013, including data entry spaces for immunization information including:~~

- ~~(i) Name of child or student,~~
- ~~(ii) Birth date,~~
- ~~(iii) Gender,~~
- ~~(iv) Type of vaccine,~~
- ~~(v) Date of each dose of vaccine received specifying day, month, and year,~~
- ~~(vi) Signature of parent, legal guardian, or adult in loco parentis, and~~
- ~~(vii) Documented exemptions, if applicable and as specified in subsection (5) of this section.~~

~~(b)) Purpose. Under the authority of RCW 43.20.050 and 28A.210.140, the state board of health is empowered to adopt rules to establish immunization requirements upon entry into school and child care. The following rule improves~~

the public health of Washington by preventing vaccine preventable disease outbreak.

(2) Definitions. The words and phrases in this section have the following meanings:

(a) Certificate of immunization status (CIS) means:

(i) A certificate of immunization status form approved by the department; or

(ii) A CHILd profile immunization record; or

(iii) Any other immunization form approved by the department.

(b) "Chief administrator" means:

(i) The person with the authority and responsibility for ~~((the immediate supervision of the))~~ supervising the immediate operation of a school((;)) or child care ~~((center;))~~; or

(ii) A ~~((designee of the chief administrator assigned))~~ person designated in writing ~~((to carry out the requirements of RCW 28A.210.160 through))~~ by the statutory or corporate board of directors of the school district or school((;)) or

(iii) In the absence of the above, a person or persons with the authority and responsibility for supervising the general ~~((supervision of the))~~ operation of the school district ~~((or school)).~~

(c) "Child" means any person regardless of age admitted to ~~((any child care center, preschool, kindergarten, or grades one through twelve program of education in))~~:

(i) Any public school district((;)) or

(ii) Any private school or private institution subject to approval by the state board of education or described in RCW 28A.305.130 and 28A.195.010 through 28A.195.060((;)) or

(iii) Any ~~((licensed))~~ child care ~~((facility which regularly provides care for a group of thirteen or more children for periods of less than twenty-four hours subject to licensure by the department of social and health services as described in chapter 74.15 RCW))~~ center.

(d) ~~((("Full immunization" means vaccinated in accordance with schedules and immunizing agents approved by the state board of health in WAC 246-100-166 against:~~

~~(i) Diphtheria;~~

~~(ii) Tetanus;~~

~~(iii) Pertussis or whooping cough;~~

~~(iv) Measles or rubeola;~~

~~(v) Rubella;~~

~~(vi) Mumps;~~

~~(vii) Poliomyelitis;~~

~~(viii) Haemophilus influenzae type b disease, and~~

~~(ix) Hepatitis b, after September 1, 1997.~~

~~(e)) "Child care center" means any licensed facility or center which regularly provides care of children for periods of less than twenty-four hours per day subject to licensure by the department of social and health services as described in chapter 74.15 RCW.~~

~~(e) "Conditional status" is a type of immunization status where a child is not fully immunized under (f) of this subsection and is in the process of completing the required immunizations for his/her age.~~

~~(f) "Exemption" is a type of immunization status where a child is not fully immunized under (f) of this subsection and meets school and child care documentation requirements under subsection (4)(b)(i) of this section.~~

(g) "Full immunization" or "fully immunized" is an immunization status where a child has been vaccinated at ages and intervals consistent with the National Immunization Guidelines, with immunizing agents against:

- (A) Diphtheria;
- (B) Tetanus;
- (C) Pertussis (whooping cough);
- (D) Poliomyelitis;
- (E) Measles (rubeola);
- (F) Mumps;
- (G) Rubella;
- (H) Hepatitis B; and
- (I) Haemophilus influenzae type B disease.

(h) "Immunizing agent((s))" means any vaccine or other (biologic) immunologic drug licensed and approved by the United States Food and Drug Administration (FDA), or meeting World Health Organization (WHO) requirements, for immunization of persons against(=

- (i) Diphtheria, tetanus, pertussis (DTP, DT, Td);
  - (ii) Measles;
  - (iii) Mumps;
  - (iv) Poliomyelitis, types I, II, and III (TOPV, IPV);
  - (v) Rubella;
  - (vi) Haemophilus influenzae type b vaccine (Hib); and
  - (vii) Hepatitis b.
- (f)) vaccine preventable diseases.

(i) "Local health officer" means the individual appointed under chapter 70.05 RCW as the health officer for the local health department, or appointed under chapter 70.08 RCW as the director of public health of a combined city-county or combined county health district.

(j) "National Immunization Guidelines" means the schedule for the immunization described in the "Recommended Childhood and Adolescent Immunization Schedule: United States—(January 1995,) July to December 2004" approved by the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

((g)) (k) "Parent" means ((a person who is)), for the purposes of signature requirements in this rule:

- (i) The mother, father, legal guardian, or any adult in loco parentis of a child seventeen years of age or younger;
- (ii) A person eighteen years of age or older;
- (iii) An emancipated minor.

((h)) "Transfer student" means a student previously enrolled in grades kindergarten through twelve moving from one school district or system to another at any time during the school year, excluding students transferring within a district or system when the school transfers records within the district.

(2) Full immunization schedule. Each child care center, preschool, and school shall establish and maintain requirements for full immunization of children attending child care and preschool through grade twelve.

(3) For child care and preschool children, full immunization means a child received age appropriate vaccines as enumerated in the National Immunization Guidelines as defined in subsection (1) of this section.

(4) For a child entering kindergarten or first grade (school entry level), full immunization means a child

received age appropriate vaccines as enumerated in the National Immunization Guidelines as defined in subsection (1) of this section.

For transfer students and those above kindergarten or first grade, full immunization means a child received age appropriate vaccines consistent with the National Immunization Guidelines as defined in subsection (1) of this section (not required of persons eighteen years of age and older).

(5) Conditions for child care, preschool, and school attendance when a child is not fully immunized:

(a) When a child lacks full immunization, the child care center, preschool, or school shall require satisfactory progress toward full immunization (conditional status) as a condition of school attendance including:

(i) Documented proof of start or continuance of child's schedule of immunization;

(ii) Assurance the scheduled immunization is consistent with the national immunization guidelines defined in subsection (1) of this section;

(iii) Notification of child's parent(s) of when the schedule must be completed; and

(iv) Exclusion of child from attendance as described in subsection (9) of this section if child has not received required immunizations on schedule and if sufficient time has elapsed (one month from date due) for completion of next dose.

(6) Schools, preschools, and child care centers shall require documented proof related to immunization including:

(a) Completion of a certificate of immunization status (CIS) form by a parent as documented proof of:

(i) Full immunization; or

(ii) Initiation or continuation of a schedule (conditional status); or

(iii) Exemption.

(b) Information from a written personal immunization record, as the source of the immunization data entered on the CIS form (substitution of a personal immunization record for a CIS form is prohibited);

(c) Acceptance of only the CIS form (no other state or local immunization forms) from new enrollees registering in kindergarten through grade twelve;

(d) In addition to current CIS form, acceptance of previous CIS forms, or locally developed forms approved by the department indicating the month and year of each immunization as the official immunization status for children enrolled prior to September 1, 1979.

(7) Schools, preschools, and child care centers shall accept medical exemptions and:

(a) Require a signature of a licensed medical doctor (M.D.), doctor of osteopathy (D.O.), doctor of naturopathy (N.D.), physician assistant, or nurse practitioner practicing within the limits of the medical or nurse practice acts to certify medical reasons to defer one or more immunizations on the CIS form;

(b) Admit children and keep on file a CIS form for children with:

(i) Temporary exemption from immunization for medical reasons if the required immunizations are received upon expiration of the exemption; or

(ii) Permanent exemptions.

PROPOSED

(c) ~~Include a statement on the CIS form informing the parent that should an outbreak of vaccine preventable disease for which the child is exempted occur, the child may be excluded from school or child care for the duration of the outbreak by order of the local health department as described in subsection (9) of this section; and~~

(d) ~~Keep on file a list of children so exempted and transmit the list to the local health department if requested.~~

(8) ~~Schools, preschools, and child care centers shall:~~

(a) ~~Allow a parent to exempt his/her child from the required immunizations for religious, philosophical, or personal objections when the CIS form indicates:~~

(i) ~~Type or exemption, and~~

(ii) ~~Signature of parent.~~

(b) ~~Keep on file a CIS form for each child so enrolled;~~

(e) ~~Include a statement on the CIS form informing the parent that should an outbreak of vaccine preventable disease for which the child is exempted occur, the child may be excluded from school for the duration of the outbreak by order of the local health department as described in subsection (9) of this section; and~~

(d) ~~Keep on file a list of children so exempted and transmit the list to the local health department if requested.~~

(9) ~~Schools, preschools, and child care centers shall exclude children from school as follows:~~

(a) ~~Exclude any child from school for failure to provide a completed CIS form as defined in subsection (1) of this section before or on the child's first day of attendance consistent with procedures required by the state board of education, Title 180 WAC;~~

(b) ~~Exclude from attendance any child in a child care center for failure to provide a completed CIS form as defined in subsection (1) of this section before or on the child's first day of attendance;~~

(e) ~~The chief administrator shall retain records on excluded children for at least three years including:~~

(i) ~~Name,~~

(ii) ~~Address, and~~

(iii) ~~Date of exclusion.~~

(d) ~~A health officer may exclude children from school, preschool, and child care attendance in the event of a child's exposure to a disease according to chapter 246-110 WAC, including children presenting proof of:~~

(i) ~~Initiation of a schedule of immunization,~~

(ii) ~~Medical exemption,~~

(iii) ~~Religious exemption,~~

(iv) ~~Philosophical exemption, or~~

(v) ~~Personal exemption.~~

(10) ~~Schools, preschools, and child care centers shall maintain records and require:~~

(a) ~~A completed CIS form retained in the files for every child enrolled;~~

(b) ~~Return of original CIS form or a legible copy to the parent in the event of the child's withdrawal or transfer from school (withholding a record for any reason, including non-payment of school, preschool, or child care fees is prohibited);~~

(c) ~~Access to immunization records by agents of the state or local health department for each child enrolled.~~

(11) ~~Persons or organizations administering immunizations, either public or private, shall:~~

(a) ~~Furnish each person immunized, or his or her parent, with a written record of immunization containing information required by the state board of health; and~~

(b) ~~Provide immunizations and records in accordance with chapter 246-100 WAC.~~

(12) ~~Chief administrators of schools, preschools, and child care centers shall forward a written annual report to the department and local health department on the immunization status of children as follows:~~

(a) ~~For schools: By November 1 of each year on forms provided by the department (except in the event of a late school opening when the report is due thirty days after the first day of school);~~

(b) ~~For preschools and child care centers: By February 1 of each year on forms provided by the department.)) (1) "School" means a facility, site, or campus for programs of education as defined in RCW 28A.210.070 to include preschool and kindergarten through grade twelve.~~

(3) ~~Documentation of immunization status required by schools and child care center.~~

(a) ~~Schools and child care centers shall require documented proof of immunization status in the form of a CIS.~~

(b) ~~The CIS form must include:~~

(i) ~~Name of child or student;~~

(ii) ~~Birth date;~~

(iii) ~~Type of vaccine(s) administered;~~

(iv) ~~Month, day, and year of each dose of vaccine received;~~

(v) ~~Documentation of immunization status to indicate:~~

(A) ~~Full immunization under subsection (2)(f) of this section; or~~

(B) ~~Conditional status under subsection (2)(d) of this section; or~~

(C) ~~Exemption under subsection (2)(e) of this section;~~

(vi) ~~Notice to parents that if an outbreak of vaccine preventable disease for which the child is exempted occurs, the child may be excluded from school or child care for the duration of the outbreak;~~

(vii) ~~Parent signature.~~

(4) ~~Duty of schools and child care centers.~~

(a) ~~Schools and child care centers shall require a CIS form, signed by parents, for new enrollees registering for admission into kindergarten through grade twelve or child care as a requirement of admission.~~

(b) ~~Full immunization is required upon admission unless:~~

(i) ~~Parent(s) sign and submit a CIS form indicating a medical exemption.~~

(A) ~~A permanent medical exemption is allowed when a signature of a licensed medical doctor (M.D.), a doctor of osteopathy (O.D.), doctor of naturopathy (N.D.), physician assistant (P.A.), or nurse practitioner (A.R.N.P.), acting within the scope of practice, certifies medical reasons to defer or forego one or more immunizations required for full immunization under subsection (2)(f) of this section.~~

(B) ~~If immunizations are deferred on a temporary basis, the student must receive the required immunizations upon expiration of the exemption.~~

(ii) Parent(s) sign and submit a CIS form indicating a religious or philosophical, or personal exemption.

(iii) Parent(s) sign and submit a CIS form indicating conditional status if there is evidence of satisfactory progress toward full immunization, including:

(A) Documentation of start or continuance towards full immunization status;

(B) Documentation that immunizations received are consistent with the National Immunization Guidelines defined in subsection (2)(i) of this section; and

(C) Documentation of when the next immunization is due.

(c) Schools and child care centers maintenance of child immunization records:

(i) Schools and child care centers shall keep a department approved certificate of immunization status for each enrolled child.

(ii) Schools and child care centers shall keep a list of children with medical exemptions.

(iii) The chief administrator shall retain records for at least three years on a child who is excluded from school under this section. The record must include the child's name, address, and date of exclusion.

(d) Schools and child care centers shall transmit the list of children with medical exemptions to the local health department upon request.

(e) A school or child care center shall return the department approved certificate of immunization status or a legible copy to the parent if the child is withdrawn from school or child care or transferred from the school.

(f) A school or child care center may not withhold a child's department approved certificate of immunization status for any reasons, including nonpayment of school child care fees.

(g) A school or child care center shall provide access to immunization records to agents of the state or local health department of each child enrolled.

(h) The chief administrator of a school or child care center shall submit a school immunization status report under chapter 28A.210 RCW either electronically on the internet or on the school immunization status report provided by the department. The report must be:

(i) Submitted to the department by November 1 of each year;

(ii) If a school opens after October 1, the report is due thirty days from the first day of school.

(5) Persons or organizations administering immunizations, either public or private shall:

(a) Furnish each person immunized, or his or her parent, with a written record of immunization containing information required by the state board of health; and

(b) Provide immunizations and records in accordance with chapter 246-100 WAC.

(6) A school or child care center shall exclude a child if one or more of the following applies:

(a) Parent(s) fail to provide a completed CIS form on or before the child's first day of attendance. Schools must use procedures consistent with Title 180 WAC.

(b) A child admitted under conditional status has not received the required immunization(s) within one month from the date due for completion of the next dose.

(c) A child has been admitted under a medical exemption and the particular vaccine for which the exemption was granted is no longer contraindicated and the child has not received the immunization within one month from the due date for completion of the next dose.

(7) A local health officer may exclude a child from school or child care under chapter 246-110 WAC to prevent a child's exposure to a disease if a child presents proof of:

(a) Medical exemption;

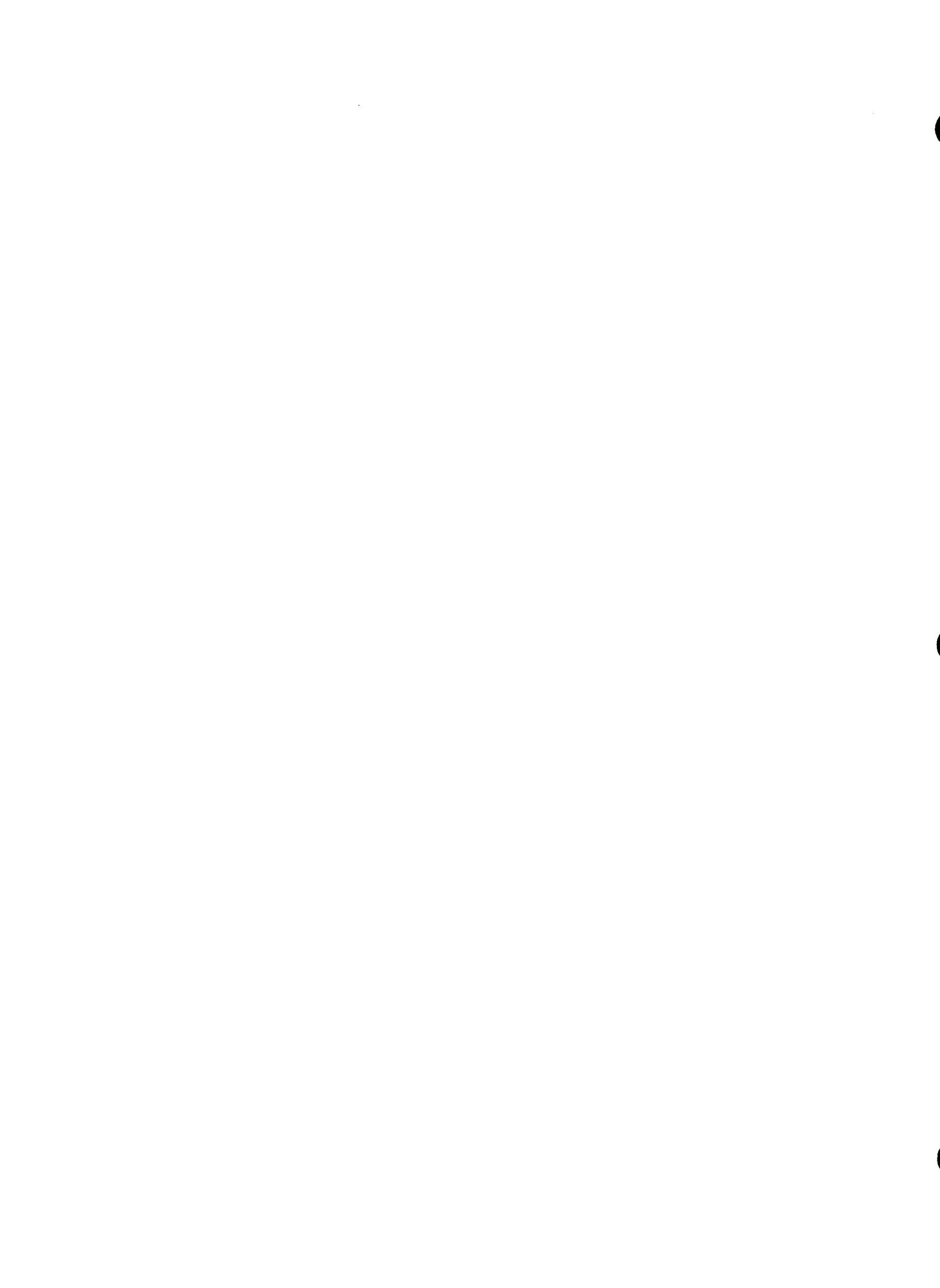
(b) Conditional status;

(c) Religious exemption;

(d) Philosophical exemption; or

(e) Personal exemption.

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



**NO EXPEDITED RULE MAKINGS FILED IN THIS ISSUE**

**EXPEDITED**



**WSR 05-03-031**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket No. UT 040015, General Order No. R-516—Filed January 10, 2005, 10:36 a.m., effective February 10, 2005]

In the matter of amending, adopting, and repealing rules in chapters 480-120, 480-122, and 480-80 WAC, relating to telecommunications.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 04-17-133, filed with the code reviser on August 18, 2004, and Notice No. WSR 04-22-072, filed with the code reviser on November 1, 2004.<sup>1</sup> The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

**2 STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

**3 DATE OF ADOPTION:** The commission adopts this rule on the date that this order is entered.

**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325 requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the commission's consideration of the comments.

5 The commission often includes a discussion of those matters in its rule adoption order. In addition, most rule-making proceedings involve extensive work by commission staff that includes summaries in memoranda of stakeholder comments, commission decisions, and staff recommendations in each of those areas.

6 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the open meetings where the commission considered whether to begin a rule making and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

**7 REFERENCE TO AFFECTED RULES:** This rule repeals, amends or adopts the following sections of the Washington Administrative Code:

Affected Rules			
Action	WAC No.	Rule Title	Changes
<b>Chapter 480-120 WAC, Telecommunications operations</b>			
Amend	480-120-021	Definitions.	1. Amend definitions of Class A and Class B companies to include reference to new section, WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).
Adopt	480-120-034	Classification of local exchange companies as Class A or Class B.	1. Adopt to clarify standard for classifying Class A and Class B companies. Clarify that affiliates' lines count in the calculation.
Amend	480-120-112	Company performance for orders for nonbasic services.	1. Correct WAC title reference.
Amend	480-120-122	Establishing credit—Residential services.	1. Grammar change. 2. Add ability to make advanced payments for ancillary service. 3. Amend to provide ability to make equal deposit amount payments.
Amend	480-120-128	Deposit administration.	1. Revise effective date for calculating interest on customer deposits. 2. Clarify that rule is for retail services.
Amend	480-120-147	Changes in local exchange and intrastate toll services.	1. Amend to be consistent with the federal rule. 2. Amend to establish time limit for LECs to lift freeze, and to submit a change order. 3. Change the term "customer" to "subscriber" throughout section to parallel FCC term. 4. Make grammar changes.
Amend	480-120-161	Form of bills.	1. Amend to require internet address of website of service provider's tariff or price list.
Amend	480-120-166	Commission-referred complaints.	1. Delete subsection (11), amend to eliminate confusion caused from subsection (11).

**PERMANENT**

Action	WAC No.	Rule Title	Changes
			2. Clarify requirement in subsections (8) and (9).
Amend	480-120-172	Discontinuing service—Company initiated.	1. Amend to clarify "deceptive means." 2. Provide consistent language across WACs. 3. Grammar changes.
Amend	480-120-173	Restoring service after discontinuation.	1. Provide consistent language across WACs. 2. Move payment arrangements portion to WAC 480-120-174. 3. Grammar changes.
Amend	480-120-174	Payment arrangements.	1. Clarify when companies must restore service. 2. Amend to provide ability to make equal deposit amount payments.
Amend	480-120-196	Customer notice requirements—Competitively classified telecommunications companies or services.	1. Incorporate requirement to include the web address of the price list on bills and notices.
Repeal	480-120-201	Definitions.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Adopt	480-120-202	Customer proprietary network information.	1. Adopt by reference FCC's rules relating to customer proprietary information, codified at sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations (47 C.F.R. §§ 64.2003 through 64.2009).
Repeal	480-120-203	Use of customer proprietary network information (CPNI) not permitted to identify or track customer calls to competing service providers.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-204	Opt-in approval required for use, disclosure, or access to customer I-CPNI.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-205	Using customer proprietary network information (CPNI) in the provision of services.	1. Enjoined from enforcement by the U.S. District Court, Seattle.

Action	WAC No.	Rule Title	Changes
Repeal	480-120-206	Using individual customer proprietary network information (I-CPNI) during inbound and outbound telemarketing calls.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-207	Use of private account information (PAI) by company or associated companies requires opt-out approval.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-208	Use of customers' private account information (PAI) to market company products and services without customer approval.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-209	Notice when use of private account information (PAI) is permitted unless a customer directs otherwise (opt-out).	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-211	Mechanisms for opting out of use of private customer account information (PAI).	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-212	Notice when express opt-in approval is required and mechanisms for express approval.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-213	Confirming changes in customer approval status.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-214	Duration of customer approval or disapproval.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-215	Safeguards required for I-CPNI.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-216	Disclosing CPNI on request of customer.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Amend	480-120-253	Automatic dialing-announcing device (ADAD).	1. Amend to remove the prohibition of using automatic dialing and announcing devices for unlisted telephone numbers.

PERMANENT

Action	WAC No.	Rule Title	Changes
Amend	480-12-262	Operator service providers (OSPs).	1. Amend to change "customer" to "consumer" in "Operator services" definition in subsection (1).
Repeal	480-120-302	Accounting requirements for companies not classified as competitive.	1. Repeal for consistency with chapter reorganization in Docket No. A-021178. Replaced by WAC 480-120-359.
Adopt	480-120-359	Companies not classified as competitive.	Replaces WAC 480-120-302. 1. Change section number and title to correspond to chapter reorganization in Docket No. A-021178. 2. Amend to remove definition that duplicates definitions used in WAC 480-120-021.
Repeal	480-120-322	Retaining and preserving records and reports.	1. Repeal for consistency with chapter reorganization in Docket No. A-021178. Replaced by WAC 480-120-349.
Adopt	480-120-349	Retaining and preserving records and reports.	Replaces WAC 480-120-322. 1. Change numbering system to correspond to chapter reorganization in Docket A-021178.
Amend	480-120-402	Safety.	1. Correct reference to WAC 480-120-999 (Adoption by reference) for information about the applicable version of National Electric Safety Code. 2. Grammar change.
Amend	480-120-414	Emergency operation.	1. Grammar change.
Amend	480-120-439	Service quality performance reports.	1. Grammar/style changes.
Amend	480-12-450	Enhanced 9-1-1 (E911) obligations of local exchange companies.	1. Amend to clarify the obligation to make changes to customer records.
Amend	480-120-540	Terminating access charges.	1. Incorporate the often-granted CLEC waiver into the rule itself.
Amend	480-120-999	Adoption by reference.	1. Update one reference. 2. Grammar and reference changes.

Action	WAC No.	Rule Title	Changes
<b>Chapter 480-122 WAC, Washington Telephone Assistance Program</b>			
Amend	480-122-020	Washington telephone assistance program rate.	1. Eliminate requirement that non-ETCs offer the WTAP benefit if they have more than 100 residential customers.
Repeal	480-122-060	Telephone assistance excise tax.	1. Repeal section on WTAP tax collections. A 2004 statutory revision eliminated the need for rule.
<b>Chapter 480-80 WAC, Utilities general—Tariffs, price lists, and contracts</b>			
Amend	480-80-123	Tariff changes that do not require statutory notice.	1. Amend for consistency with RCW 80.36.110(1).
Amend	480-80-204	Price lists format and content.	1. Amend to include requirements for title page content of price list.
Amend	480-80-206	Price list availability to customers.	1. Delete requirement to include the web address of the price list on bills and notices. Incorporate this requirement into the rules governing bills (WAC 480-120-161) and notices (WAC 480-120-196).

**8 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on January 21, 2004, at WSR 04-03-118, and January 27, 2004, at WSR 04-04-021.

**9 ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The statement at WSR 04-03-118 advised interested persons that the commission was considering entering a rule making on possible corrections and changes to the rules in chapter 480-120 WAC, Telephone companies, and chapter 480-80 WAC, Utilities general—Tariffs, price lists, and contracts, relating to telecommunications. The statement at WSR 04-04-021 advised interested persons that the commission was considering entering a rule making on possible corrections and changes to rules relating to telecommunications in chapter 480-122 WAC, Washington telephone assistance program. The commission also informed persons of the inquiry into these matters by providing notice of the subjects and the CR-101s to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies and the commission's list of telecommunications attorneys. The commission posted the relevant rule-making information on its internet website at <http://www.wutc.wa.gov>.

**10 WORKSHOP; WRITTEN COMMENTS:** Pursuant to the notice, the commission held one stakeholder workshop on March 11, 2004. Representatives of regulated telecommunications companies and consumer advocacy organizations attended the workshop and/or filed written comments.

**11 NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on August 18, 2004, at WSR 04-17-133. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 04-17-133 at 9:30 a.m., Wednesday, September 22, 2004, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

**12** The commission filed a supplemental notice of proposed rule making (supplemental CR-102) on November 1, 2004, at WSR 04-22-072. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 04-22-072 at 9:30 a.m., Friday, December 10, 2004, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission. On November 12, 2004, the commission filed a continuance at WSR 04-23-052 that continued the time of the hearing to receive public comment regarding adoption of the rules that are the subject of the supplemental CR-102 from 9:30 a.m. to 1:30 p.m. on December 10, 2004.

**13 ORAL COMMENTS:** Rhonda Weaver, representing Comcast Phone of Washington, LLC, requested that the proposed language in subsection (4) of WAC 480-120-034 Classification of local exchange companies as Class A or Class B, be revised. She asked that the word "promptly" be replaced with more time-specific language. Richard Potter, representing Verizon Northwest, Inc., commented that this section is problematic because the A and B classifications impose regulatory burdens. Mr. Potter argued that the proposed rule takes a specific, narrow categorization from RCW 80.04.530 and illogically applies the Class A and Class B labels beyond that context, with unwarranted results. He suggested the commission should make a conscious decision on whether burdens should be imposed on these other companies and consider the value of slavish adherence to a statute that would produce unwarranted regulations.

**14** Mary Kimball, representing public counsel, argued that the most effective means of safeguarding private customer account information is through an all-inclusive opt-in approach. She noted that this approach is also consistent with the preference of the vast majority of customers. Public counsel recommended that the commission pursue further rule making to consider whether a broader opt-in approach could be adopted that would meet the objections raised to the prior approach. In the alternative, public counsel recommended that the commission conduct further rule making to, at a minimum, adopt Washington rules consistent with the current FCC rules. According to public counsel, this would provide a basis for better enforcement in Washington of existing protections.

**15 COMMENTERS (WRITTEN COMMENTS):** The commission received written comments from Citizens Utility Alliance of Washington, AT&T Communications of the Pacific Northwest, Inc., TCG Seattle and TCG Oregon (collectively AT&T), public counsel, Qwest Corporation, and Verizon Northwest, Inc.

**16 RULE-MAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rule-making hearing scheduled during the commission's regularly scheduled open public meeting on September 22, 2004, before Chairwoman Marilyn Showalter and Commissioner Patrick Oshie. The commission heard oral comments from Sharyn Bate, representing commission staff. Richard Potter representing Verizon Northwest, Inc., commented on WAC 480-120-034 Classification of local exchange companies as Class A or Class B.

**17** The commission considered the supplemental rule proposal (*i.e.*, supplemental CR-102) for adoption pursuant to the notice at a rule-making hearing scheduled during the commission's regularly scheduled open public meeting on December 10, 2004, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick J. Oshie. No one appeared to offer oral comments.

**18 SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED OR REJECTED:** In this section the commission responds to comments made on the proposed rules. The commission received fifteen suggested changes from five interested persons. The intent of this rule making is only a tune-up of the rules. Some suggested changes to the rules went beyond the intent and were not addressed under this docket.

**19** The material in this section is organized by rule number. In each response we indicate whether we made a change in the adopted rules in response to a comment, or adhered to the language in the proposed rule.

#### **WAC 480-120-034 Definition of Class A and Class B Companies.**

**20** Verizon contends that the wording in proposed WAC 480-120-034(3) is inadvisable. Verizon suggested that the commission revisit both its rationale for having the A and B classifications at all, and its use of those classifications to impose regulatory burdens. According to Verizon, the proposed rule takes a specific, narrow categorization from RCW 80.04.530 and illogically applies the Class A and Class B labels beyond that context, with unwarranted results. Verizon believes that the commission should make a conscious decision on whether burdens should be imposed on these other companies and consider the value of slavish adherence to a statute that would produce unwarranted regulations.

**21** The commission does not accept this suggestion. The commission made a reasoned decision in Docket No. UT-990146 to use the standard in RCW 80.04.530 to define company size for the purpose of reporting requirements. It is reasonable to relieve companies of regulatory reporting burdens based on the size of the company and to distinguish company size by considering all the operations of a company in a particular state. When the commission excuses small companies from reporting requirements, it reduces its ability to monitor those companies and protect those companies' customers from unreasonable rates and services. The commission's decision to do so should balance the loss of oversight ability against the cost to the regulated company of complying with those reporting requirements. It is quite common for a company with multiple operating companies to consolidate the regulatory compliance and reporting functions, enabling it to meet these requirements at lower cost. Therefore, compliance costs should be lower for a company with a larger cus-

customer base, and this economy of scale should apply even when the customer base is spread over more than one operating company. The result is not, as suggested by at least one commenter, full-scale regulation of any small competitive local exchange company that is affiliated with a large incumbent local exchange company, because the commission separately provides for reduced regulatory requirements for both Class A and Class B competitive companies. *WAC 480-120-439.*

**WAC 480-120-122 Establishing credit—Residential services, subsections (1) and (4).**

22 AT&T contends subsections (1) and (4) are unclear as to how the deposit amount would be determined when a customer subscribes to a bundled (local plus features or long distance) service.

23 The commission does not agree with AT&T's contention. The proposed rule includes a revision of subsection (1) to state more clearly that the more restrictive deposit policy applies only to a company's lowest-priced flat-rated local service offering. To the extent there may be confusion in the future, the better way to address the confusion is through informal or formal clarification rather than further rule amendment.

24 In the last rule making, the commission responded to industry suggestions by giving companies more flexibility in establishing deposit requirements for local service bundles. Companies were given more flexibility to establish deposit requirements for all higher-priced bundles. This kind of flexibility leads to complexity, and complexity can lead to confusion. The stricter rule on deposits was limited to local service; if a company did not offer local service outside a bundle, the rule applied to the local bundle with the lowest price. For this bundle, the company may require a deposit only if the conditions in subsection (1) exist. For all other bundles, companies may use any reasonable method to decide whether to require a deposit. Once the company determines that a deposit may be required, the amount of the deposit is based on the customer's anticipated bill, as stated in subsection (4). If a company seeks a more formal explanation of the intent of the rule, the company can bring the issue before the commission at an open meeting. A company may request an exemption if it cannot meet the requirements of the rule.

**WAC 480-120-122 Establishing credit—Residential services, subsection (5).**

25 AT&T suggests that the provision for a customer to pay a deposit over time should allow for three equal deposit payments, in addition to the existing option of paying 50%, 25%, and 25%. According to AT&T, the 50/25/25 structure is unique to Washington, AT&T acknowledges that it did not focus on this issue in the last rule making because it was not offering residential service at that time. While AT&T admits that it would benefit from its suggested revision for only a short time because it is exiting the residential market, AT&T contends that the proposal still makes sense from a public policy standpoint.

26 The commission accepts AT&T's suggestion by amending the provision to provide that "no more than" 50% of the deposit may be collected the first month. Any company wishing to collect the lesser amount of 33 1/3% may do

so and collect the remaining amount payable in two equal amounts, also 33 1/3%.

**WAC 480-120-147 Changes in local exchange and intrastate toll services.**

27 AT&T contends that the existing rule is not consistent with the corresponding federal rule. Specifically, AT&T points out that the state rule uses the term "customer" in subsection (1), where the federal rule uses the term "subscriber." AT&T explains that due to differences in definition of the two terms, the state rule does not allow a customer's family members to authorize a change in service, while the federal rule does.

28 In addition, AT&T contends that subsection (4) does not properly reflect a 2003 FCC interpretation relating to customers who subscribe to a carrier under a written term contract.

29 The commission addressed AT&T's concerns by issuing a supplemental CR-102. The language proposed in the supplemental CR-102 received no written or oral comments and thus apparently addresses the concern.

**WAC 480-120-164 Pro rata credits.**

30 AT&T remains concerned that a literal reading of the requirement to provide a credit whenever service is not available for more than twenty-four hours creates an obligation on companies to install monitoring systems to detect all outages.

31 The commission does not share AT&T's concern. As a procedural matter, the CR-102 proposed no revisions to WAC 480-120-164. Therefore this suggestion is outside the scope of the proceeding. The commission will monitor this rule for possible review in the future.

**WAC 480-120-172 Discontinuing service—Company initiated.**

32 AT&T commented that identity theft is a serious problem and a crime, which once detected must be acted on quickly to reduce the amount of harm caused by such theft. AT&T proposes that the commission add a provision to the rule on company-initiated discontinuance that would allow a company to disconnect a customer, without notice, when identity theft is detected.

33 The commission did not accept this proposal. The rule already provides for without-notice discontinuance when a customer has "used deceptive means to initiate or continue service." The rule then lists three examples of deceptive means, and AT&T would add a fourth example. Obtaining service using someone else's identity is plainly a "deceptive means"; adding it as an example would not contribute to the rule.

**WAC 480-120-174 Payment arrangements.**

34 AT&T suggests that if the commission accepts its proposals for modification of WAC 480-120-122 allowing deposits to be paid in two or three equal payments, then subsection (1) of this rule would also need to be modified.

35 The commission accepts this suggestion.

**WAC 480-120-196 Customer notice requirements—Competitively classified telecommunications companies or services.**

36 AT&T suggests that the rule should be amended to allow for notice of some price list changes on the first bill after the change becomes effective. AT&T sees no reason for opposition to the change since it simply gives noncompetitive companies the same flexibility that it gives noncompetitive companies. AT&T argues that from a policy standpoint, competitive companies have less stringent notice requirements than noncompetitive companies, so it makes no sense to hold them to a more stringent standard under these circumstances.

37 The commission does not accept this suggestion. The distinction identified by AT&T is based not on policy, but on differences in the law governing competitive and noncompetitive services. RCW 80.36.110 requires that companies provide *customers* with notice of a price list change ten days in advance of that change. The corresponding provision regarding tariffs requires advance notice to the *commission* but not to the *customers*. Therefore the commission has the authority to allow for after-the-fact notice for tariff changes, but it does not have that authority for price list changes.

**WAC 480-120-202 Customer proprietary network information.**

38 With respect to customer proprietary network information, Citizens Utility Alliance of Washington (Alliance) and public counsel propose that the commission pursue an opt-in requirement or adopt additional requirements for opt-out notice and procedures. At a minimum, they recommend that the invalidated rules should be repealed.

39 The commission accepts this suggestion in part. The commission adopts by reference the federal privacy rules, which will improve the commission's ability to protect customer privacy. Comments proposing further privacy rules do not address the legal issue of whether the state interest, which a federal court found to exist, can be advanced by adopting a rule that does not apply to customers of wireless telecommunications services.

**WAC 480-120-439 Service quality performance reports.**

40 AT&T requests that the commission open another proceeding to discuss whether, given the proliferation of competition, there is a continued need for service quality reports. If the need exists, AT&T suggests development of standards which will result in uniformed reporting across all industry segments required to comply with the rule—in other words, standards that do not routinely require waivers or alternative reporting methods.

41 This suggestion does not include a change to the proposed rule and thus could not be accepted or rejected. The commission will gain experience with CLEC service quality reporting over coming months, since Comcast, AT&T, and XO Communications are now required to report. The commission may open a new rule making on service quality reporting if that experience reveals a problem with the existing requirements and the existing opportunity for alternative reporting methods.

**WAC 480-120-540 Terminating access charges.**

42 AT&T asks that the CLEC exemption be incorporated into the rule.

43 The commission does not grant this request. The CLEC exemption is already incorporated into the proposed rule as subsection (2).

**WAC 480-120-999 Adoption by reference.**

44 Verizon continues to advocate that the commission rule in this section should allow the use of the most recent versions of the indicated standards. Verizon notes that revisions to industry standards take place on a routine basis. For example, Institute of Electrical and Electronic Engineers (IEEE) standard IEEE-820 is currently undergoing a revision. A new version is expected to be released in early 2005. Likewise, T1.510-1999 is scheduled for revision or reaffirmation in 2004. Communications companies try to stay current with the most recent versions of industry standards. Obviously, when commission rules cite a specific version of a standard, particularly an outdated version, problems can arise for national companies. Verizon contends that subsection (4) of this rule, which cites the 1998 version of 47 C.F.R., is a good case in point. If this subsection is not updated to allow use of the most current version of FCC accounting rules, companies will have to petition the commission each time the FCC makes changes to the USOA.

45 The commission does not accept this suggestion. The commission cannot delegate its regulatory authority to an industry standard-setting body, a federal regulatory agency, or any other entity. Adoption of an industry standard or a federal regulation that is not yet in effect would delegate the commission's authority to the entity that sets the standard or regulation.

46 The commission is attempting to minimize the effects of this limitation by using the "adoption by reference" approach. All adoptions of third-party standards and rules are specified in a single section, WAC 480-120-999. This makes it easier to review these references regularly and update them quickly as the need arises. The adoption by reference of the 1998 version of 47 C.F.R. is not a good example of an outdated adoption by reference. The commission concluded in the last telecom rules review that the accounting rules to be used for intrastate purposes should be the 1998 version rather than later, less comprehensive rules. The use of the 1998 version reflects a deliberate policy decision by the commission rather than unconsidered delegation of intrastate regulatory authority to the Federal Communications Commission.

**WAC 480-122-020 Washington telephone assistance program rate.**

47 Alliance expresses concern that there may be parts of the state that do not have a designated eligible telecommunications carrier (ETC), and that the Washington telephone assistance program (WTAP) customers may have little if any competitive choices in those areas. Alliance did not submit a proposal that would address its concern.

48 The commission does not share Alliance's concern. All incumbent local exchange companies are designated as ETCs in all areas where they offer service. The objective of

having a choice of providers for WTAP customers should be advanced through the design and management of WTAP.

**49 COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, repeal, and adopt the rules in the CR-102 Notice at WSR 04-17-133 and WSR 04-22-072 with the changes described below.

**50 CHANGES FROM PROPOSAL:** After reviewing the entire record, the commission adopts the CR-102 proposal and the supplemental CR-102 proposal with the following changes from the text noticed at WSR 04-17-133.

**WAC 480-120-122 Establishing credit—Residential services.**

51 WAC 480-120-122, as published in the CR-102, is edited as follows:

WAC 480-120-122 (5)(a) ~~The customer may pay no~~ more than fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months;

**WAC 480-120-172 Discontinuing service—Company initiated.**

52 WAC 480-120-172, as published in the CR-102, is edited as follows:

(1) A company may discontinue service without notice or without further notice when, after conducting a thorough investigation, it finds the customer has used deceptive means to initiate or continue service, including but not limited to:

- (a) Tampering with the company's property;
- (b) Using service through an illegal connection; or
- (c) Unlawfully using service or using service for unlawful purposes.

(7) **Discontinuation notice requirements.** The company must provide the customer notice before discontinuing service in accordance with (a) through (c) of this subsection, except as provided in subsection (1) of this section, and except as provided in WAC 480-120-122(5)(8).

**WAC 480-120-174 Payment arrangements.**

53 WAC 480-120-174, as published in the CR-102, is edited as follows:

WAC 480-120-174(1) General. Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first half installment of a deposit is paid as provided for in WAC 480-120-122 Establishing credit—Residential services.

**WAC 480-120-999 Adoption by reference.**

54 WAC 480-120-999 as published in the CR-102, is edited as follows:

(5) *Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations*, cited as 47 C.F.R. §§ 64.2003 through 64.2009, are published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-120-~~207~~202 Customer proprietary network information.

**55 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the commission determines that WAC 480-120-201, 480-120-203, 480-120-204, 480-120-205, 480-120-206, 480-120-207, 480-120-208, 480-120-209, 480-120-211, 480-120-212, 480-120-213, 480-120-214, 480-120-215, 480-120-216, 480-120-302, 480-120-322, and 480-122-060 should be repealed to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

56 WAC 480-120-021, 480-120-112, 480-120-122, 480-120-128, 480-120-147, 480-120-161, 480-120-166, 480-120-172, 480-120-173, 480-120-174, 480-120-196, 480-120-253, 480-120-262, 480-120-402, 480-120-414, 480-120-439, 480-120-450, 480-120-540, 480-120-999, 480-122-020, 480-80-123, 480-80-204, and 480-80-206 should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

57 WAC 480-120-034, 480-120-202, 480-120-349, and 480-120-359 should be adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

<sup>1</sup>On November 12, 2004, the commission filed a continuance of WSR 04-22-072 at WSR 04-23-052 to provide notice of a change in the time of the hearing to receive public comment regarding the adoption of the rules that are the subject of the Supplemental CR-102.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 22, Repealed 17.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

**58 THE COMMISSION ORDERS:**

59 WAC 480-120-201, 480-120-203, 480-120-204, 480-120-205, 480-120-206, 480-120-207, 480-120-208, 480-120-209, 480-120-211, 480-120-212, 480-120-213, 480-120-214, 480-120-215, 480-120-216, 480-120-302, 480-120-322, and 480-122-060 are repealed to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

60 WAC 480-120-021, 480-120-112, 480-120-122, 480-120-128, 480-120-147, 480-120-161, 480-120-166, 480-120-172, 480-120-173, 480-120-174, 480-120-196, 480-120-253, 480-120-262, 480-120-402, 480-120-414, 480-120-439, 480-120-450, 480-120-540, 480-120-999, 480-122-020, 480-80-123, 480-80-204, and 480-80-206 are amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

61 WAC 480-120-034, 480-120-202, 480-120-349, and 480-120-359 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

62 This order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 7th day of January, 2005.

Washington Utilities and Transportation Commission  
Marilyn Showalter, Chairwoman  
Richard Hemstad, Commissioner  
Patrick J. Oshie, Commissioner

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-021 Definitions.** The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

"**Access charge**" means a rate charged by a local exchange ((~~carrier~~)) company to an interexchange ((~~carrier~~)) company for the origination, transport, or termination of a call to or from a customer of the local exchange ((~~carrier~~)) company. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

"**Access line**" means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

"**Affiliate**" means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

"**Ancillary services**" means all local service features excluding basic service.

"**Applicant**" means any person applying to a telecommunications company for new service or reconnection of discontinued service.

"**Average busy hour**" means a time-consistent hour of the day during which a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"**Basic service**" means service that includes the following:

- Single-party service;

- Voice grade access to the public switched network;
- Support for local use;
- Dual tone multifrequency signaling (touch-tone);
- Access to emergency services (E911);
- Access to operator services;
- Access to interexchange services;
- Access to directory assistance; and
- Toll limitation services.

"**Business**" means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

"**Business days**" means days of the week excluding Saturdays, Sundays, and official state holidays.

"**Business office**" means an office or service center provided and maintained by a company.

"**Business service**" means service other than residential service.

"**Busy season**" means an annual, recurring, and reasonably predictable three-month period of the year when a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"**Call aggregator**" means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

~~("Call detail" has the meaning found in WAC 480-120-201.)~~

"**Category of service**" means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intraLATA and interLATA primary interexchange carrier freeze status is part of the local category.

"**Central office**" means a company facility that houses the switching and trunking equipment serving a defined area.

"**Centrex**" means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

"**Class A company**" means a local exchange company with two percent or more of the access lines within the state of Washington. The method of determining whether a company is a Class A company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

"**Class B company**" means a local exchange company with less than two percent of the access lines within the state of Washington. The method of determining whether a company is a Class B company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

"**Commercial mobile radio service (CMRS)**" means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

**"Commission (agency)"** in a context meaning a state agency, means the Washington utilities and transportation commission.

**"Company"** means any telecommunications company as defined in RCW 80.04.010.

**"Competitively classified company"** means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

**"Customer"** means a person to whom the company is currently providing service.

**"Customer premises equipment (CPE)"** is equipment located on the customer side of the SNI (other than a ~~((carrier))~~ company) and used to originate, route, or terminate telecommunications.

~~("Customer proprietary network information (CPNI)" has the meaning found in WAC 480-120-201.)~~

**"Discontinue; discontinuation; discontinued"** means the termination or any restriction of service to a customer.

**"Drop facilities"** means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

**"Due date"** means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

**"Emergency response facility"** means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

**"Exchange"** means a geographic area established by a company for telecommunications service within that area.

**"Extended area service (EAS)"** means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

**"Facility or facilities"** means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

**"Force majeure"** means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

**"Interexchange"** means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

**"Interexchange company"** means a company, or division thereof, that provides long distance (toll) service.

**"Interoffice facilities"** means facilities connecting two or more telephone switching centers.

**"InterLATA"** is a term used to describe services, revenues, functions, etc., that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

**"IntraLATA"** is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

**"Local access and transport area (LATA)"** means a local access transport area as defined by the commission in conformance with applicable federal law.

**"Local calling area"** means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

**"Local exchange company (LEC)"** means a company providing local exchange telecommunications service.

**"Major outages"** means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand ~~((subscribers))~~ customers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

**"Missed commitment"** means orders for exchange access lines for which the company does not provide service by the due date.

**"Order date"** means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs, price lists, or commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.

When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff or price list. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff or price list, a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff or price list.

**"Pay phone" or "pay telephone"** means any telephone made available to the public on a fee-per-call basis independent of any other commercial transaction. A pay phone or pay telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

**"Pay phone services"** means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

**"Pay phone service provider (PSP)"** means any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

**"Payment agency"** means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

**"Person"** means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

**"Prior obligation"** means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

~~("Private account information" means customer proprietary network information that is associated with an identifiable individual.)~~

**"Proprietary"** means owned by a particular person.

**"Provision"** means supplying telecommunications service to a customer.

**"Public access line (PAL)"** means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

**"Public safety answering point (PSAP)"** means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

**"Residential service"** means basic service to a household.

**"Restricted basic service"** means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

**"Results of operations"** means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

**"Service interruption"** means a loss of or impairment of service that is not due to, and is not, a major outage.

**"Service provider"** means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

**"Special circuit"** means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

**"Standard network interface (SNI)"** means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

**"Station"** means a telephone instrument installed for ~~(the use of a subscriber to provide)~~ a customer to use for toll and exchange service.

**"Subscriber list information (SLI)"** means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

**"Support structure"** means the trench, pole, or conduit used to provide a path for placement of drop facilities.

~~("Telecommunications-related products and services" means:~~

~~(a) The offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used; or~~

~~(b) Services offered over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information; or~~

~~(c) Equipment employed on the premises of a person to originate, route, or terminate telecommunications.)~~

**"Telecommunications service"** means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

**"Telemarketing"** means contacting a person by telephone in an attempt to sell one or more products or services.

**"Toll restriction" or "toll restricted"** means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

**"Traffic"** means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

**"Trouble report"** means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

**"Trunk"** means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

#### NEW SECTION

**WAC 480-120-034 Classification of local exchange companies as Class A or Class B.** (1) Each local exchange company is classified as a Class A company or a Class B company, based on the number of access lines it provides to Washington state customers.

(2) The classification of a company as Class A or Class B is made without respect to the company's classification as a competitive company under RCW 80.36.320.

(3) For purposes of classifying a company as Class A or Class B, the number of access lines served by the local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.

(4) Any company whose classification as Class A or Class B changes, due to a change in the number of access lines served, a change in affiliate relationships, or other reason, must notify the commission secretary of the change in classification within thirty days after the end of the month in which change in classification occurs.

(5) By July 1 of each year, the commission will publish on its website the total number of access lines served by local exchange companies in Washington, based on information reported by companies for the previous calendar year, and a calculation of the two percent threshold.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-112 Company performance for orders for nonbasic services.** (1) Except as provided in subsection (2) of this section, the local exchange company (LEC) must complete orders for all nonbasic services within one hundred eighty days of the order date or by a later date requested by a customer.

(2) The timeline set forth in subsection (1) of this section does not apply when a later installation or activation is permitted under WAC 480-120-071 (~~((Extending))~~ Extension of service), or when the commission has granted an exemption from the requirement for installation or activation of a particular order under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC).

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-122 Establishing credit—Residential services.** (~~((†))~~) This section applies only to the provision of residential services.

(1) For a local exchange company (LEC) that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering. The LEC may require an applicant or customer of residential basic service to pay a local service deposit only ((in accordance with (a) through (e) of this subsection. For a LEC that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering.)) if:

(a) ~~((†))~~ The applicant or customer has received two or more delinquency notices for basic service during the last twelve month period with that company or another company;

(b) ~~((†))~~ The applicant or customer has had basic service discontinued by any telecommunications company;

(c) ~~((†))~~ The applicant or customer has an unpaid, overdue basic service balance owing to any telecommunications company;

(d) ~~((†))~~ The applicant's or customer's service is being restored following a discontinuation for nonpayment or acquiring service through deceptive means under WAC 480-120-172(1); or

(e) ~~((†))~~ The applicant or customer has been disconnected for taking service under deceptive means as described in WAC 480-120-172(1).

(2) A LEC may, if provided for in its tariff or price list, require an applicant or customer of ancillary services to demonstrate satisfactory credit by reasonable means (~~((†))~~), pay a deposit, or make advanced payments consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit or advanced payments for ancillary services.

(3) An interexchange company may, if provided for in its tariff or price list, require an applicant or customer of interexchange services to demonstrate satisfactory credit by reasonable means or pay a deposit consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit for interexchange services.

(4) When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(5) When an applicant or customer is required to pay a basic service deposit or an interexchange deposit, but is unable to pay the entire amount in advance of connection or continuation of service, the ~~((following will apply))~~ company must offer the applicant or customer the following options:

(a) ~~((The customer may))~~ Pay no more than fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; or

(b) Where technology permits, the applicant or customer must ~~((be allowed))~~ have the option of accepting toll-restricted basic service in lieu of payment of the deposit. A company must not charge for toll restriction when it is used as an alternative to a deposit.

A company must remove toll restriction unless the customer requests to retain it when ~~((a))~~ the customer makes full payment of the requested interexchange ~~((carrier))~~ company deposit or pays fifty percent of the requested deposit and enters into payment arrangements as provided for in (a) of this subsection.

(6) A company may require an applicant or customer to pay a deposit or make advanced payments equal to two months' charges for ancillary service before providing or continuing ancillary services.

(7) A company may require an applicant or customer to pay a deposit if it finds that service was provided initially without a deposit based on incorrect information and the customer otherwise would have been required to pay a deposit.

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice to the customer listing the reason(s) for the request, the date the deposit must be paid, and the actions the company may take if the deposit is not paid.

(b) Except for circumstances described in subsection (8) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery, if the notice is delivered in person to the customer.

(8)(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay unbilled toll charges or pay a new or additional deposit amount when the customer's toll charges exceed thirty dollars, or exceed customary use over the previous six months by twenty dollars or by twenty percent, whichever is greater. A company may toll-restrict a customer's services if the customer is unable to pay the toll or deposit amount.

(b) When a customer has exceeded the toll levels (~~outlined above~~) in (a) of this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in toll restriction of the customer's service. The company must give the customer the option to pay one of the following:

(i) All outstanding toll charges specified in the notice; or  
 (ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or

(iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.

(c) When an applicant does not have a customary utilization amount from a previous service, the company may request that the applicant estimate the greatest monthly toll amount the applicant expects to use. If the company asks for an estimate, it must explain that if the customer's toll charges exceed the amounts in (a) of this subsection, the company may toll restrict or require a deposit as permitted in this subsection.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-128 Deposit administration.** (1) **Transfer of deposit.** A company must transfer a customer's deposit, less any outstanding balance, from the account at one service address to another service address, when a customer moves to a new address, is required to pay a deposit, and continues to receive service from that company.

(2) **Interest on deposits.** Companies that collect customer deposits must pay interest on those deposits calculated:

(a) For each calendar year, at the rate for the one-year Treasury Constant Maturity as of November 15 of the previous year, as calculated by the U.S. Treasury (~~as~~) and published in the Federal Reserve's Statistical Release H.15 (~~on January 15 of that year. If January 15 falls on a nonbusiness day, the company will use the rate posted on the next following business day~~); and

(b) From the date of deposit to the date of refund or when applied directly to the customer's account.

(3) **Refunding deposits for (~~residential~~) retail services.** Companies must refund deposits, plus accrued interest, less any outstanding balance, to a retail customer when:

(a) A customer terminates service or services for which a deposit is being held.

A company is not required to refund an amount held on deposit when a customer requests a discontinuation of service or services but requests to establish similar service with a company for which the current deposit holder also provides billing and collection service. The new provider must have authority with the commission to collect deposits; or

(b) The customer has paid for service for twelve consecutive months in a prompt and satisfactory manner as evidenced by the following:

(i) The company has not issued a discontinuation notice against the customer's account for nonpayment during the last twelve months; and

(ii) The company has sent no more than two delinquency notices to the customer in the last twelve months.

~~((e))~~ (4) A company may apply a deposit refund to a customer's account or, upon customer request, must provide the refund in the form of a check issued and mailed to the customer no later than thirty days after satisfactory payment history is established or thirty days after the date the closing bill is (~~issued~~) paid when service is terminated.

**AMENDATORY SECTION** (Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03)

**WAC 480-120-147 Changes in local exchange and intrastate toll services.** For the purpose of this section "subscriber" is any one of the following: The party identified in the account records of a common carrier as responsible for payment of the telephone bill; any adult person authorized by such party to change telecommunications services or to charge services to the account; or any person contractually or otherwise lawfully authorized to represent such party.

(1) **Verification of orders.** A local exchange or intrastate toll (~~carrier~~) company that requests on behalf of a (~~customer~~) subscriber that the (~~customer's carrier~~) subscriber's company be changed, and that seeks to provide retail services to the (~~customer~~) subscriber (submitting (~~carrier~~) company), may not submit a change-order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the procedures in (a) through (c) of this subsection:

(a) The company has obtained the (~~customer's~~) subscriber's written or electronic authorization to submit the order (letter of agency). The letter of agency must be a separate electronic form, located on a separate screen or web page, or a separate written document (or easily separable document) containing only the authorizing language described in (a)(i) through (vi) of this subsection, having the sole purpose of authorizing a telecommunications (~~carrier~~) company to initiate a preferred (~~carrier~~) company change. The letter of agency, whether written or electronic, must be signed and dated by the (~~customer~~) subscriber of the telephone line(s) requesting the preferred (~~carrier~~) company change. The letter of agency (~~shall~~) must not be combined on the same doc-

ument or on the same screen or web page with inducements of any kind; however, it may be combined with checks that contain only the required letter of agency language as prescribed in (a)(i) through (vi) of this subsection, and the necessary information to make the check a negotiable instrument. The check may not contain any promotional language or material. It must contain, in easily readable, boldface type on the front of the check, a notice that the ((eustomer)) subscriber is authorizing a preferred ((earrier)) company change by signing the check. Letter-of-agency language must be placed near the signature line on the back of the check. Any ((earrier)) company designated in a letter of agency as a preferred ((earrier)) company must be the ((earrier)) company directly setting the rates for the ((eustomer)) subscriber. If any portion of a letter of agency is translated into another language, then all portions must be translated into that language, as well as any promotional materials, oral descriptions or instructions provided with the letter of agency. The letter of agency must confirm the following information from the ((eustomer)) subscriber:

(i) The ((eustomer)) subscriber billing name, billing telephone number and billing address and each telephone number to be covered by the change order;

(ii) The decision to change;

(iii) The ((eustomer's)) subscriber's understanding of the change fee;

(iv) That the ((eustomer)) subscriber designates (name of ((earrier)) company) to act as the ((eustomer's)) subscriber's agent for the preferred ((earrier)) company change;

(v) That the ((eustomer)) subscriber understands that only one telecommunications ((earrier)) company may be designated as the ((eustomer's)) subscriber's intraLATA preferred ((earrier)) company; that only one telecommunications ((earrier)) company may be designated as the ((eustomer's)) subscriber's interLATA preferred ((earrier)) company; and that only one telecommunications ((earrier)) company may be designated as the ((eustomer's)) subscriber's local exchange provider, for any one telephone number. The letter of agency must contain a separate statement regarding the ((eustomer's)) subscriber's choice for each preferred ((earrier)) company, although a separate letter of agency for each choice is not necessary; and

(vi) Letters of agency may not suggest or require that a ((eustomer)) subscriber take some action in order to retain the current preferred ((earrier)) company.

(b) The submitting ((earrier)) company has obtained the ((eustomer's)) subscriber's authorization, as described in (a) of this subsection, electronically, by use of an automated, electronic telephone menu system. This authorization must be placed from the telephone number(s) for which the preferred ((earrier)) company is to be changed and must confirm the information required in (a)(i) through (vi) of this subsection.

Telecommunications companies electing to confirm the preferred ((earrier)) company change electronically must establish one or more toll free telephone numbers exclusively for that purpose.

Calls to the number(s) must connect a ((eustomer)) subscriber to a voice response unit, or similar device, that records the required information regarding the change, including

recording the originating automatic number identification (ANI).

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the ((eustomer's)) subscriber's oral authorization to submit the change order that confirms and includes appropriate verification data (e.g., the ((eustomer's)) subscriber's date of birth). A company or a company's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection with the third-party verifier has been established. The independent third party must not be owned, managed, controlled or directed by the ((earrier)) company or the ((earrier's)) company's marketing agent; and must not have any financial incentive to confirm preferred ((earrier)) company change orders for the ((earrier)) company or the ((earrier's)) company's marketing agent. The content of the verification must include clear and unambiguous confirmation that the ((eustomer)) subscriber has authorized a preferred ((earrier)) company change.

(2) Where a telecommunications ((earrier)) company is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll) that ((earrier)) company must obtain separate authorization, and separate verification, from the ((eustomer)) subscriber for each service sold, although the authorizations may be made within the same solicitation.

(3) The documentation regarding a ((eustomer's)) subscriber's authorization for a preferred ((earrier)) company change must be retained by the submitting ((earrier)) company, at a minimum, for two years to serve as verification of the ((eustomer's)) subscriber's authorization to change his or her telecommunications company. The documentation must be made available to the ((eustomer)) subscriber and to the commission upon request and at no charge. Documentation includes, but is not limited to, entire third-party-verification conversations and, for written verifications, the entire verification document.

(4) **Implementing order changes.** An executing ((earrier)) company may not verify directly with the ((eustomer)) subscriber the submission of a change in a ((eustomer's)) subscriber's selection of a provider received from a submitting ((earrier)) company. The executing ((earrier)) company must comply promptly, without any unreasonable delay, with a requested change that is complete and received from a submitting ((earrier)) company. An executing ((earrier)) company is any telecommunications ((earrier)) company that affects a request that a ((eustomer's-earrier)) subscriber's company be changed. Except as provided by contract, a telecommunications company must submit a preferred company change order on behalf of a subscriber within no more than sixty days of obtaining authorization.

This section does not prohibit any company from investigating and responding to any ((eustomer-initiated)) subscriber-initiated inquiry or complaint.

(5) **Preferred carrier freezes.** A preferred carrier freeze prevents a change in a ((eustomer's)) subscriber's preferred ((earrier)) company selection unless the ((eustomer)) subscriber gives the ((earrier)) company from whom the

freeze was requested express consent. Express consent means direct, written, electronic, or oral direction by the ((eustomer)) subscriber. All local exchange companies (LECs) must offer preferred carrier freezes. Such freezes must be offered on a nondiscriminatory basis to all ((eustomers)) subscribers. Offers or solicitations for such freezes must clearly distinguish among telecommunications services subject to a freeze (e.g., local exchange, intraLATA toll, and interLATA toll). The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested. Separate authorizations may be contained within a single document.

(a) All LECs must notify all ((eustomers)) subscribers of the availability of a preferred carrier freeze, no later than the ((eustomer's)) subscriber's first telephone bill, and once per year must notify all local exchange service ((eustomers)) subscribers of such availability on an individual ((eustomer)) subscriber basis (e.g., bill insert, bill message, or direct mailing).

(b) All ((carrier-provided)) company-provided solicitation and other materials regarding freezes must include an explanation, in clear and neutral language, of what a preferred carrier freeze is, and what services may be subject to a freeze; a description of the specific procedures to lift a preferred carrier freeze; an explanation that the ((eustomer)) subscriber will be unable to make a change in ((carrier)) company selection unless he or she lifts the freeze; and an explanation of any charges incurred for implementing or lifting a preferred carrier freeze.

(c) No local exchange ((carrier)) company may implement a preferred carrier freeze unless the ((eustomer's)) subscriber's request to impose a freeze has first been confirmed in accordance with the procedures outlined for confirming a change in preferred ((carrier)) company, as described in subsections (1) and (2) of this section.

(d) All LECs must offer ((eustomers)) subscribers, at a minimum, the following procedures for lifting a preferred carrier freeze:

(i) A ((eustomer's)) subscriber's written or electronic authorization stating the ((eustomer's)) subscriber's intent to lift the freeze;

(ii) A ((eustomer's)) subscriber's oral authorization to lift the freeze. This option must include a mechanism that allows a submitting ((carrier)) company to conduct a three-way conference call with the executing ((carrier)) company and the ((eustomer)) subscriber in order to lift the freeze. When engaged in oral authorization to lift a freeze, the executing ((carrier)) company must confirm appropriate verification data (e.g., the ((eustomer's)) subscriber's date of birth), and the ((eustomer's)) subscriber's intent to lift the freeze.

(iii) The LEC must lift the freeze within three business days of the subscriber request.

(e) A LEC may not change a ((eustomer's)) subscriber's preferred ((carrier)) company if the ((eustomer)) subscriber has a freeze in place, unless the ((eustomer)) subscriber has lifted the freeze in accordance with this subsection.

(6) **Remedies.** In addition to any other penalties provided by law, a submitting ((carrier)) company that requests a change in a ((eustomer's-carrier)) subscriber's company without proper verification as described in this rule ((shall))

must receive no payment for service provided as a result of the unauthorized change and ((shall)) must promptly refund any amounts collected as a result of the unauthorized change. The ((eustomer)) subscriber may be charged, after receipt of the refund, for such service at a rate no greater than what would have been charged by its authorized telecommunications company, and any such payment ((shall)) must be remitted to the ((eustomer's)) subscriber's authorized telecommunications company.

(7) **Exceptions.** Companies transferring ((eustomers)) subscribers as a result of a merger, purchase of the company, or purchase of a specific ((eustomer)) subscriber base are exempt from subsections (1) through (6) of this section if the companies comply with the following conditions and procedures:

(a) The acquiring company must provide a notice to each affected ((eustomer)) subscriber at least thirty days before the date of transfer. Such notice must include the following information:

(i) The date on which the acquiring company will become the ((eustomer's)) subscriber's new provider;

(ii) The rates, terms, and conditions of the service(s) to be provided upon transfer, and the means by which the acquiring company will notify the ((eustomer)) subscriber of any change(s) to those rates, terms, and conditions;

(iii) That the acquiring company will be responsible for any ((carrier)) company change charges associated with the transfer;

(iv) The ((eustomer's)) subscriber's right to select a different company to provide the service(s);

(v) That the ((eustomer)) subscriber will be transferred even if the ((eustomer)) subscriber has selected a "freeze" on his/her ((carrier)) company choices, unless the ((eustomer)) subscriber chooses another ((carrier)) company before the transfer date;

(vi) That, if the ((eustomer)) subscriber has a "freeze" on ((carrier)) company choices, the freeze will be lifted at the time of transfer and the ((eustomer)) subscriber must "refreeze" ((carrier)) company choices;

(vii) How the ((eustomer)) subscriber may make a complaint prior to or during the transfer; and

(viii) The toll-free customer service telephone number of the acquiring ((carrier)) company.

(b) The acquiring company must provide a notice to the commission at least thirty days before the date of the transfer. Such notice must include the following information:

(i) The names of the parties to the transaction;

(ii) The types of services affected;

(iii) The date of the transfer; and

(iv) That the company has provided advance notice to affected ((eustomers)) subscribers, including a copy of such notice.

(c) If after filing notice with the commission any material changes develop, the acquiring company must file written notice of those changes with the commission no more than ten days after the transfer date announced in the prior notice. The commission may, at that time, require the company to provide additional notice to affected ((eustomers)) subscribers regarding such changes.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-161 Form of bills.** (1) **Bill frequency.**

Companies must offer customers, at a minimum, the opportunity to receive billings on a monthly interval, unless subsection (1) of this section applies.

(2) **Length of time for payment of a bill.** Bill due dates must reflect a date which at a minimum allows a customer fifteen days from the date of mailing for payment.

(a) Upon showing of good cause, a customer may request and the company must allow the customer to pay by a date that is not the normally designated payment date on their bill. Good cause may include, but not be limited to, adjustment of the billing cycle to parallel receipt of income.

(i) A company may not assess late payment fees for the period between the regularly scheduled due date and the customer-chosen due date so long as the customer makes payment in full by the customer-chosen due date.

(ii) A company may refuse to establish a preferred payment date that would extend the payment date beyond the next normally scheduled payment or due date.

(b) If a company is delayed in billing a customer, the company must offer arrangements upon customer request or upon indication that a payment arrangement is necessary, that are equal to the length of time the bill is delayed beyond the regularly scheduled billing interval (e.g., if the bill includes two months delayed charges, the customer must be allowed to pay the charges over two months).

Companies may not charge a customer late payment fees on the delayed charges during the extended payment period.

(3) **Form of bill.** With the consent of the customer, a company may provide regular billings in electronic form if the bill meets all the requirements of this rule. The company must maintain a record of the customer's request, and the customer may change from electronic to printed billing upon request.

(4) **Bill organization.** Telephone bills must be clearly organized, and must comply with the following requirements:

(a) Bills may only include charges for services that have been requested by the customer or other individuals authorized to request such services on behalf of the customer, and that have been provided by the company;

(b) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill;

(c) Where charges for two or more ~~((carriers))~~ companies appear on the same telephone bill, the charges must be separated by service provider; ~~((and))~~

(d) The telephone bill must clearly and conspicuously identify any change in service provider, including identification of charges from any new service provider; and

(e) The telephone bill must include the internet address (uniform resource locator) of the website containing the service provider's tariff or price list, if the service provider is a telecommunications company required to publish its tariff or price list on a website pursuant to WAC 480-80-206(2) (Price list availability to customers) or WAC 480-120-193 (Posting of tariffs for public inspection and review). This requirement

may be satisfied by including the address of a website other than that of the telecommunications company itself, if the website provides access to the tariff or price list that applies to the service being billed.

For purposes of this subsection, "new service provider" means a service provider that did not bill the ~~((subscriber))~~ customer for service during the service provider's last billing cycle. This definition ~~((shall))~~ includes only providers that have continuing relationships with the ~~((subscriber))~~ customer that will result in periodic charges on the ~~((subscriber's))~~ customer's bill, unless the service is subsequently canceled.

For purposes of this subsection, "clearly and conspicuously" means notice that would be apparent to ~~((the))~~ a reasonable customer.

(5) **Descriptions of billed charges.**

(a) The bill must include a brief, clear, nonmisleading, plain language description of each service for which a charge is included. The bill must be sufficiently clear in presentation and specific enough in content so that the customer can determine that the billed charges accurately reflect the service actually requested and received, including individual toll calls and services charged on a per-occurrence basis.

(b) The bill must identify and set out separately, as a component of the charges for the specific service, any access or other charges imposed by order of or at the direction of the Federal Communications Commission (FCC).

(c) The bill must clearly delineate the amount or the percentage rate and basis of any tax assessed by a local jurisdiction.

(6) **Charges for which service can be discontinued.**

Where a bill contains charges for basic service, in addition to other charges, the bill must distinguish between charges for which nonpayment will result in loss of basic service. The bill must include telephone numbers by which ~~((subscribers))~~ customers may inquire or dispute any charges on the bill. A ~~((carrier))~~ company may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the ~~((subscriber's))~~ customer's account and is fully authorized to resolve the ~~((consumer's))~~ customer's complaints on the ~~((carrier's))~~ company's behalf. Where the ~~((subscriber))~~ customer does not receive a paper copy of the ~~((customer's))~~ customer's telephone bill, but instead accesses that bill only by e-mail or internet, the ~~((carrier))~~ company may comply with this requirement by providing on the bill an e-mail or website address. Each ~~((carrier))~~ company must make a business address available upon request from a ~~((consumer))~~ customer.

(7) **Itemized statement.** A company must provide an itemized statement of all charges when requested by a customer, including, but not limited to ~~((, the following))~~:

(a) Rates for individual services;

(b) Calculations of time or distance charges for calls, and calculations of any credit or other account adjustment; and

(c) When itemizing the charges of information providers, the name, address, telephone number, and toll-free number, if any, of the providers.

**(8) Methods of payment.**

(a) Companies must, at a minimum, allow the following methods of payment: Cash, certified funds (e.g., cashier check or money order), and personal checks.

(b) Upon written notice to a customer, companies may refuse to accept personal checks when that customer has tendered two or more nonsufficient-funds checks within the last twelve months.

(9) **Billing companies.** A company may bill regulated telecommunications charges only for companies properly registered to provide service within the state of Washington or for billing agents. The company must, in its contractual relationship with the billing agent, require the billing agent to certify that it will submit charges only on behalf of properly registered companies; and that it will, upon request of the company, provide a current list of all companies for which it bills, including the name and telephone number of each company. The company must provide a copy of this list to the commission for its review upon request.

(10) **Crediting customer payments.** Unless otherwise specified by the customer, payments that are less than the total bill balance must be credited first to basic service, with any remainder credited to any other charges on the bill.

For purposes of this subsection, basic service includes associated fees and surcharges such as FCC access charges. Basic service does not include ancillary services such as caller identification and custom calling features.

(11) **Exemptions from this rule.** Prepaid calling card services (PPCS) are exempt from subsections (1) through (10) of this section.

**AMENDATORY SECTION** (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-120-166 Commission-referred complaints.**

(1) Each company must keep a record of all complaints concerning service or rates for at least ~~((three))~~ two years and, on request, make them readily available for commission review. The records must contain complainant's name and address, date and the nature of the complaint, action taken, and final result.

(2) Each company must have personnel available during regular business days to respond to commission staff.

(3) Applicants, customers, or their authorized representatives, may file with the commission an informal complaint as described in WAC 480-07-910 (Informal complaints) or a formal complaint against a company when there are alleged violations of statutes, administrative rules, or tariffs as provided by WAC 480-07-370 (Pleadings—General).

(4) When the commission staff refers an informal complaint to a company, the company must:

(a) Stop any pending action involving the issues raised in the complaint provided any amounts not in dispute are paid when due (e.g., if the complaint involves a disconnect threat or collection action, the disconnect or collection must be stopped);

(b) Thoroughly investigate all issues raised in the complaint and provide a complete report of the results of its investigation to the commission, including, if applicable,

information that demonstrates that the company's action was in compliance with commission rules; and

(c) Take corrective action, if warranted, as soon as appropriate under the circumstances.

(5) Commission staff will ask the customer filing the informal complaint whether the customer wishes to speak directly to the company during the course of the complaint, and will relay the customer's preference to the company at the time staff opens the complaint.

(6) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of service-affecting informal complaints to commission staff within two business days from the date commission staff passes the complaint to the company. Service-affecting complaints include, but are not limited to, nonfunctioning or impaired services (i.e., disconnected services or those not functioning properly).

(7) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes.

(8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission staff for additional information on pending informal complaints within three business days.

(9) The company must keep commission staff informed when relevant changes occur in what has been previously communicated to the commission and when there is final resolution of the informal complaint.

(10) An informal complaint opened with the company by commission staff may not be considered closed until commission staff informs the company that the complaint is closed.

~~((11) The company must provide information requested by staff regarding any informal complaint in accordance with subsections (6) and (7) of this section until such time as staff informs the company that the complaint is closed.))~~

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-172 Discontinuing service—Company initiated.** (1) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it finds the customer has ~~((performed a))~~ used deceptive ((practice by)) means to initiate or continue service including, but not limited to:

- (a) Tampering with the company's property;
- (b) Using service through an illegal connection; or
- (c) Unlawfully using service or using service for unlawful purposes~~((or~~
- ~~((d) Obtaining service in another false or deceptive manner)).~~

(2)(a) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it determines the customer has:

(i) Vacated the premises without informing the company;

(ii) Paid a delinquent balance in response to a delinquency notice as described in subsection (7) of this section with a check or electronic payment that is subsequently dishonored by the bank or other financial institution; or

(iii) Failed to keep payment arrangements agreed upon in response to a delinquency notice as described in subsection (7) of this section.

(b) The company must restore service once the customer has corrected the reason for discontinuance as described in subsection (2)(a) of this section.

(c) The company may require a deposit from a customer that it has disconnected due to the reasons described in subsection (2)(a) of this section.

(3) A company may discontinue service after providing proper notice, or may issue a discontinuation notice, if, and only if (~~in one or more of the following circumstances~~):

(a) The company determines the customer has violated a rule, statute, service agreement, filed tariff, or price list;

(b) The company determines the customer has used customer-owned equipment that adversely affects the company's service to its other customers;

(c) The company determines the customer has not paid regulated charges or has not paid a deposit as provided in the tariff or price list of the company or another company with which it has a billing and collection agreement, except for nonpayment of charges incurred from information delivery services as provided for in WAC 480-120-254 (Telephone solicitation) or disputed third party-billed charges;

(d) The company is unable to substantiate the identity of the individual requesting service:

(i) Companies must allow the applicant to substantiate identity with one piece of identification chosen from a list, provided by the company, of at least four sources of identification. The list must include a current driver's license or other picture identification;

(ii) Company business offices and payment agencies, required under WAC 480-120-132 (Business offices) and 480-120-162 (Cash and urgent payments), must provide a means for applicants to provide identification at no charge to the applicant;

(e) The company determines the customer has received service from the company by providing false information, including false statements of credit references or employment, false statement of premises address, use of an alias or false name with intent to deceive, or rotation of service among roommates or persons living together for the purpose of avoiding the debts of one or more persons; or

(f) The company determines the customer is receiving service at an address where a former customer is known to reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address and there is evidence that the applicant lived at the address while the overdue, unpaid prior obligation was incurred and helped incur the obligations. However, a company may not deny ser-

vice if a former customer with an overdue, unpaid prior obligation has permanently vacated the address.

(4) Except as provided in subsections (1), (2), and (3) of this section, a company may discontinue (~~or restrict services only under the following circumstances~~):

(a) (~~A company may discontinue~~) Basic service only for nonpayment of basic service charges;

(b) (~~A company may discontinue~~) Ancillary services only for nonpayment of ancillary charges or if the company properly discontinues basic service;

(c) (~~A company may discontinue~~) Interexchange access only for nonpayment of interexchange charges or if the company properly discontinues basic service:

(i) At its discretion, the company may permit access to toll-free numbers while a customer's interexchange access service is discontinued or restricted;

(ii) The company may not charge fees for toll restriction when it has discontinued or restricted the customer's interexchange access service under this section;

(d) (~~Companies may~~) A company must not shift a rate plan as a discontinuation method.

(5) When a company discontinues service to a customer, it must also discontinue billing for service as of the date of the discontinuation.

#### (6) **Medical emergencies.**

(a) When a local exchange company (LEC) has cause to discontinue residential basic service or has discontinued service, it must postpone total service discontinuation or reinstate toll-restricted basic service that permits both making and receiving calls and access to E911 for a grace period of five business days after receiving either oral or written notice of the existence of a medical emergency, as described in (b) of this subsection. The LEC must reinstate service during the same day if the customer contacts the LEC prior to the close of the business day and requests a same-day reconnection. Otherwise, the LEC must restore service by 12:00 p.m. the next business day. When service is reinstated, the LEC cannot require payment of a reconnection charge or deposit before reinstating service but may bill the charges at a later date.

(b) The LEC may require that the customer submit written certification from a qualified medical professional, within five business days, stating that the discontinuation of basic service or restricted basic service would endanger the physical health of a resident of the household. "Qualified medical professional" means a licensed physician, nurse practitioner, or physician's assistant authorized to diagnose and treat the medical condition without supervision of a physician. Nothing in this subsection precludes a company from accepting other forms of certification, but the maximum the company can require is written certification. If the company requires written certification, it may (~~not~~) require (~~more than the following information~~) only:

(i) The address of the residence;

(ii) An explanation of how discontinuation of basic service or restricted basic service would endanger the physical health of the resident;

(iii) A statement of how long the condition is expected to last; and

(iv) The title, signature, and telephone number of the person certifying the condition.

(c) The medical certification is valid only for the length of time the medical professional certifies the resident's health would be endangered, but no longer than ninety days unless renewed.

(d) A medical emergency does not excuse a customer from paying delinquent and ongoing charges. The company may require that, within the five-day grace period, the customer pay a minimum of twenty-five percent of the delinquent basic service balance or ten dollars, whichever is greater, and enter into an agreement to pay the remaining delinquent basic service balance within ninety days, and agree to pay subsequent bills when due.

Nothing in this subsection precludes the company from agreeing to an alternate payment plan, but the company must not require the customer to pay more than this section prescribes and must send a notice to the customer confirming the payment arrangements within two business days.

(e) The company may discontinue basic service or restrict basic service without further notice if, within the five-day grace period, the customer fails to provide an acceptable medical certificate or pay the amount required under (d) of this subsection. The company may discontinue basic service or restrict basic service, without further notice, if the customer fails to abide by the terms of the payment agreement.

(f) The company must ensure that the records of medical emergencies are used or disclosed only for the purposes provided for in this section.

**(7) Discontinuation notice requirements.** The company must provide the customer notice before discontinuing service in accordance with (a) through (c) of this subsection, except as ((described)) provided in subsection (1) of this section, ((as follows:)) and except as provided in WAC 480-120-122(8).

(a) Each company must provide a written discontinuation notice to the customer either by first class mail, personal delivery to the customer's service address, or electronically delivered when the company has the technical capability and the customer consents to this delivery method. A company must provide delivered notice by handing the notice to a person of apparent competence in the residence; to a person employed at the place of business of the customer if it is a business account; or attached to the primary door of the residential unit or business office where service is provided if no person is available to receive notice. ~~((A company must include the following information, at a minimum, in a))~~ The discontinuation notice must include, at a minimum:

(i) A discontinuation date that is not less than eight business days after the date the notice is mailed, transmitted electronically, or personally delivered;

(ii) The amount(s) owing for the service(s) that is subject to discontinuation or restriction;

(iii) A statement that clearly indicates the amount a customer must pay to maintain basic service or restricted basic service, regardless of the full amount owed by the customer;

(iv) Instructions on how to correct the problem to avoid the discontinuation;

(v) Information about any discontinuation or restoration charges that may be assessed;

(vi) Information about how a customer can avoid disconnection under the medical emergency rules described in subsection (6) of this section; and

(vii) The company's name, address, toll-free number, and TTY number where the customer may contact the company to discuss the pending discontinuation of service.

(b) If the company discovers that the information provided on the notice failed to meet the requirements of (a) of this subsection, or if ~~((it))~~ the company discovers it provided incorrect information on the notice, the company must restore service and issue a second notice with accurate information as described in this section.

(c) If the company has not discontinued service within ten business days of the first day the discontinuation may be implemented, the discontinuation notice is void, unless the customer and the company have entered into a mutually acceptable payment agreement with payment dates that exceed the ten-day period. Upon a void notice, the company must provide a new discontinuation notice to the customer if ~~((it))~~ the company intends to discontinue service at a later date.

(8) In addition to the notice required in subsection (7) of this section, a company must attempt to make personal contact with a customer prior to discontinuing service. Any of the following methods will satisfy the personal contact requirement:

(a) **Delivered notice.** A company must provide delivered notice handing the notice to a person of apparent competence in the residence; to a person employed at the place of business of the customer if it is a business account; or attached to the primary door of the residential unit or business office where service is provided if no person is available to receive notice. The notice must state a scheduled discontinuation date that is not earlier than 5:00 p.m. of the next business day after the date of delivery;

(b) **Electronically issued notice.** If the company has the technical capability to provide electronic notice and the customer has agreed to receive notice in electronic form, the notice sent by the company must state a scheduled discontinuation date that is not earlier than 5:00 p.m. of the second business day after the date of delivery;

(c) **Mailed notice.** The notice mailed by the company may not include a scheduled discontinuation date that is earlier than 5:00 p.m. of the third business day after the date of mailing. The date of mailing is not the first day of the notice period; or

(d) **Telephone notice.** The company must attempt at least two times to contact the customer during regular business hours. If the company is unable to reach the customer on the first attempt, the company must attempt to contact the customer using any business or message number provided by the customer as a contact number. The company must keep a log or record of the calls for a minimum of ninety calendar days showing the telephone number called, the time of the call, and details of the results of each attempted call. The disconnection must not take place before 5:00 p.m. of the next business day after the phone calls or attempts.

(e) A company need not attempt personal contact as provided for in (a) through (d) of this subsection when the company has had cause, in any two previous billing periods dur-

ing a consecutive twelve-month period, to attempt such contact and the company has notified the customer in writing that such contact will not be attempted in the future before effecting a discontinuation of services.

(9) Except in case of danger to life or property, companies may not discontinue service on days that it is not fully staffed to discuss discontinuation and reestablish service to the customer on the same or the following day.

(10) When the company has reasonable grounds to believe that service is to other than the party of record, the company must ~~((take))~~ make reasonable efforts to inform the occupants at the service address of the impending discontinuation. Upon request of one or more service users, the company must allow a minimum period of five business days to permit the service user to arrange for continued service.

The company is not required to allow the additional five days when a thorough investigation indicates there is deceptive activity at the service address.

(11) LECs must provide notice of pending local service discontinuation to the secretary, Washington state department of social and health services, and to the customer, where it provides service to a facility with resident patients including, but not limited to, hospitals, medical clinics, or nursing homes. Upon request from the secretary or a designee, the company must allow a delay in discontinuation of no less than five business days from the date of notice so that the department may take whatever steps are necessary in its view to protect the interests of patients living within the facilities.

(12) **Remedy and appeals.** The company must not discontinue or restrict service while a customer is pursuing any remedy or appeal provided for by these rules, if the customer pays any amounts not in dispute when due and the customer corrects any conditions posing a danger to health, safety, or property. The company must inform the customer of these provisions when the customer is referred to a company's supervisor or the commission.

During a dispute a company may, upon authorization from commission staff, discontinue service when a customer's toll charges substantially exceed the amount of any deposit or customary use and it appears the customer may incur excessive, uncollectible toll charges while an appeal is being pursued. A customer whose service is subject to discontinuation may maintain service pending resolution of any dispute upon payment of outstanding toll charges subject to refund if the dispute is resolved in the customer's favor.

(13) **Payment at a payment agency.** Payment of any past-due amounts to a designated payment agency of the company constitutes payment to the company when the customer informs the company of the payment and the company verifies the payment.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507 and 507A, filed 12/12/02 and 1/16/03, effective 7/1/03)

**WAC 480-120-173 Restoring service after discontinuation.** (1) A company must restore a discontinued service when:

(a) The causes of discontinuation not related to a delinquent balance have been removed or corrected. In the case of

deceptive (~~((practices))~~) means, as described in WAC 480-120-172 (1)(~~((a))~~), this means the customer has corrected the (~~((deceptive practice))~~) deception and has paid the estimated amount of service that was taken through deceptive means, all costs resulting from the (~~((deceptive use))~~) deception, any applicable deposit, and any delinquent balance owed to the company by that customer for the same class of service. A company may require a deposit from a customer that has obtained service (~~((in a deceptive manner))~~) deceptively as described in WAC 480-120-172 (1)(~~((a))~~). A company is not required to allow six-month arrangements on a delinquent balance as provided for in WAC (~~((480-120-173 (1)(b)))~~) 480-120-174(1) when it can demonstrate that a customer obtained service through deceptive means in order to avoid payment of a delinquent amount owed to that company;

(b) Payment or satisfactory arrangements for payment of all proper charges due from the applicant, including any proper deposit and reconnection fee, have been made (~~((Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first half of a deposit is paid as provided for in WAC 480-120-122))~~) as provided in WAC 480-120-122 (Establishing credit—Residential services) and 480-120-174 (Payment arrangements); or

(c) The commission staff directs restoration pending resolution of any dispute between the company and the applicant or customer over the propriety of discontinuation.

(2) After the customer notifies the company that the causes for discontinuation have been corrected, and the company has verified the correction, the company must restore service(s) within the following periods:

(a) Service(s) that do not require a premises visit for reconnection must be restored within one business day; and

(b) Service(s) that require(~~((s))~~) a premises visit for reconnection must be restored within two business days. Companies must offer customers a four-hour window during which the company will arrive to complete the restoration.

(c) For purposes of this section Saturdays are considered business days.

(3) A company may refuse to restore service to a customer who has been discontinued twice for deceptive (~~((practices))~~) means as described in WAC 480-120-172 (1)(~~((a))~~) for a period of five years from the date of the second disconnection, subject to petition by the customer to the commission for an order requiring restoration of service based on good cause.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-174 ((Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility.)) Pay-**

**ment arrangements.** (1) **General.** Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first installment of a deposit is paid as provided for in WAC 480-120-122 (Establishing credit—Residential services).

(2) **Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility.** Local exchange companies (LECs) must restore service for any customer who has had basic service discontinued for nonpayment under WAC 480-120-172 (Discontinuing service—Company initiated) if the customer was not a participant in either the Washington telephone assistance program (WTAP) or the federal enhanced tribal lifeline program at the time service was discontinued and if the customer is eligible to participate in WTAP or the federal enhanced tribal lifeline program at the time the restoration of service is requested. To have service restored under this ~~(section)~~ subsection, a customer must establish eligibility for either WTAP or the federal enhanced tribal lifeline program, agree to continuing participation in WTAP or the federal enhanced tribal lifeline program, agree to pay unpaid basic service and ancillary service amounts due to the LEC at the monthly rate of no more than one and one-half times the telephone assistance rate required to be paid by WTAP participants as ordered by the commission under WAC 480-122-020 (Washington telephone assistance program rate), agree to toll restriction, or ancillary service restriction, or both, if the company requires it, until the unpaid amounts are paid. Companies must not charge for toll restriction when restoring service under this section.

~~((2))~~ In the event a customer receiving service under this ~~(section)~~ subsection fails to make a timely payment for either monthly basic service or for unpaid basic service or ancillary service, the company may discontinue service pursuant to WAC 480-120-172.

(3) Nothing in this rule precludes the company from entering into separate payment arrangements with any customer for unpaid toll charges or over a longer period than described in this rule as long as both the company and the customer agree to the payment arrangement. Longer payment arrangements as described in this subsection satisfy the requirements in subsection (1) or (2) of this section.

**AMENDATORY SECTION** (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

**WAC 480-120-196 Customer notice requirements—Competitively classified telecommunications companies or services.** This rule sets out requirements in specific circumstances for notices that companies must provide to customers when services are provided under price list.

(1) A company must provide customer notice before the effective date of changes to the price list for competitively classified companies or competitively classified services.

(a) The company must provide notice to each affected customer at least ten days before the effective date when a company proposes to:

- (i) Increase rates;
- (ii) Decrease rates; or
- (iii) Change terms or conditions.

The company must measure the ten-day period from the time the notice is mailed to all customers or appears in the newspaper or on the website.

(b) Each customer notice must include, at a minimum:

- (i) The effective date;
- (ii) A clear description of changes to rates and services;
- ~~((and))~~
- (iii) A company contact number where customers can seek additional information; and

(iv) The internet address (uniform resource locator) of the website where the company's price list is posted, unless the company is not required by WAC 480-80-206(2) (Price list availability to customers) to post its price list.

(c) For increase in rates or a material change of terms and conditions a company must provide notice by bill insert, bill message, printing on the billing envelope, a separate mailing to all affected customers, or, if a company has the capability and the customer has authorized, by e-mail.

(d) For changes not covered by (c) of this subsection. A company must provide notice by:

- (i) Any method listed in (c) of this subsection;
- (ii) Publishing the notice in one or more newspapers of general circulation for the affected areas; or
- (iii) Posting the notice on the website on which the price list is available to the public.

(2) A company may request assistance from the commission's designated public affairs officer with efforts to comply with this section.

(3) As an alternative to the customer notice required by this rule, a company may propose another form of customer notice. The commission's public affairs officer must approve any such notice in advance.

(4) Within ten days of making a filing requiring posting, publication, or customer notice required by this rule, a company must file a statement with the commission records center that the required notice has been posted, published, and/or mailed. The statement must include:

- (a) The methods used to post, publish, and/or give notice to customers;
- (b) When the notice was first posted, published, and/or issued to customers; and
- (c) A copy of the notice.

#### **NEW SECTION**

**WAC 480-120-202 Customer proprietary network information.** (1) The commission adopts by reference the Federal Communications Commission's rules codified at sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations (47 CFR §§ 64.2003 through 64.2009), concerning protection of Customer Proprietary Network Infor-

mation, for application to all telecommunications carriers providing wireline, intrastate telecommunications service in Washington. The effective date for these sections is stated in WAC 480-120-999 (Adoption by reference).

(2) Telecommunications carriers providing wireline, intrastate telecommunications service in Washington shall provide the commission with the same notice that carriers are required to provide the Federal Communications Commission under 47 CFR § 64.2009(f).

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-253 Automatic dialing-announcing device (ADAD).** (1) An automatic dialing and announcing device (ADAD) is a device that automatically dials telephone numbers and plays a recorded message once a connection is made.

(2) "Commercial solicitation" means an unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(3) This rule regulates the use of ADADs for purposes other than commercial solicitation. RCW 80.36.400 prohibits the use of an ADAD for purposes of commercial solicitation intended to be received by telephone customers within the state.

(4) This rule does not apply to the use of ADADs by government agencies to deliver messages in emergency situations.

(5) Except for emergency notification as provided for in subsection (6) of this section, an ADAD may be used for calls to telephone customers within the state only if:

(a) The recorded message states the nature of the call, identifies the individual, business, group, or organization for whom the call is being made, and telephone number to which a return call can be placed; ~~((and))~~

(b) ~~((#))~~ The ADAD automatically disconnects the telephone connection within two seconds after the called party hangs up the receiver~~((:)); and~~

(c) The ADAD does not dial ~~((unlisted telephone numbers (except as provided in this subsection),))~~ designated public service emergency telephone numbers as listed in published telephone directories, or any telephone number before 8:00 a.m. or after 9:00 p.m. ~~((An ADAD may dial an unlisted number if the ADAD is being used to deliver the name, telephone number, or brief message of a calling party to a called party when the called party's line was busy or did not answer.))~~

(6) An emergency ADAD may be connected to the telephone network and used only if:

(a) The ADAD contains sensors that will react only to a steady tone of at least four seconds duration, broadcasts only on frequencies allocated by the FCC for emergency services, and is designed to prevent accidental triggering of emergency calls;

(b) The ADAD provides some audible tone or message that alerts the user that the device has been activated and will automatically dial the preprogrammed emergency number

unless manually deactivated within thirty to forty-five seconds;

(c) The ADAD provides for disconnection within two seconds when the called party performs a predetermined function;

(d) The ADAD satisfies applicable state safety requirements; and

(e) The user registers the instrument with, and receives written approval for, its use from the emergency service entity to which an automatic call would be directed, secures from such entity an approved telephone number or numbers to be programmed into the instrument, and does not program the instrument to dial unlisted numbers, law enforcement numbers, or E911 emergency response numbers.

(7) Before any ADAD may be operated while connected to the telephone network, the potential ADAD user, unless it is a facilities-based LEC using its own facilities, must notify, in writing, the LEC whose facilities will be used to originate calls. The notice must include the intended use of the ADAD equipment, the calendar days and clock hours during which the ADADs will be used, an estimate of the expected traffic volume in terms of message attempts per hour and average length of completed message, and written certification that the equipment can effectively preclude calls to unlisted telephone numbers, designated public service emergency numbers, or any number or series of numbers on a list of telephone customers that may be in the future designated by tariff, regulation, or statute, as customers who are not to receive ADAD calls.

(a) The ADAD user must notify the LEC in writing within thirty days of any changes in the ADAD operation that would result in either an increase or decrease in traffic volume.

(b) For new applications for ADADs, the LEC must review the statement of intended use of ADAD equipment to determine whether there is a reasonable probability that use of the equipment will overload its facilities and may refuse to provide connections for the ADADs or may provide them subject to conditions necessary to prevent an overload.

(8) A LEC may suspend or terminate service to an ADAD user if the LEC determines that the volume of calling originated by the ADAD is degrading the service furnished to others. The LEC must provide at least five days' notice before suspending or terminating service, unless the ADAD creates an overload in the LEC's switching office, in which case it may terminate service immediately, with no prior notice.

(9) If a LEC learns that a customer is using an ADAD in violation of the provisions of this rule, the LEC must suspend or terminate the service of any ADAD user five days after the ADAD user receives a termination notice or immediately, with no prior notice, if use of the ADAD creates overloading in a LEC's switching office.

(10) Each LEC must maintain records of any ADAD equipment a user reports to the LEC as being connected to its facilities. If requested by the commission, the LEC must provide the name of the individual business, group, or organization using the ADAD, their address, and the telephone number or numbers associated with the ADAD.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-262 Operator service providers (OSPs).** (1) Only for the purpose of this section:

"Consumer" means the party paying for a call using operator services. For collect calls, a consumer is both the originating party and the party who receives the call.

"Customer" means the call aggregator or pay phone service provider (PSP) contracting with an operator service provider (OSP) for service, such as hotel, motel, hospital, correctional facility, prison, campus, or similar entity.

"Operator service provider (OSP)" means any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.

"Operator services" means any telecommunications service provided to a call aggregator location that includes automated or live assistance to ~~((customers))~~ consumers in billing or completing (or both) telephone calls, other than those billed to the number from which the call originated or those completed through an access code used to bill a ~~((customer's))~~ consumer's account previously established with the company.

This section applies to OSPs providing operator services from pay phones and other call aggregator locations. Each OSP must maintain a current list of the customers it serves in Washington and the locations and telephone numbers where the service is provided.

(2) **Posted disclosure.** OSPs must post clearly, legibly, and unobstructed, on or near the front of the pay phone the presubscribed OSP's name, address, and toll-free number, as registered with the commission. This information must be updated within thirty days after a change of OSPs. OSPs must post a notice to consumers that they can access other long distance companies and, in contrasting colors, the commission compliance number for consumer complaints and the following information:

"If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(3) **Oral disclosure of rates.** This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones or "smart" phones. When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) **Oral rate disclosure message required.** Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark rate in (f) of this subsection, the oral rate disclosure message must comply with the requirements of (b) of this subsection. In all other instances, the oral rate disclosure message must comply with the requirements of (c) of this subsection.

(b) **Rate disclosure method when charges do not exceed benchmark.** The oral rate disclosure message must state that the consumer may receive a rate quote and explain the method of obtaining the quote. The method of obtaining the quote may be by pressing a specific key or keys, but no more than two keys, or by staying on the line. If the consumer follows the directions to obtain the rate quote, the OSP must state all rates and charges that will apply if the consumer completes the call.

(c) **Rate disclosure method when rates exceed benchmark.** The oral rate disclosure message must state all rates and charges that will apply if the consumer completes the call.

(d) **Charge must not exceed rate quote.** If the OSP provides a rate quote pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed the quoted rate. If a consumer complains to the commission that the charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

(e) **Completion of call.** Following the consumer's response to any of the above, the OSP must provide oral information advising that the consumer may complete the call by entering the consumer's calling card number.

(f) **Benchmark rates.** An OSP's charges for a particular call exceed the benchmark rate if the sum of all charges, other than taxes and fees required by law to be assessed directly on the consumer, would exceed, for any duration of the call, the sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For example, an OSP's charges would exceed the benchmark rate if any of these conditions were true:

- (i) Charges for a one-minute call exceeded one dollar;
- (ii) Charges for a five-minute call exceeded three dollars;

or

- (iii) Charges for a ten-minute call exceeded five dollars and fifty cents.

(4) **Access.** Pay phones must provide access to the services identified in WAC 480-120-263(3).

(5) **Branding.** The OSP must identify audibly and distinctly the OSP providing the service at the beginning of every call, including an announcement to the called party on collect calls. The OSP must ensure that the call begins no later than immediately following the prompt to enter billing information on automated calls and on live and automated operator calls, when the call is initially routed to the operator. The OSP must state the name of the company as registered with the commission (or its registered "doing business as" name) whenever referring to the OSP. When not necessary to identify clearly the OSP, the company may omit terms such as "company," "communications," "incorporated," or "of the Northwest."

(6) **Billing.** The OSP must provide to the billing company applicable call detail necessary for billing purposes and an address and toll-free number for consumer inquiries. The OSP must ensure that consumers are not billed for calls that are not completed. For billing purposes calls must be itemized, identified, and rated from the point of origination to the

point of termination. An OSP may not transfer a call to another company unless the call can be billed from the point of origin. The OSP must provide specific call detail upon request, in accordance with WAC 480-120-161 (Form of bills). Charges billed to a credit card need not conform to the call detail requirements of that section.

(7) **Operational capabilities.** The OSP must answer at least ninety percent of all calls within ten seconds of the time the call reaches the company's switch. The OSP must maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, the OSP must determine what caused the blockage and take immediate steps to correct the problem. The OSP must reoriginate calls to another company upon request and without charge when technically able to accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the OSP must provide dialing instructions for the consumer's preferred company.

(8) **Emergency calls.** For purposes of emergency calls, every OSP must be able to transfer the caller into the appropriate E911 system and to the public safety answering point (PSAP) serving the location of the caller with a single key-stroke from the operator's console, to include automatic identification of the exact location and address from which the call is being made. The OSP must be able to stay on the line with the emergency call until the PSAP representative advises the operator that they are no longer required to stay on the call. The OSP must provide a toll-free number for direct access to PSAPs should additional information be needed when responding to a call for assistance from a phone using the provider's services. That emergency contact information must not be considered proprietary.

(9) **Fraud protection.**

(a) A company may not bill a call aggregator for:

(i) Charges billed to a line for originating calls using company access codes, toll-free access codes, or originating calls that otherwise reach an operator position if the originating line subscribed to outgoing call screening or pay phone specific ANI coding digits and the call was placed after the effective date of the outgoing call screening or pay phone specific ANI coding digits order; or

(ii) Collect or third-number-billed calls if the line serving the call that was billed had subscribed to incoming call screening (also termed "billed number screening") and if the call was placed after the effective date of the call screening service order.

(b) The access line provider must remove from the call aggregator's bill any calls billed through the access line provider in violation of this subsection. If investigation by the access line provider determines that the pertinent call screening or pay phone specific ANI coding digits was operational when the call was made, the access line provider may return the charges for the call to the company as not billable.

(c) Any call billed directly by an OSP, or through a billing method other than the access line provider, which is billed in violation of this subsection, must be removed from the call aggregator's bill. The company providing the service

may request an investigation by the access line provider. If the access line provider determines that call screening or pay phone specific ANI coding digits (which would have prevented the call) was subscribed to by the call aggregator and was not operational at the time the call was placed, the OSP must bill the access line provider for the call.

(10) **Suspension.** The commission may suspend the registration of any company providing operator services if the company fails to meet minimum service levels or to provide disclosure to consumers of protection available under chapter 80.36 RCW and pertinent rules.

Except as required by federal law, no provider of pay phone access line service may provide service to any OSP whose registration is suspended.

NEW SECTION

**WAC 480-120-349 Retaining and preserving records and reports.** (1) Companies must keep all records and reports required by these rules or commission order for three years unless otherwise specified in subsection (2) of this section. No records may be destroyed before the expiration of three years or the time specified in subsection (2) of this section, whichever is applicable.

(2) Companies must adhere to the retention requirements of Title 47, Code of Federal Regulations, Part 42, Preservation of Records of Communication Common Carriers published by the Federal Communications Commission. The effective date is stated in WAC 480-120-999.

NEW SECTION

**WAC 480-120-359 Companies not classified as competitive.** (1)(a) For accounting purposes, each company not classified as competitive must use the *Uniform System of Accounts (USOA) for Class A and Class B Telephone Companies* published by the Federal Communications Commission (FCC) and designated as Title 47, Code of Federal Regulations, Part 32 (47 CFR 32, or Part 32). The effective date for Part 32 is stated in WAC 480-120-999 (Adoption by reference). Each company not classified as competitive wishing to adopt changes to the USOA made by the FCC after the date specified in WAC 480-120-999, must petition for and receive commission approval. The petition must include the effect of each change for each account and subaccount on an annual basis for the most recent calendar year ending December 31. If the petition is complete and accurate the commission may choose to grant such approval through its consent agenda.

(b) Class B companies may use Class A accounting, but Class A companies must not use Class B accounting.

(2) The commission modifies Part 32 as follows:

(a) Any reference in Part 32 to "Commission," "Federal Communications Commission," or "Common Carrier Bureau" means the Washington utilities and transportation commission.

(b) Each company not classified as competitive must keep subsidiary records to reflect Washington intrastate differences when the commission imposes accounting or rate-making treatment different from the accounting methods required in subsection (2) of this section. Each company not

classified as competitive must maintain subsidiary accounting records for:

- (i) Residential basic service revenues;
  - (ii) Business basic service revenues;
  - (iii) Access revenues for each universal service rate element;
  - (iv) Special access revenues; and
  - (v) Switched access revenues.
- (c) Part 32 section 24, compensated absences, is supplemented as follows:

(i) Each company not classified as competitive must record a liability and charge the appropriate expense accounts for sick leave in the year in which the employees use the sick leave.

(ii) Each company not classified as competitive must keep records for:

- (A) Compensated absences that are actually paid; and
- (B) Compensated absences that are deductible for federal income tax purposes.

(d) Each company not classified as competitive that has multistate operations must keep accounting records that provide Washington results of operations. The methods used to determine Washington results of operations must be acceptable to the commission.

(e) Part 32 section 32.11(a) is replaced by WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

(f) Part 32 section 32.11 (d) and (e) are replaced by WAC 480-120-034.

(g) Any reference in Part 32 to "Class A" or "Class B" means the classification as set out in WAC 480-120-034.

(3) The commission does not require Part 32 section 32.2000 (b)(4). This rule does not supersede any accounting requirements specified in a commission order, nor will it be construed to limit the commission's ability to request additional information on a company specific basis. This rule does not dictate intrastate ratemaking.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-402 Safety.** The plant and all facilities of utilities ~~((shall))~~ must be constructed and installed in conformity with good engineering practice and comply with the minimum standards as set out in the ~~((current))~~ National Electric Safety Code ~~((in effect on January 1, 1991)).~~ Information about this standard regarding the version adopted and where to obtain it is set forth in WAC 480-120-999 (Adoption by reference). All instrumentalities and equipment ~~((shall))~~ must be installed and maintained with due consideration to the safety of the ~~((subscribers))~~ customers, employees and general public. Hazardous conditions endangering persons, property, or the continuity of service when found, reported or known to exist, ~~((shall))~~ must be expeditiously corrected.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-414 Emergency operation.** (1) ~~((All companies))~~ Each company must maintain, revise, and provide to the commission the following:

(a) The titles and telephone numbers of the company's disaster services coordinator and alternates; and

(b) Upon request of the commission, the company's current plans for emergency operation, including current plans for recovery of service to governmental disaster recovery response agencies within the state of Washington.

(2) For coordination of disaster response and recovery operations, each company must maintain on file with the Washington state emergency management division the titles and telephone numbers of the managers of the company's:

- (a) Local network operations center;
- (b) Regional network operations center; or
- (c) Emergency operations center.

**AMENDATORY SECTION** (Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03)

**WAC 480-120-439 Service quality performance reports.** (1) **Class A companies.** Each Class A ~~((companies))~~ company must report monthly the information required in subsections (3), (4), and (6) through (10) of this section. ~~((Companies))~~ Each company must report within thirty days after the end of the month in which the activity reported on takes place (e.g., a report concerning missed appointments in December must be reported by January 30).

(2) **Class B companies.** Class B companies need not report to the commission as required by subsection (1) of this section. However, these companies must retain, for at least three years from the date they are created, all records that would be relevant, in the event of a complaint or investigation, to a determination of the company's compliance with the service quality standards established by WAC 480-120-105 (Company performance standards for installation or activation of access lines), 480-120-112 (Company performance for orders for nonbasic services), 480-120-133 (Response time for calls to business office or repair center during regular business hours), 480-120-401 (Network performance standards), 480-120-411 (Network maintenance), and 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages).

(3) **Missed appointment report.** The missed appointment report must state the number of appointments missed, the total number of appointments made, and the number of appointments excluded under (b), (c), or (d) of this subsection. The report must state installation and repair appointments separately.

(a) A LEC is deemed to have kept an appointment when the necessary work in advance of dispatch has been completed and the technician arrives within the appointment period, even if the technician then determines the order cannot be completed until a later date. If the inability to install or repair during a kept appointment leads to establishment of

another appointment, it is a new appointment for purposes of determining under this subsection whether it is kept or not.

(b) When a LEC notifies the customer at least twenty-four hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, then the appointment that was canceled is not a missed appointment for purposes of this subsection. A company-initiated changed appointment date is not a change to the order date for purposes of determining compliance with WAC 480-120-105 (Company performance standards for installation or activation of access lines) and 480-120-112 (Company performance for orders for nonbasic services).

(c) A LEC does not miss an appointment for purposes of this subsection when the customer initiates a request for a new appointment.

(d) A LEC does not miss an appointment for purposes of this subsection when it is unable to meet its obligations due to force majeure, work stoppages directly affecting provision of service in the state of Washington, or other events beyond the LEC's control.

(4) **Installation or activation of basic service report.** The report must state the total number of orders taken, by central office, in each month for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The report must include orders with due dates later than five days as requested by a customer. The installation or activation of basic service report must state, by central office, of the total orders taken for the month, the number of orders that the company was unable to complete within five business days after the order date or by a later date as requested by the customer.

(a) ~~((A separate report must be filed))~~ The company must file a separate report each calendar quarter that states the total number of orders taken, by central office, in that quarter for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service ninety-day report must state, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date.

(b) ~~((A separate report must be filed))~~ The company must file a separate report each six months that states the total number of orders taken, by central office, in the last six months for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service one hundred eighty day report must state, of the total orders taken for six months, the number of orders that the company was unable to complete within one hundred eighty days.

(c) A company may exclude from the total number of orders taken and the total number of uncompleted orders for the month:

(i) Orders for which customer-provided special equipment is necessary;

(ii) When a later installation or activation is permitted under WAC 480-120-071 (Extension of service);

(iii) When a technician arrives at the customer's premises at the appointed time prepared to install service and the customer is not available to provide access; or

(iv) When the commission has granted an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC), from the requirement for installation or activation of a particular order (~~may be excluded from the total number of orders taken and from the total number of uncompleted orders for the month~~).

(d) For calculation of the report of orders installed or activated within five business days in a month, a company may exclude from the total number of orders taken and from the total number of uncompleted orders for the month, orders that could not be installed or activated within five days in that month due to force majeure (~~may be excluded from the total number of orders taken and from the total number of uncompleted orders for the month~~) if the company supplies documentation of the effect of force majeure upon the order.

(5) **Major outages report.** Notwithstanding subsections (1) and (2) of this section, any company experiencing a major outage that lasts more than forty-eight hours must provide a major outage report to the commission within ten business days of the major outage. The major outages report must include a description of each major outage and a statement that includes the time, the cause, the location and number of affected access lines, and the duration of the interruption or impairment. When applicable, the report must include a description of preventive actions to be taken to avoid future outages. This reporting requirement does not include company-initiated major outages that are in accordance with the contract provisions between the company and its customers or other planned interruptions that are part of the normal operational and maintenance requirements of the company.

The commission staff may request oral reports from companies concerning major outages at any time and companies must provide the requested information.

(6) **Summary trouble reports.** Each month companies must submit a report reflecting the standard established in WAC 480-120-438 (Trouble report standard). The report must include the number of reports by central office and the number of lines served by the central office. In addition, the report must include an explanation of causes for each central office that exceeds the service quality standard established in WAC 480-120-438 (~~trouble report standard~~). The reports, including repeated reports, must be presented as a ratio per one hundred lines in service. The reports caused by customer-provided equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company should not be included in this report.

(7) **Switching report.** Any company experiencing switching problems in excess of the standard established in WAC 480-120-401 (2)(a) (Switches—Dial service), must report the problems to the commission. The report must identify the location of every switch that is performing below the standard.

(8) **Interoffice, intercompany and interexchange trunk blocking report.** ~~((Companies))~~ Each company that experiences trunk blocking in excess of the standard in WAC 480-120-401 (3) (Interoffice facilities) and (5) (Service to

interexchange (~~(carriers)~~) companies must report each trunk group that does not meet the performance standards. For each trunk group not meeting the performance standards, the report must include the peak percent blocking level experienced during the preceding month, the number of trunks in the trunk group, the busy hour when peak blockage occurs, and whether the problem concerns a standard in WAC 480-120-401 (3) or (5). The report must include an explanation of steps being taken to relieve blockage on any trunk groups that do not meet the standard for two consecutive months.

**(9) Repair report.**

(a) For service-interruption repairs subject to the requirements of WAC 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages), (~~(companies)~~) each company must report the number of service interruptions reported each month, the number repaired within forty-eight hours, and the number repaired more than forty-eight hours after the initial report. In addition, a company must report the number of interruptions that are exempt from the repair interval standard(~~(s)~~) as provided for in WAC 480-120-440.

(b) For service-impairment repairs subject to the requirements of WAC 480-120-440, (~~(companies)~~) each company must report the number of service impairments reported each month, the number repaired within seventy-two hours, and the number repaired more than seventy-two hours after the initial report. In addition, a company must report the number of impairments that are exempt from the repair interval standard as provided for in WAC 480-120-440.

**(10) Business office and repair answering system reports.** When requested, (~~(companies)~~) each company must report compliance with the standard required in WAC 480-120-133 (Response time for calls to business office or repair center during regular business hours). If requested, (~~(companies)~~) each company must provide the same reports to the commission that company managers receive concerning average speed of answer, transfers to live representatives, station busies, and unanswered calls.

(11) The commission may choose to investigate matters to protect the public interest, and may request further information from companies that details geographic area and type of service, and such other information as the commission requests.

(12) If consistent with the purposes of this section, the commission may, by order, approve for a company an alternative measurement or reporting format for any of the reports required by this section, based on evidence that:

(a) The company cannot reasonably provide the measurement or reports as required;

(b) The alternative measurement or reporting format will provide a reasonably accurate measurement of the company's performance relative to the substantive performance standard; and

(c) The ability of the commission and other parties to enforce compliance with substantive performance standard will not be significantly impaired by the use of the alternative measurement or reporting format.

(13) Subsection (12) of this section does not preclude application for an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC).

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies.** "Private branch exchange (PBX)" means customer premises equipment installed on the (~~(subscriber's)~~) customer's premises that functions as a switch, permitting the (~~(subscriber)~~) customer to receive incoming calls, to dial any other telephone on the premises, to access a tie trunk leading to another PBX or to access an outside trunk to the public switched telephone network.

"Data base management system (DBMS)" means a data base used by local exchange companies (LECs) to provide automatic location information (ALI) to public safety answering points (PSAPs).

"Emergency location identification number (ELIN)" means a telephone number that is used to route the call to a PSAP and is used to retrieve the automatic location information (ALI) for a PSAP.

"Emergency response location (ERL)" means a location to which a 911 emergency response team may be dispatched.

(1) Local exchange companies (LECs) must provide enhanced 9-1-1 (E911) services including:

(a) For single line service, the ability for customers to dial 911 with the call and caller's ELIN transmitted to the E911 selective router serving the location associated with the ERL for that line;

(b) For multiline customers, the ability for customers to dial 911 with common signal protocols available which permit the call and caller's ELIN to be transmitted to the E911 selective router serving the location associated with the ERL for that line;

(c) For pay phones served by pay phone access lines (PALs) the ability for customers to dial 911 with the call and the ELIN transmitted to the E911 selective router serving the location of the ERL for that line. The ELIN must be that of the pay phone.

(2)(a) LECs that provide or make available E911 data base management, whether directly or through contract, must provide to all PBX owners or their agents (including LECs) a simple, internet-based method to maintain customer records in the E911 data base, and the LEC may provide an option of a secure dial up access method for the PBX owner or agent to maintain customer records in the E911 data base. The method must use a generally accepted national format for customer record information.

(b) LECs that provide or make available E911 data base management, whether directly or through contract, must provide or make available to all other LECs a simple, internet-based method to maintain customer records in the E911 data base for their non-PBX customers, and the LEC may provide an option of a secure dial up access or direct data link method for LECs to maintain customer records in the E911 data base. The LEC may offer methods for maintaining station location information that are not internet-based (~~(may be offered)~~) in addition to the required internet-based method.

(c) LECs that provide pay phone access lines must maintain customer record information, including ELIN and ERL information, for those access lines using a method required

by (b) of this subsection. ~~((Records must be forwarded))~~ The LEC must forward the records to the data base manager within one business day of a record's posting to the company records system.

(d) For single line services, PBX main station lines, and pay phone lines, LECs must transmit updated location information records to the data base management system (DBMS) within one business day of those records being posted to the company record system.

~~((Records that do not post to the DBMS because of address errors must be corrected))~~ The LEC must correct records that do not post to the DBMS because of address errors within two working days ~~((unless))~~. If modifications are necessary to the audit tables of the master street address guide, ((in which case the record must be resubmitted)) the LEC must resubmit the record within one business day of notification that the master street address guide has been updated.

(e) The LEC or its agent administering the data base must resolve E911 data base errors and inquiries, including selective routing errors, reported by county E911 data base coordinators or PSAPs ((must be resolved by the LEC or its agent administering the data base)) within five working days of receipt.

(3) LECs choosing to provide E911 services including selective routing, data base management and transmission of the call to a PSAP must file with the commission tariffs and supporting cost studies or price lists, whichever applies, that specify the charges and terms for E911 services.

(4)(a) The LEC must permit PBX customers who choose to maintain their own E911 data base((:)) or contract that maintenance to a third party, ((must be permitted to do so)) if the customer maintains the data in a generally accepted national format for customer record information.

(b) PBX customers who choose to not use LEC data base management may transmit, or have a third-party transmit, customer record information to their LEC's national data service gateway at no additional charge.

**AMENDATORY SECTION** (Amending Order R-450, Docket No. UT-970325, filed 9/23/98, effective 12/21/98)

**WAC 480-120-540 Terminating access charges.**

(1)(a) Except for any universal service rate allowed pursuant to subsection ~~((3))~~ (1)(b) of this section, the rates charged by a local exchange company for terminating access ~~((shall))~~ service offered by tariff must not exceed the lowest rate charged by the local exchange company for the comparable local interconnection service (in each exchange), such as end office switching or tandem switching. If a local exchange company does not provide local interconnection service (or does so under a bill and keep arrangement), the rates charged for terminating access ~~((shall))~~ must not exceed the cost of the terminating access service being provided.

~~((2))~~ (b) If a local exchange company is authorized by the commission to recover any costs for support of universal access to basic telecommunications service through access charges, it shall recover such costs as an additional, explicit universal service rate element applied to terminating access service.

(2) The rates charged by a local exchange company for terminating access service offered by price list must not exceed the rates charged by the incumbent local exchange company for terminating access service in the comparable geographic area. For purposes of this subsection, the rates charged by the incumbent local exchange company include any universal service rate charged pursuant to subsection (1)(b) of this section.

(3) The cost of the terminating access ~~((shall))~~ must be determined based on the total service long-run incremental cost of terminating access service plus a reasonable contribution to common or overhead costs. Local loop costs are considered "shared" or "joint" costs and ~~((shall))~~ must not be included in the cost of terminating access. However, nothing in this rule prohibits recovery of local loop costs through originating access charges (including switched, special, and dedicated as defined in subsection (4)(a) of this section).

~~((3) If a local exchange company is authorized by the commission to recover any costs for support of universal access to basic telecommunications service through access charges, it shall recover such costs as an additional, explicit universal service rate element applied to terminating access service.))~~

(4) Definitions.

(a) "Access charge" means a rate charged by a local exchange ~~((carrier))~~ company to an interexchange ~~((carrier))~~ company for the origination, transport, or termination of a call to or from a customer of the local exchange ~~((carrier))~~ company. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

(b) "Terminating access service" includes transport only to the extent that the transport service is bundled to the end office or tandem switching service. Dedicated transport unbundled from switching services is not subject to subsection (1) of this section.

(c) "Bill and keep" (also known as "mutual traffic exchange" or "payment in kind") is a compensation mechanism where traffic is exchanged among companies on a reciprocal basis. Each company terminates the traffic originating from other companies in exchange for the right to terminate its traffic on that company's network.

(5) The requirement of subsection (1) of this section that any terminating rate be based on cost ~~((shall))~~ must not apply to any local exchange company that is a small business, or to any local exchange company that is competitively classified, if it concurs in the terminating rate of any local exchange company that has filed a terminating rate that complies with the requirements of subsection (1) of this section. For the purposes of this subsection, "small business" has the same meaning as it does in RCW 19.85.020.

(6) Any local exchange company that is required to lower its terminating access rates to comply with this rule may file tariffs or price lists (as appropriate) to increase or restructure its originating access charges. The commission will approve the revision as long as it is consistent with this rule, in the public interest and the net effect is not an increase in revenues.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) American National Standards for Telecommunications - "*Network Performance Parameters for Dedicated Digital Services - Specifications*" (ANSI T1.510-1999) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services - Specifications*" is a copyrighted document. Copies are available from the publisher and third-party vendors.

(2) *The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics* (ANSI/IEEE Std 820-1984) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect on March 22, 1984, and reaffirmed September 16, 1992.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from the publishers.

(3) *The National Electrical Safety Code* is published by the IEEE.

(a) The commission adopts the version in effect ((~~in 1997~~) on January 1, 2002).

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from the publishers and from third-party vendors.

(4) *Title 47 Code of Federal Regulations*, cited as 47 CFR, is published by the United States Government Printing Office, except sections 64.2003 through 64.2009.

(a) The commission adopts the version in effect on October 1, 1998.

(b) This publication is referenced in WAC ((~~480-120-302 and 480-120-322~~) 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports)).

(c) Copies of Title 47 Code of Federal Regulations are available from the Government Printing Office and from third-party vendors.

(5) Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations, cited as 47 CFR §§ 64.2003 through 64.2009, are published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-120-202 (Customer Proprietary Network Information).

(c) Copies of Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations are available from the Government Printing Office and from third-party vendors.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-120-201	Definitions.
WAC 480-120-203	Use of customer proprietary network information (CPNI) not permitted to identify or track customer calls to competing service providers.
WAC 480-120-204	Opt-in approval required for use, disclosure, or access to customer I-CPNI.
WAC 480-120-205	Using customer proprietary network information (CPNI) in the provision of services.
WAC 480-120-206	Using individual customer proprietary network information (I-CPNI) during inbound and outbound telemarketing calls.
WAC 480-120-207	Use of private account information (PAI) by company or associated companies requires opt-out approval.
WAC 480-120-208	Use of customers' private account information (PAI) to market company products and services without customer approval.
WAC 480-120-209	Notice when use of private account information (PAI) is permitted unless a customer directs otherwise (opt-out).
WAC 480-120-211	Mechanisms for opting out of use of private customer account information (PAI).
WAC 480-120-212	Notice when express (opt-in) approval is required and mechanisms for express approval.
WAC 480-120-213	Confirming changes in customer approval status.
WAC 480-120-214	Duration of customer approval or disapproval.

PERMANENT

WAC 480-120-215	Safeguards required for I-CPNI.
WAC 480-120-216	Disclosing CPNI on request of customer.
WAC 480-120-302	Accounting requirements for companies not classified as competitive.
WAC 480-120-322	Retaining and preserving records and reports.

**AMENDATORY SECTION** (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

**WAC 480-80-123 Tariff changes that do not require statutory notice.** (1) A utility must file with the commission tariff changes that do not require statutory notice at least one day before the effective date.

(2) The filing must include a transmittal letter as set forth in WAC 480-80-104 (Transmittal letter).

(3) Tariff changes that do not require statutory notice include:

(a) Initial tariffs filed by a newly regulated utility;

(b) A filing for a service not previously contained within a regulated utility's existing tariff;

(c) A change to a telecommunications tariff not affecting the rates or charges paid by customers;

(d) A change to a tariff ((change)), other than a telecommunications tariff, that does not affect the public; and

~~((d))~~ (e) A change in a banded rate when notice to customers has been or will be given in accordance with tariff rules applicable to the service.

**AMENDATORY SECTION** (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

**WAC 480-80-204 Price lists format and content.** (1) A price list must include, for each service in the price list, a description of the service, any limitations, terms, or conditions on the offering of that service, and all rates, charges, or prices at which the service is offered.

(2) A price list must:

(a) Plainly state the places where the offered telecommunications service will be rendered;

(b) Include the effective date clearly marked on each page;

(c) Include the complete name, address, phone number, unified business identifier (UBI) number, and if available, the mail address and web page address of the issuing utility; and

(d) Conform to all applicable laws, rules, and orders. The filing of a nonconforming price list will not be deemed a waiver of the law, rule, or order. A company may not enforce a price list provision that conflicts with a law, rule, or order unless the commission waives that law, rule, or order.

(3) A price list of a competitive telecommunications company may state the rates, charges, or prices as maximum amounts rather than as specific prices.

(4) A price list of a telecommunications company not classified as competitive offering a service classified as competitive under RCW 80.36.330 may state the rates, charges, or prices as maximum and minimum amounts rather than as specific prices. The minimum price must comply with the cost requirement in subsection (6) of this section.

(5) A transmittal letter must accompany a price list change in compliance with the provisions of WAC 480-80-203.

(6) The rates, charges, and prices of services classified as competitive under RCW 80.36.330 must cover the cost of providing the service. Costs must be determined using a long-run incremental cost analysis, including as part of the incremental cost, the price charged by the offering company to other telecommunications companies for any essential function used to provide the service, or any other commission-approved cost method.

**AMENDATORY SECTION** (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

**WAC 480-80-206 Price list availability to customers.**

(1) Each telecommunications company offering service under a price list must maintain a complete copy of the price list on a website accessible to the public using standard web browser software.

(2) Each telecommunications company offering service under a price list must provide to any customer making a written or oral request a copy of the price list sheets applicable to that customer's service. The telecommunications company must provide the price list at no charge to the customer. This subsection does not apply if the telecommunications company makes available for public inspection, at a location within the customer's exchange, a complete copy of the price list.

~~((3) Each telecommunications company offering service under a price list must include in each customer bill or notice:~~

~~(a) The internet address (uniform resource locator) of the website containing its price list; and~~

~~(b) The toll-free telephone number to use in requesting price list copies and a statement that there is no charge for the price list copy. If a company is not required by subsection (2) of this section to provide price list copies, it must instead provide the address, telephone number, and business hours of the location within the customer's exchange at which a complete copy of the price list is available for public inspection.))~~

**AMENDATORY SECTION** (Amending Docket No. UT-003074, General Order No. R-492, filed 1/4/02, effective 2/28/02)

**WAC 480-122-020 Washington telephone assistance program rate.** The commission ~~((shall))~~ will set by order the telephone assistance rate to be paid by program participants for local service. Every eligible telecommunications ~~((earlier))~~ company (ETC) must offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.475. ~~((Every non-ETC local exchange company must offer the telephone assistance rates and discounts~~

PERMANENT

~~in accordance with RCW 80.36.410 through 80.36.475 when one hundred or more of its access lines are subscribed to for residential service. Radio communications service companies that are not ETCs may offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.475.)~~

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-122-060 Telephone assistance excise tax.

### WSR 05-04-002 PERMANENT RULES

#### WASHINGTON STATE PATROL

[Filed January 19, 2005, 2:37 p.m., effective February 19, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To more clearly identify the adoption of specific codes of federal regulations used for enforcement of commercial motor vehicles, and any amendments thereto.

Citation of Existing Rules Affected by this Order: Amending WAC 446-65-010.

Statutory Authority for Adoption: RCW 46.32.020.

Adopted under notice filed as WSR 04-23-018 on November 5, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 19, 2005.

Lowell Porter  
Chief

AMENDATORY SECTION (Amending WSR 98-19-043, filed 9/11/98, effective 10/12/98)

**WAC 446-65-010 Transportation requirements.** (1) The Washington state patrol hereby adopts the following parts, and any amendments thereto, of Title 49 Code of Federal Regulations, for motor carriers used in intrastate or interstate commerce, in their entirety: Parts 390 General, 391 Qualification of drivers, 392 Driving of motor vehicles, 393 Parts and accessories necessary for safe operation, 395 Hours

of service of drivers, 396 Inspection, repair, and maintenance, 397 Transportation of hazardous materials; driving and parking rules, provided, however, motor carriers operating vehicles with a gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating solely intrastate, and not used to transport hazardous materials in a quantity requiring placarding, are exempt from Parts 390 General, 391 Qualifications of drivers, 392 Driving of motor vehicles, 395 Hours of service, and 396 Inspection, repair, and maintenance.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined as starting February 1 and ending November 30 of each year.

(3) Agricultural operations exceptions:

(a) Agricultural operations transporting agricultural products other than Class 2 material (Compressed Gases), over roads, other than the National System of Interstate Defense Highways, between fields of the same farm, is excepted from part 397 when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier.

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 CFR 173.24, 173.24a, and 173.24b.

(b) The transportation of an agricultural product to or from a farm within one hundred fifty miles of the farm, is excepted from the requirements of 49 CFR part 172 subpart G (emergency response information) and H (training requirements) when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 CFR adopted in this section.

(C) Formulated liquid agricultural products in specification packaging of fifty-eight gallon capacity or less, with closures manifolded to a closed mixing system and equipped with a positive dry disconnect device, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(4) Copies of Title 49 CFR, parts 390 through 397, now in force are on file at the code reviser's office, Olympia and at the Washington state patrol headquarters, commercial vehicle enforcement section, Olympia. Additional copies may be available for review at Washington state patrol district headquarters offices, public libraries, Washington utilities and

transportation commission offices, and at the United States Department of Transportation, Bureau of Motor Carrier Safety Office, Olympia. Copies of the CFR may be purchased through the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

**WSR 05-04-012**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed January 24, 2005, 12:57 p.m., effective February 24, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To add a new section to chapter 308-20 WAC regulating cosmetologists, barbers, manicurists and estheticians which will establish a procedure for appealing an examination failure.

Citation of Existing Rules Affected by this Order: New section WAC 308-20-123 Examination appeal.

Statutory Authority for Adoption: RCW 18.16.030, 43.24.023.

Adopted under notice filed as WSR 04-24-010 on November 22, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New [1], Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New [1], Amended 1, Repealed 0.

Date Adopted: January 24, 2005.

Trudie Touchette  
 Administrator

**NEW SECTION**

**WAC 308-20-123 Examination appeal.** (1) An applicant who has received a failing score on the written or practical examination shall be eligible to appeal to the department for a review of the examination results. The department shall only consider appeals regarding significant procedural errors or adverse environmental conditions during the test administration.

(2) The appeal shall be filed with the department within fifteen days after the date of notification of examination results. The appeal shall be made in writing, and shall state the reason for appeal.

(3) The review of the appeal shall be conducted by one or more department staff, or the department's designee, to determine if there is clear and convincing evidence to sustain the

applicant's appeal. The director or director's designee shall make the final determination on the appeal.

(4) Within thirty days after the department has made a determination on the appeal, the applicant shall be notified in writing of the results.

(5) In acting on appeals, the department may take such action as it deems appropriate.

**WSR 05-04-016**  
**PERMANENT RULES**  
**STATE BOARD OF EDUCATION**

[Filed January 24, 2005, 2:00 p.m., effective February 24, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The repeal removes from WAC a section that is no longer needed due to the fact that new accreditation rules/procedures have been adopted by the State Board of Education.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-55-034 Temporary extension of accreditation status.

Statutory Authority for Adoption: RCW 28A.150-220(4), 28A.305.140, and 28A.305.130(6).

Adopted under notice filed as WSR 04-24-075 on November 30, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 13 [14], 2005.

January 21, 2005  
 Larry Davis  
 Executive Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 180-55-034                      Temporary extension of accreditation status.

PERMANENT

**WSR 05-04-024**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed January 25, 2005, 10:49 a.m., effective February 25, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed rule states that the exemptions and extensions provided for the professional educator standards board in WAC 181-01-001 through 181-01-003, shall be the sole exceptions to the WEST-B and WEST-E assessment requirements.

Statutory Authority for Adoption: RCW 28A.410-.220(c).

Adopted under notice filed as WSR 04-24-048 on November 29, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 13, 2005.

Esther Baker  
 Program Director  
 Teacher Assessments

**NEW SECTION**

**WAC 181-01-004 Appeals process.** The Washington professional educator standards board may permit exceptions from the assessment requirements under RCW 28A.410.220 (1) and (2) on a case-by-case basis. Consistent with the discretion accorded to the professional educator standards board in RCW 28A.410.220(3), the exemptions and extensions provided for in WAC 181-01-001 through 181-01-003, shall be the sole exceptions to the WEST-B and WEST-E assessment requirements.

**WSR 05-04-028**  
**PERMANENT RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed January 26, 2005, 12:30 p.m., effective February 26, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To modify pilot license limitations in order to enable a newly licensed Grays Harbor pilot, during his/her first year, to perform pilotage services on vessels having a

higher gross tonnage. To allow a pilot to perform pilotage services in certain cases and with prior board approval on vessels not permitted by his/her restricted license.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-082 Limitations on new pilots.

Statutory Authority for Adoption: RCW 88.16.105.

Other Authority: RCW 88.16.035.

Adopted under notice filed as WSR 04-24-070 on November 30, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 13, 2005.

Peggy Larson  
 Administrator

**AMENDATORY SECTION** (Amending WSR 99-08-003, filed 3/25/99, effective 4/25/99)

**WAC 363-116-082 Limitations on new pilots.** (1) The following limitations shall apply to a newly licensed pilot during his/her first five years of active service. Except where otherwise noted, the pilotage assignment may include docking and undocking of vessels within the tonnage limitations. For purposes of this section, the term "tanker" shall in addition to tankers include any combination of tug and tank barge, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. All tonnages referred to are international tonnages.

(2) Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels under the direct supervision of a five-year pilot on the familiarization/training trips listed below. This veteran pilot shall complete and submit an evaluation form for each trip a new pilot performs. All of these trips must, if practical, be completed during the last ninety days of the license year.

(3) Puget Sound pilotage district - License limitations.

(a) First year:

(i) Not authorized to pilot loaded petroleum tankers.

(ii) Not authorized to pilot any vessels in excess of 25,000 gt or 660' in length.

(iii) Not authorized to pilot any passenger vessels in excess of 5,000 gt.

(b) Second year:

(i) Not authorized to pilot loaded petroleum tankers in excess of 25,000 gt.

(ii) Not authorized to pilot any vessels in excess of 30,000 gt.

(c) Third year:

(i) Not authorized to pilot loaded petroleum tankers in excess of 32,000 gt.

(ii) Not authorized to pilot any vessels in excess of 45,000 gt.

(d) Fourth year:

(i) Not authorized to pilot loaded petroleum tankers in excess of 38,000 gt.

(ii) Not authorized to pilot any vessels in excess of 60,000 gt.

(e) Fifth year:

(i) Not authorized to pilot loaded petroleum tankers in excess of 45,000 gt.

(ii) Not authorized to pilot any vessels in excess of 75,000 gt.

(4) Puget Sound pilotage district - Familiarization/training trips.

(a) Prior to the expiration of the FIRST license year, a new pilot must make three familiarization/training trips, two of which shall involve docking loaded petroleum tankers of not more than 30,000 gt; and the third trip shall involve a waterway transit of a vessel between 25,000 and 35,000 gt.

(b) Prior to the expiration of the SECOND license year, a new pilot must make three familiarization/training trips, two of which shall involve docking loaded petroleum tankers of between 25,000 and 32,000 gt; and the third trip shall involve the docking of a vessel between 30,000 and 45,000 gt other than a loaded petroleum tanker.

(c) Prior to the expiration of the THIRD license year, a new pilot must make three familiarization/training trips, one of which shall involve docking a loaded petroleum tanker of between 32,000 and 38,000 gt; and two trips shall involve the docking of vessels between 45,000 and 60,000 gt other than loaded petroleum tankers.

(d) Prior to the expiration of the FOURTH license year, a new pilot must make three familiarization/training trips, one of which shall involve docking a loaded petroleum tanker of between 38,000 and 45,000 gt; and two trips shall involve the docking of vessels between 60,000 and 75,000 gt other than loaded petroleum tankers.

(e) Prior to the expiration of the FIFTH license year, a new pilot must make three familiarization/training trips which shall involve two trips docking and one trip anchoring loaded petroleum tankers of 55,000 gt or larger.

(f) All of these trips must be complete trips between one port and another port, or between the pilot station and a port.

(5) Grays Harbor pilotage district - License limitations.

(a) First year:

(i) Not authorized to pilot loaded tankers carrying chemical or petroleum products.

(ii) Not authorized to pilot any vessels in excess of ~~((17,500))~~ 25,000 gt.

(iii) Not authorized to pilot loaded or partially loaded vessels through the Chehalis River bridge.

(b) Second year:

(i) Not authorized to pilot loaded tankers carrying chemical or petroleum products in excess of 10,000 gt.

(ii) Not authorized to pilot any vessels in excess of ~~((20,000))~~ 30,000 gt.

(c) Third year: Not authorized to pilot any vessels in excess of ~~((22,500))~~ 45,000 gt.

(d) Fourth year: Not authorized to pilot any vessels in excess of ~~((25,000))~~ 60,000 gt.

(e) Fifth year: Not authorized to pilot any vessels in excess of ~~((30,000))~~ 75,000 gt.

(f) Notwithstanding subsection (8) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chair or acting chair of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(6) Grays Harbor pilotage district - Familiarization/training trips.

(a) Prior to the expiration of the FIRST license year, a new pilot must make ~~((ten))~~ five familiarization/training trips. ~~((Eight))~~ Three of these trips shall be through the Chehalis River bridge on loaded or partially loaded vessels. ~~((The other trips may be elsewhere on the waterway but shall be on vessels in excess of 17,500 gt.))~~ The other trips shall be on vessels in excess of 25,000 gt and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the SECOND license year, a new pilot must make three familiarization/training trips on vessels in excess of ~~((20,000))~~ 30,000 gt. Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(c) Prior to the expiration of the THIRD license year, a new pilot must make three familiarization/training trips on vessels in excess of ~~((25,000))~~ 45,000 gt or on the nearest larger size vessels available. Two of these trips shall involve docking and passage to or from the sea buoy~~((Two))~~; and one of these trips shall involve ~~((docking these vessels))~~ turning the vessel in the waterway.

(d) Prior to the expiration of the FOURTH license year, a new pilot must make ~~((three))~~ two familiarization/training trips on vessels in excess of ~~((27,500))~~ 60,000 gt or on the nearest larger size vessels available. ~~((Two of these trips shall involve docking these vessels; and one of these trips shall involve turning the vessel in the waterway.))~~

(e) Prior to the expiration of the FIFTH license year, a new pilot must make ~~((three))~~ two familiarization/training trips on vessels in excess of ~~((32,500))~~ 75,000 gt or on the nearest larger size vessels available.

(f) Notwithstanding (c), (d), and/or (e) of this subsection being accomplished due to unavailability of vessels, in the sixth license year the new pilot will be issued an unlimited license.

(7) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years,

he shall notify the board and request a revised schedule of limitations.

(8) No pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(9) All limitations on a new pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that he/she has completed all the required familiarization/training requirements and the vessel simulator courses required.

**WSR 05-04-038**

**PERMANENT RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed January 27, 2005, 1:31 p.m., effective February 27, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To clarify that those persons who, after one nonfiling occasion, again fail to file required reports will automatically be scheduled before the full commission for enforcement action.

Citation of Existing Rules Affected by this Order: Amending WAC 390-37-160, 390-37-165, 390-37-170, and 390-37-175.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 05-01-028 on December 3, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: January 25, 2005.

Vicki Rippie  
Executive Director

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03)

**WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing.				
Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing.				
Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may

impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) was found in violation during a previous reporting period,

(b) the violation remains in effect following any appeals, and

(c) the person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

PERMANENT

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03)

**WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file F-1 and/or C-1 by date of enforcement hearing.	\$150 per report	\$300 per report, up to \$500	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100 per report	\$200 per report	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100 per report	\$100 - \$200 per report	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may

impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) was found in violation during a previous reporting period,

(b) the violation remains in effect following any appeals, and

(c) the person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

PERMANENT

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03)

**WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer. Except in rare circumstances, the non-suspended portion of the penalty will not be less than the original settlement offer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) was found in violation during a previous reporting period,

(b) the violation remains in effect following any appeals, and

(c) the person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

**AMENDATORY SECTION** (Amending WSR 03-22-065, filed 11/4/03)

**WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) was found in violation during a previous reporting period,

(b) the violation remains in effect following any appeals, and

(c) the person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

**WSR 05-04-039**

**PERMANENT RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed January 27, 2005, 1:33 p.m., effective February 27, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To clarify the meaning of "doing business in Washington" under RCW 42.17.640(11) by amending WAC 390-17-310 Doing business in Washington. The rule amendment conforms to current practice and includes a list of non-exclusive indicators for determining whether a corporation or business entity is doing business in Washington state.

Citation of Existing Rules Affected by this Order: Amending WAC 390-17-310.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 04-22-057 on October 29, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

PERMANENT

Date Adopted: January 25, 2005.

Vicki Rippie  
Executive Director

AMENDATORY SECTION (Amending WSR 96-05-001, filed 2/7/96, effective 3/9/96)

**WAC 390-17-310 Doing business in Washington.**

~~((+)) A corporation or business entity is "doing business in Washington state" for purposes of RCW 42.17.640(11) if it conducts continuous ((and)) or substantial activities in Washington state of such character as to give rise to a legal obligation. ((Such things as registering as a foreign corporation in Washington, operating business locations in Washington, hiring employees to work in Washington or purchasing supplies or services from other businesses in Washington may be considered in determining whether a corporation or business entity is doing business in Washington state.~~

~~(2) Prior to making contributions reportable under chapter 42.17 RCW, a corporation or business entity shall appoint an agent for service of process in Washington state.))~~

In determining whether a corporation or business entity is doing business in Washington state, the commission will take into consideration the following nonexclusive list of indicators:

- Purposefully availing itself of the privilege of conducting business in the state by invoking both benefits and protections of state law.
- Appointing an agent for service of process in Washington state.
- Registering as a corporation in Washington.
- Operating business locations in Washington.
- Hiring employees to work in Washington.
- Purchasing or selling goods or services in Washington.
- Operating an interactive internet website for the purpose of conducting business.

**WSR 05-04-040**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed January 27, 2005, 3:16 p.m., effective March 19, 2005]

Effective Date of Rule: March 19, 2005.

Purpose: The proposal amends chapter 246-338 WAC, Medical test site rules. The amendments are at the request of the federal Centers for Medicare and Medicaid Services, following a review of the state rules for exemption from federal legislation (CLIA), amended on January 24, 2003. The amendments included quality control provisions, personnel qualifications, patient test management requirements, quality assurance requirements and consensus required for grading proficiency testing challenges.

Citation of Existing Rules Affected by this Order: Amending WAC 246-338-010, 246-338-028, 246-338-040, 246-338-050, 246-338-060, 246-338-070, 246-338-080, and 246-338-090.

Statutory Authority for Adoption: RCW 70.42.005.

Other Authority: 42 C.F.R. Part 493.

Adopted under notice filed as WSR 04-22-114 on November 3, 2004.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-338-090, Table 090-9, Acid-fast stains, the words "acid-fast" are removed from "an organism that produces a negative reaction." Acid-fast organisms do not produce negative reactions. The federal regulations are correct.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 8, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: January 26, 2005.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

**WAC 246-338-010 Definitions.** For the purposes of this chapter, the following words and phrases have these meanings unless the context clearly indicates otherwise.

(1) "Accreditation organization" means a public or private organization or agency approved by ((HCFA)) CMS as having standards which are consistent with federal law and regulation, and judged by the department to be equivalent to this chapter.

(2) "Authorized person" means any individual allowed by Washington state law or rule to order tests or receive test results.

(3) "Biannual verification" means a system for verifying the accuracy of test results, at least twice a calendar year, for those tests for which proficiency testing is not required by the department.

(4) "Calibration" means a process of testing and adjusting an instrument, kit, or test system to provide a known relationship between the measurement response and the value of the substance that is being measured by the test procedure.

(5) "Calibration verification" means the assaying of ((calibration)) materials of known concentration in the same manner as patient samples to confirm that the calibration of the instrument, kit, or test system has remained stable throughout the laboratory's reportable range for patient test results.

(6) "Calibrator" means a material, solution, or lyophilized preparation designed to be used in calibration. The values or concentrations of the analytes of interest in the cal-

ibration material are known within limits ascertained during its preparation or before use.

(7) "Case" means any slide or group of slides, from one patient specimen source, submitted to a medical test site, at one time, for the purpose of cytological or histological examination.

(8) "CDC" means the federal Centers for Disease Control and Prevention.

(9) "CMS" means the federal Centers for Medicare & Medicaid Services.

(10) "CLIA" means Section 353 of the Public Health Service Act, Clinical Laboratory Improvement Amendments of 1988, and regulations implementing the federal amendments, 42 CFR Part 493-Laboratory Requirements in effect on September 22, 2003.

((10)) (11) "Control" means a material, solution, lyophilized preparation, or pool of collected serum designed to be used in the process of quality control. The concentrations of the analytes of interest in the control material are known within limits ascertained during its preparation or before routine use.

((11)) (12) "Control slide" means a preparation of a material known to produce a specific reaction which is fixed on a glass slide and is used in the process of quality control.

((12)) (13) "Days" means calendar days.

((13)) (14) "Deemed status" means recognition that the requirements of an accreditation organization have been judged to be equal to, or more stringent than, the requirements of this chapter and the CLIA requirements, and the accreditation organization has agreed to comply with all requirements of this chapter and CLIA.

((14)) (15) "Deficiency" means a finding from an inspection or complaint investigation that is not in compliance with this chapter and requires corrective action.

((15)) (16) "Department" means the department of health.

((16)) (17) "Direct staff time" means all state employees' work time; travel time; telephone contacts and staff or management conferences; and expenses involved with a complaint investigation or an on-site follow-up visit.

((17)) (18) "Director," defined as the designated test site supervisor in RCW 70.42.010, means the individual responsible for the technical functions of the medical test site. This person must meet the qualifications for Laboratory Director, listed in 42 CFR Part 493 Subpart M - Personnel for ~~(Moderate and High Complexity)~~ Nonwaived Testing.

((18)) (19) "Disciplinary action" means license or certificate of waiver denial, suspension, condition, revocation, civil fine, or any combination of the preceding actions, taken by the department against a medical test site.

((19)) (20) "Facility" means one or more locations within one campus or complex where tests are performed under one owner.

((20)) (21) "Forensic" means investigative testing in which the results are never used for clinical diagnosis, or referral to a health care provider for treatment of an individual.

((21) ~~"HCFA" means the federal Health Care Financing Administration.~~)

(22) "HHS" means the federal Department of Health and Human Services.

(23) "High complexity" means a test system, assay, or examination that is categorized under CLIA as a high complexity test.

((23)) (24) "May" means permissive or discretionary.

((24)) (25) "Medical test site" or "test site" means any facility or site, public or private, which analyzes materials derived from the human body for the purposes of health care, treatment, or screening. A medical test site does not mean:

(a) A facility or site, including a residence, where a test approved for home use by the Federal Food and Drug Administration is used by an individual to test himself or herself without direct supervision or guidance by another and where this test is not part of a commercial transaction; or

(b) A facility or site performing tests solely for forensic purposes.

((25)) (26) "Moderate complexity" means a test system, assay, or examination that is categorized under CLIA as a moderate complexity test.

((26)) (27) "Must" means compliance is mandatory.

((27)) (28) "Nonwaived" means all tests categorized under CLIA as:

(a) Moderate complexity tests, including provider-performed microscopic procedures; or

(b) High complexity tests.

((28)) (29) "Owner" means the person, corporation, or entity legally responsible for the business requiring licensure or a certificate of waiver as a medical test site under chapter 70.42 RCW.

((29)) (30) "Performance specification" means a value or range of values for a test that describe its accuracy, precision, analytical sensitivity, analytical specificity, reportable range and reference range.

((30)) (31) "Person" means any individual, public organization, private organization, agent, agency, corporation, firm, association, partnership, or business.

((31)) (32) "Physician" means an individual with a doctor of medicine, doctor of osteopathy, doctor of podiatric medicine, or equivalent degree who is a licensed professional under chapter 18.71 RCW Physicians; chapter 18.57 RCW Osteopathy—Osteopathic medicine and surgery; or chapter 18.22 RCW Podiatric medicine and surgery.

((32)) (33) "Provider-performed microscopic procedures" means only those moderate complexity tests listed under WAC 246-338-020 (2)(b)(i) through (x), when the tests are performed in conjunction with a patient's visit by a licensed professional meeting qualifications specified in WAC 246-338-020 (2)(a)(i) through (vi).

((33)) (34) "Provisional license" means an interim approval issued by the department to the owner of a medical test site.

((34)) (35) "Records" means books, files, reports, or other documentation necessary to show compliance with the quality control and quality assurance requirements under this chapter.

((35)) (36) "Reference material" means a material or substance, calibrator, control, or standard where one or more properties are sufficiently well established for use in calibrating a process or for use in quality control.

~~((36))~~ (37) "Specialty" means a group of similar subspecialties or tests. The specialties for a medical test site are as follows:

- (a) Chemistry;
- (b) Cytogenetics;
- (c) Diagnostic immunology;
- (d) Immunohematology;
- (e) Hematology;
- (f) Histocompatibility;
- (g) Microbiology;
- (h) Pathology; and
- (i) Radiobioassay.

~~((37))~~ (38) "Standard" means a reference material of fixed and known chemical composition capable of being prepared in essentially pure form, or any certified reference material generally accepted or officially recognized as the unique standard for the assay regardless of level or purity of the analyte content.

~~((38))~~ (39) "Subspecialty" means a group of similar tests. The subspecialties of a specialty for a medical test site are as follows, for:

(a) Chemistry, the subspecialties are routine chemistry, urinalysis, endocrinology, and toxicology(~~(, and other chemistry)~~);

(b) Diagnostic immunology, the subspecialties are syphilis serology and general immunology;

(c) Immunohematology, the subspecialties are (~~blood group~~) ABO Grouping and Rh typing, antibody detection, antibody identification, (~~crossmatching, and other immunohematology~~) and compatibility testing;

(d) Hematology, the subspecialties are routine hematology(~~(, and~~) and coagulation(~~(, and other hematology)~~);

(e) Microbiology, the subspecialties are bacteriology, mycology, parasitology, virology, and mycobacteriology; and

(f) Pathology, the subspecialties are histopathology (including dermatopathology), diagnostic cytology, and oral pathology.

~~((39))~~ (40) "Supervision" means authoritative procedural guidance by an individual qualified under 42 CFR Part 493 Subpart M - Personnel for (~~Moderate and High Complexity~~) Non-waived Testing, assuming the responsibility for the accomplishment of a function or activity by technical personnel.

~~((40))~~ (41) "Technical personnel" means individuals employed to perform any test or part of a test.

~~((41))~~ (42) "Test" means any examination or procedure conducted on a sample taken from the human body.

~~((42))~~ (43) "Validation inspection" means an on-site inspection by the department of an accredited medical test site to determine that the accreditation organization's regulations are equivalent to this chapter and are enforced.

~~((43))~~ (44) "Waived test" means a test system that is:

(a) Cleared by the Food and Drug Administration for home use; or

(b) A simple laboratory examination or procedure that has an insignificant risk of an erroneous result.

In order for a test system to be waived, it must be approved for waiver under CLIA.

~~((44))~~ (45) "Will" means compliance is mandatory.

AMENDATORY SECTION (Amending WSR 01-02-069, filed 12/29/00, effective 1/29/01)

**WAC 246-338-028 On-site inspections.** (1) The department may conduct an on-site review of a licensee or applicant at any time to determine compliance with chapter 70.42 RCW and this chapter as described in Table 020-1.

(2) The department may at any time examine records of the medical test site to determine compliance with chapter 70.42 RCW and this chapter.

(3) The department will:

(a) Provide written notice of deficiencies to the medical test site; and

(b) Allow the owner a reasonable period of time, not to exceed sixty days after department approval of the written plan of correction, to correct a deficiency unless the deficiency is an immediate threat to public health, safety, or welfare.

(4) The medical test site must:

(a) Present a written plan of correction to the department within fourteen days following the date of postmark of the notice of deficiencies;

(b) Comply with the written plan of correction within a specified time, not to exceed sixty days, after department approval of the written plan of correction which must detail how and when the medical test site will correct the deficiencies;

(c) Submit to inspections by (~~(HCFA))~~ CMS or (~~(HCFA))~~ CMS agents as a condition of licensure for the purpose of validation or in response to a complaint against the medical test site;

(d) Authorize the department to release all records and information requested by (~~(HCFA))~~ CMS to (~~(HCFA))~~ CMS or (~~(HCFA))~~ CMS agents;

(e) Cooperate with any on-site review conducted by the department; and

(f) Authorize the accreditation organization to submit, upon request of the department:

(i) On-site inspection results;

(ii) Reports of deficiencies;

(iii) Plans of corrections for deficiencies cited;

(iv) Any disciplinary or enforcement action taken by the accreditation organization against the medical test site and results of any disciplinary or enforcement action taken by the accreditation organization against the medical test site; and

(v) Any records or other information about the medical test site required for the department to determine whether or not standards are consistent with chapter 70.42 RCW and this chapter.

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

**WAC 246-338-040 Approval of accreditation organizations.** (1) The department will recognize the accreditation organizations granted deemed status by (~~(HCFA))~~ CMS.

(2) The (~~(HCFA))~~ CMS-approved accreditation organizations are:

(a) American Association of Blood Banks (AABB);

(b) American Osteopathic Association (AOA);

(c) American Society of (~~Histocompatibility~~) Histo-compatibility and Immunogenetics (ASHI);

(d) College of American Pathologists (CAP);

(e) COLA; and

(f) Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(3) The accreditation organizations must:

(a) Allow the department to have jurisdiction to investigate complaints, do random on-site validation inspections, and take disciplinary action against a medical test site if indicated;

(b) Notify the department within fifteen days of any medical test site that:

(i) Has had its accreditation withdrawn, revoked, or limited;

(ii) Is sanctioned as a result of a routine inspection or complaint investigation; or

(iii) When adverse action has been taken for unsuccessful proficiency testing performance;

(c) Notify the department within five days of any deficiency that jeopardizes the public health, safety, or welfare; and

(d) Provide the department with a list of inspection schedules, as requested, for the purpose of conducting on-site validation inspections.

(4) The department will:

(a) Revoke deemed status from any organization which has deeming authority removed by (~~HCFA~~) CMS; and

(b) Notify the medical test site if approval of an accreditation organization is withdrawn by the department.

**AMENDATORY SECTION** (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

**WAC 246-338-050 Proficiency testing.** (1) All licensed medical test sites, excluding those granted a certificate of waiver, must:

(a) Comply with federal proficiency testing requirements listed in 42 CFR Part 493-Laboratory Requirements, Subparts H and I;

(b) Submit to the department a copy of proficiency testing enrollment confirmation form(s) for the tests the medical test site will perform during the following calendar year, by December 31st of each year; and

(c) Authorize the proficiency testing program to release to the department all data required to determine the medical test site's compliance with this section.

(2) The department will:

(a) Recognize only those proficiency testing programs approved by (~~HCFA~~) HHS; and

(b) Furnish, upon request:

(i) A copy of 42 CFR Part 493 Subparts H and I;

(ii) A list of the proficiency testing programs approved by (~~HCFA~~) HHS; and

(iii) A list of tests that must be covered by proficiency testing.

(3) The department will evaluate proficiency testing results by using the following criteria:

(a) An evaluation of scores for the last three testing events of proficiency testing samples including:

(i) Tests;

(ii) Subspecialties; and

(iii) Specialties;

(b) Maintenance of a minimum acceptable score of eighty percent for all tests, subspecialties, and specialties except one hundred percent for:

(i) ABO (~~(group and D(Rh))~~) grouping and Rh typing;

(ii) Compatibility testing; and

(iii) Antihuman immunodeficiency virus;

(c) Unsatisfactory performance occurs when:

(i) Unsatisfactory scores are obtained in any specialty or Subspecialty in a testing event; or

(ii) An unsatisfactory score is obtained on a single test in a testing event.

(4) Unsatisfactory performance on two of any three successive testing events is considered unsuccessful participation, and will result in the following actions:

(a) The department will mail a letter to the director stating that the medical test site may choose to:

(i) Discontinue patient testing for the identified test, specialty or subspecialty; or

(ii) Follow a directed plan of correction; and

(b) The medical test site must notify the department, within fifteen days of receipt of the notice of the decision to:

(i) Discontinue testing patient specimens for the identified test, subspecialty or specialty; or

(ii) Agree to a directed plan of correction.

(5) Continued unsatisfactory performance for a test, specialty or subspecialty in either of the next two consecutive sets of proficiency testing samples, after completing a directed plan of correction, will result in the following action:

(a) The department will send, by certified mail, a notice to the owner and director of the medical test site to cease performing the identified test, subspecialty, or specialty; and

(b) The owner must notify the department in writing within fifteen days of the receipt of the notice of the decision to voluntarily stop performing tests on patient specimens for the identified test, subspecialty, or specialty.

(6) The owner may petition the department for reinstatement of approval to perform tests on patient specimens after demonstrating satisfactory performance on two successive testing events of proficiency testing samples for the identified test, subspecialty, or specialty.

(7) The department will notify the owner in writing, within fifteen days of receipt of petition, of the decision related to the request for reinstatement.

**AMENDATORY SECTION** (Amending WSR 01-02-069, filed 12/29/00, effective 1/29/01)

**WAC 246-338-060 Personnel.** (1) Medical test site owners must:

(a) Have a director responsible for the overall technical supervision and management of the test site personnel including oversight of the performance of test procedures and reporting of test results;

(b) Have technical personnel, competent to perform tests and report test results; and

(c) Meet the standards for personnel qualifications and responsibilities in compliance with federal regulation, as

listed in 42 CFR Part 493 Subpart M-Personnel for (~~Moderate and High Complexity~~) Non-waived Testing (~~, with the following exception:~~

A person that achieved a satisfactory grade through an examination conducted by or under the sponsorship of the United States Public Health Service for director, on or before July 1, 1970, would qualify as a director, technical supervisor, technical consultant, general supervisor and testing personnel for the specialties in which a satisfactory grade was achieved for moderate and high complexity testing).

(2) The department will furnish a copy of 42 CFR Part 493 Subpart M upon request.

(3) Medical test site directors must:

(a) Establish and approve policies for:

- (i) Performing, recording, and reporting of tests;
- (ii) Maintaining an ongoing quality assurance program;
- (iii) Supervision of testing; and
- (iv) Compliance with chapter 70.42 RCW and this chapter;

(b) Evaluate, verify, and document the following related to technical personnel:

(i) Education, experience, and training in test performance and reporting test results;

(ii) Sufficient numbers to cover the scope and complexity of the services provided;

(iii) Access to training appropriate for the type and complexity of the test site services offered; and

(iv) Maintenance of competency to perform test procedures and report test results;

(c) Be present, on call, or delegate the duties of the director to an on-site technical person during testing.

**AMENDATORY SECTION** (Amending WSR 01-02-069, filed 12/29/00, effective 1/29/01)

**WAC 246-338-070 Records.** Medical test sites must maintain records as described in this section.

(1) REQUISITIONS must include the following information, in written or electronic form:

(a) Patient name, identification number, or other method of (~~specimen~~) patient identification;

(b) Name and address or other suitable identifiers of the authorized person ordering the test;

(c) Date of specimen collection, and time, if appropriate;

(d) Source of specimen, if appropriate;

(e) Type of test ordered;

(f) Sex, and age or date of birth, of the patient (~~, if appropriate~~); and

(g) For cytology and histopathology specimens:

(i) Pertinent clinical information; and

(ii) For Pap smears:

(A) Date of last menstrual period; and

(B) Indication whether the patient (~~has history of cervical cancer or its precursors~~) had a previous abnormal report, treatment, or biopsy.

(2) TEST RECORD SYSTEMS must:

(a) Consist of instrument printouts, worksheets, accession logs, corrective action logs, and other records that ensure reliable identification of patient specimens as they are pro-

cessed and tested to assure that accurate test results are reported; and

(b) Include:

(i) The patient's name or other method of specimen identification;

(ii) The date and time the specimen was received (~~, and time, if appropriate~~);

(iii) The reason for specimen rejection or limitation;

(iv) The date of specimen testing; and

(v) The identification of the personnel who performed the test.

(3) TEST REPORTS must:

(a) Be maintained in a manner permitting identification and reasonable accessibility;

(b) Be released only to authorized persons or designees;

(c) Include (~~the~~);

(i) Name and address of the medical test site, or where applicable, the name and address of each medical test site performing each test;

(~~ii~~) Include:

(i) Patient's name and identification number, or a unique patient identifier and identification number;

(ii) Date reported;

(~~iii~~) (iv) Time reported, if appropriate;

(~~iii~~) (v) Specimen source, when appropriate, and any information regarding specimen rejection or limitation; and

(~~iv~~) (vi) Name of the test performed, test result, and units of measurement, if applicable.

(4) CYTOLOGY REPORTS must:

(a) Distinguish between unsatisfactory specimens and negative results;

(b) Provide narrative descriptions for any abnormal results, such as the 2001 Bethesda system of terminology as published in the Journal of the American Medical Association, (~~1989~~) 2002, Volume (~~262~~) 287, pages (~~931-934~~) 2114-2119; and

(c) Include the signature or initials of the technical supervisor, or an electronic signature authorized by the technical supervisor, for nongynecological preparations and gynecological preparations interpreted to be showing reactive or reparative changes, atypical squamous or glandular cells of undetermined significance, or to be in the premalignant (dysplasia, cervical intraepithelial neoplasia or all squamous intraepithelial neoplasia lesions including human papillomavirus-associated changes) or malignant category.

(5) HISTOPATHOLOGY REPORTS must include the signature or initials of the technical supervisor or an electronic signature authorized by the technical supervisor on all reports.

(6) CYTOGENETICS REPORTS must:

(a) Use (~~appropriate~~) the International System for Human Cytogenetic Nomenclature on final reports;

(b) Include the number of cells counted and (~~karyo-~~) analyzed; and

(c) Include (~~an~~) a summary and interpretation of the (~~karyotypes findings~~) observations.

(7) If a specimen is referred to another laboratory for testing, the medical test site must:

(a) Report the essential elements of the referred test results without alterations that could affect the clinical interpretation of the results; and

(b) Retain or be able to produce an exact duplicate of each testing report from the referral laboratory.

(8) The medical test site must retain records, slides, and tissues as described in Table 070-1, under storage conditions that ensure proper preservation.

(9) If the medical test site ceases operation, it must make provisions to ensure that all records and, as applicable, slides, blocks and tissue are retained and available for the time frames specified in Table 070-1.

**Table 070-1 Record/Slide/Tissue Retention Schedule**

	Two Years	Five Years	Ten Years
(a) General Requirements for all Laboratory Specialties	<ul style="list-style-type: none"> <li>• Test requisitions or equivalent;</li> <li>• Test records, <u>including instrument printouts if applicable</u>;</li> <li>• Test reports;</li> <li>• Quality control records;</li> <li>• Quality assurance records;</li> <li>• Proficiency testing records;</li> <li>• Hard copy of report, or ability to reproduce a copy, for all specimens referred for testing; and</li> <li>• Discontinued procedures for all specialty areas</li> </ul>		
(b) Transfusion Services*		<ul style="list-style-type: none"> <li>• Test requisitions or equivalent;</li> <li>• Test records;</li> <li>• Test reports;</li> <li>• Quality control records; and</li> <li>• Quality assurance records</li> </ul>	
(c) Cytology		<ul style="list-style-type: none"> <li>• All cytology slides, from date of examination of the slide</li> </ul>	<ul style="list-style-type: none"> <li>• All cytology reports</li> </ul>
(d) <u>Histopathology/Oral Pathology</u>	<ul style="list-style-type: none"> <li>• Specimen blocks, from date of examination</li> </ul>		<ul style="list-style-type: none"> <li>• All histopathology <u>and oral pathology</u> reports; and</li> <li>• Stained slides, from date of examination of the slide</li> </ul>
(e) <u>Histopathology/Oral Pathology-Tissues</u>	Retain remnants of tissue specimens in an appropriate preserved state until the portions submitted for microscopic examination have been examined and diagnosed		
(f) Instrument/method Validation Studies	For life of instrument/method plus two years		

\* Must be retained for no less than five years in accordance with 21 CFR (~~Part 606, Subpart I~~) 606.160(d).

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**AMENDATORY SECTION** (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

**WAC 246-338-080 Quality assurance.** Each medical test site performing moderate complexity (including PPMP) or high complexity testing, or any combination of these tests, must establish and follow written policies and procedures for a comprehensive quality assurance program. The quality assurance program must be designed to monitor and evaluate the ongoing and overall quality of the total testing process (preanalytic, analytic, postanalytic). The medical test site's quality assurance program must evaluate the effectiveness of its policies and procedures; identify and correct problems; assure the accurate, reliable, and prompt reporting of test results; and assure the adequacy and competency of the staff. As necessary, the medical test site must revise policies and procedures based upon the results of those evaluations. The medical test site must meet the standards as they apply to the services offered, complexity of testing performed and test results reported, and the unique practices of each testing entity. All quality assurance activities must be documented.

(1) The medical test site must establish and implement a written quality assurance plan, including policies and procedures, designed to:

(a) Monitor, evaluate, and review quality control data, proficiency testing results, and test results, including biannual verification of:

(i) Accuracy of test results for:

(A) Tests that are not covered by proficiency testing;  
~~((and))~~

(B) Tests that are covered by proficiency testing but have unsatisfactory scores, are not scored by the proficiency testing program, or where scoring does not reflect actual test performance (e.g., the proficiency testing program does not obtain the agreement required for scoring); and

(ii) Relationship between test results when the medical test site performs the same test on different instruments or at different locations within the medical test site;

(b) Identify and correct problems;

(c) Establish and maintain accurate, reliable, and prompt reporting of test results;

(d) Verify all tests performed and reported by the medical test site conform to specified performance criteria in quality control under WAC 246-338-090; ~~((and))~~

(e) Establish and maintain the adequacy and competency of the technical personnel; and

(f) Establish and follow written policies and procedures that ensure positive identification and optimum integrity of a patient's specimen from the time of collection or receipt of the specimen through completion of testing and reporting of results.

(2) The quality assurance plan must include mechanisms or systems to:

(a) Establish and apply criteria for specimen acceptance and rejection;

(b) Notify the appropriate individuals as soon as possible when test results indicate potential life-threatening conditions;

(c) Assess problems identified during quality assurance reviews and discuss them with the appropriate staff;

(d) Evaluate all test reporting systems to verify accurate and reliable reporting, transmittal, storage, and retrieval of data;

(e) Document all action taken to identify and correct problems or potential problems;

(f) Issue corrected reports when indicated;

(g) Provide appropriate instructions for specimen collection, handling, preservation, and transportation; ~~((and))~~

(h) Ensure that specimens are properly labeled, including patient name or unique patient identifier and, when appropriate, specimen source;

(i) Ensure confidentiality of patient information throughout all phases of the testing process; and

(j) Provide clients updates of testing changes that would affect test results or the interpretation of test results.

(3) The medical test site must establish criteria for and maintain appropriate documentation of any remedial action taken in response to quality control, quality assurance, personnel, proficiency testing, and transfusion reaction investigations.

(4) When results of control or calibration materials fail to meet the established criteria for acceptability, the medical test site must have a system in place to determine if patient test results have been adversely affected. The system must include:

(a) A review of all patient test results obtained in the unacceptable test run; and

(b) A review of all patient test results since the last acceptable test run.

(5) The medical test site must have a system in place to assure:

(a) All complaints and problems reported to the medical test site are documented and investigated when appropriate; and

(b) Corrective actions are instituted as necessary.

~~((5))~~ (6) The owner must:

(a) Maintain adequate space, facilities, and essential utilities for the performance and reporting of tests;

(b) Ensure that molecular amplification procedures that are not contained in closed systems have a unidirectional workflow. This must include separate areas for specimen preparation, amplification and production detection, and as applicable, reagent preparation;

(c) Establish, ~~((post))~~ make accessible, and observe safety precautions to ensure protection from physical, chemical, biochemical, and electrical hazards and biohazards; and

~~((e))~~ (d) Establish and implement policies and procedures for infectious and hazardous medical wastes consistent with local, state, and federal authorities.

~~((6))~~ (7) Information that must be available to authorized persons ordering or utilizing the test results includes:

(a) A list of test methods, including performance specifications;

(b) Reference ranges; and

(c) Test method limitations.

~~((7))~~ (8) If the medical test site refers specimens to another site for testing, the site to which specimens are referred must have a valid medical test site license or meet equivalent requirements as determined by ~~((HCFA))~~ CMS.

**AMENDATORY SECTION** (Amending WSR 01-02-069, filed 12/29/00, effective 1/29/01)

**WAC 246-338-090 Quality control.** The medical test site must use quality control procedures, providing and assuring accurate and reliable test results and reports, meeting the requirements of this chapter.

(1) The medical test site must have written procedures and policies available in the work area for:

(a) Analytical methods used by the technical personnel including:

- (i) Principle;
- (ii) Specimen collection and processing procedures;
- (iii) Equipment/reagent/supplies required;
- (iv) Preparation of solutions, reagents, and stains;
- (v) Test methodology;
- (vi) Quality control procedures;
- (vii) Procedures for reporting results (normal, abnormal, and critical values);
- (viii) Reference range;
- (ix) Troubleshooting guidelines - limitations of methodology;
- (x) Calibration procedures; and
- (xi) Pertinent literature references; and

(b) Alternative or backup methods for performing tests including the use of a reference facility if applicable.

(2) The medical test site must establish written criteria for and maintain appropriate documentation of:

- (a) Temperature-controlled spaces and equipment;
- (b) Preventive maintenance activities;
- (c) Equipment function checks;
- (d) Procedure calibrations; and
- (e) Method/instrument validation procedures.

(3) The medical test site must maintain documentation of:

(a) Expiration date, lot numbers, and other pertinent information for:

- (i) Reagents;
- (ii) Solutions;
- (iii) Culture media;
- (iv) Controls;
- (v) Calibrators;
- (vi) Standards;
- (vii) Reference materials; and
- (viii) Other testing materials; and
- (b) Testing of quality control samples.

(4) For **quantitative tests**, the medical test site must perform quality control as follows:

(a) Include two reference materials of different concentrations each day of testing unknown samples, if these reference materials are available; or

(b) ~~((Have an equivalent mechanism to assure the quality, accuracy, and precision of the test if reference materials are not available.))~~ Follow an equivalent quality testing procedure that meets federal CLIA regulations.

(5) For **qualitative tests**, the medical test site must perform quality control as follows:

(a) Use positive and negative reference material each day of testing unknown samples; or

(b) ~~((Have an equivalent mechanism to assure the quality, accuracy, and precision of the test if reference materials~~

~~are not available.))~~ Follow an equivalent quality testing procedure that meets federal CLIA regulations.

(6) The medical test site must:

(a) Use materials within their documented expiration date;

(b) Not interchange components of kits with different lot numbers, unless specified by the manufacturer;

(c) Determine the statistical limits for each lot number of unassayed reference materials through repeated testing;

(d) Use the manufacturer's reference material limits for assayed material, provided they are:

(i) Verified by the medical test site; and

(ii) Appropriate for the methods and instrument used by the medical test site;

(e) Make reference material limits readily available;

(f) Report patient results only when reference materials are within acceptable limits; and

(g) Rotate control material testing among all persons who perform the test;

(h) Use calibration material from a different lot number than that used to establish a cut-off value or to calibrate the test system, if using calibration material as a control material; and

(i) Comply with general quality control requirements as described in Table 090-1, unless otherwise specified in subsection (9)(a) through (l) of this section.

(7) The medical test site must perform, when applicable:

(a) Calibration and calibration ~~((ehecks))~~ verification for moderate and high complexity testing as described in Table 090-2;

(b) ~~((Calibration and calibration verification for high complexity testing as described in Table 090-3;~~

~~((e)))~~ Validation for moderate complexity testing by verifying the following performance characteristics when the medical test site introduces a new procedure classified as moderate complexity:

(i) Accuracy;

(ii) Precision; ~~((and))~~

(iii) Reportable range of patient test results; and

~~((d)))~~ (iv) If using the reference range provided by the manufacturer, that it is appropriate for the patient population;

(c) Validation for high complexity testing:

(i) When the medical test site introduces a new procedure classified as high complexity;

(ii) For each method that is developed in-house, is a modification of the manufacturer's test procedure, or is an instrument, kit or test system that has not been cleared by FDA; and

(iii) By verifying the following performance characteristics:

(A) Accuracy;

(B) Precision;

(C) Analytical sensitivity;

(D) Analytical specificity to include interfering substances;

(E) Reference ranges (normal values);

(F) Reportable range of patient test results; and

(G) Any other performance characteristic required for test performance.

(8) When patient values are above the maximum or below the minimum calibration point or the reportable range, the medical test site must:

(a) Report the patient results as greater than the upper limit or less than the lower limit or an equivalent designation; or

(b) Use an appropriate procedure to rerun the sample allowing results to fall within the established linear range.

**Table 090-1 General Quality Control Requirements**

	<b>Control Material</b>	<b>Frequency</b>	
(a)	Each batch or shipment of reagents, discs, antisera, and identification systems	<ul style="list-style-type: none"> <li>• Appropriate control materials for positive and negative reactivity</li> </ul>	<ul style="list-style-type: none"> <li>• When prepared or opened, unless otherwise specified</li> </ul>
(b)	Each batch or shipment of stains	<ul style="list-style-type: none"> <li>• Appropriate control materials for positive and negative reactivity</li> </ul>	<ul style="list-style-type: none"> <li>• When prepared or opened; and</li> <li>• Each day of use, unless otherwise specified</li> </ul>
(c)	Fluorescent <u>and immunohistochemical</u> stains	<ul style="list-style-type: none"> <li>• Appropriate control materials for positive and negative reactivity</li> </ul>	<ul style="list-style-type: none"> <li>• Each time of use, unless otherwise specified</li> </ul>
(d)	Quality control for each specialty and subspecialty	<ul style="list-style-type: none"> <li>• Appropriate control materials; or</li> <li>• Equivalent mechanism to assure the quality, accuracy, and precision of the test if reference materials are not available</li> </ul>	<ul style="list-style-type: none"> <li>• At least as frequently as specified in this section;</li> <li>• More frequently if recommended by the manufacturer of the instrument or test procedure; or</li> <li>• More frequently if specified by the medical test site</li> </ul>
(e)	Direct antigen detection systems without procedural controls	<ul style="list-style-type: none"> <li>• Positive and negative controls that evaluate both the extraction and reaction phase</li> </ul>	<ul style="list-style-type: none"> <li>• Each batch, shipment, and new lot number; and</li> <li>• Each day of use</li> </ul>

~~((Table 090-2 Calibration and Calibration Checks—Moderate Complexity Testing~~

	<b>Calibration Material</b>	<b>Frequency</b>
<del>CALIBRATION</del>	<ul style="list-style-type: none"> <li>• <del>Calibration material appropriate for methodology according to manufacturer's instructions</del></li> </ul>	<ul style="list-style-type: none"> <li>• <del>Initial on-site installation/implementation of instrument/method;</del></li> <li>• <del>At the frequency recommended by the manufacturer;</del></li> <li>• <del>When controls show trends, shifts, or are out of limits and other corrective action has not fixed the problem.</del></li> </ul>
<del>CHECK CALIBRATION</del>	<ul style="list-style-type: none"> <li>• <del>Assayed material appropriate for methodology</del></li> </ul>	<ul style="list-style-type: none"> <li>• <del>At least every six months.))</del></li> </ul>

**Table 090-((3)) 2 Calibration and Calibration ((Checks)) Verification—Moderate and High Complexity Testing**

	<b>Calibration Material</b>	<b>Frequency</b>
CALIBRATION	<ul style="list-style-type: none"> <li>• Calibration materials appropriate for methodology</li> </ul>	<ul style="list-style-type: none"> <li>• Initial on-site installation/implementation of instrument/method;</li> <li>• At the frequency recommended by the manufacturer; and</li> <li>• Whenever calibration verification fails to meet the medical test site's acceptable limits for calibration verification.</li> </ul>

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	Calibration Material	Frequency
CALIBRATION VERIFICATION	<ul style="list-style-type: none"> <li>Use assayed material, if available, at the lower, mid-point, and upper limits of procedure's reportable range; or</li> <li>Demonstrate alternate method of assuring accuracy at the lower, mid-point, and upper limits of procedure's reportable range</li> </ul>	<ul style="list-style-type: none"> <li>At least every six months;</li> <li>When there is a complete change of reagents (i.e., new lot number or different manufacturer) is introduced;</li> <li>When major preventive maintenance is performed or there is a replacement of critical parts of equipment; or</li> <li>When controls are outside of the medical test site's acceptable limits or exhibit trends.</li> </ul>

(9) The medical test site must perform quality control procedures as described for each specialty and subspecialty in (a) through (l) of this subsection.

(a) **Chemistry.**

Perform quality control procedures for chemistry as described in Table 090-((4))3 or follow an equivalent quality testing procedure that meets federal CLIA regulations.

**Table 090-((4)) 3 Quality Control Procedures - Chemistry**

Subspecialty/Test	Qualitative		Quantitative	
	Control Material	Frequency	Control Material	Frequency
Routine Chemistry	<ul style="list-style-type: none"> <li>Positive and negative reference material</li> </ul>	<ul style="list-style-type: none"> <li>Each day of use</li> </ul>	<ul style="list-style-type: none"> <li>Two levels of reference material in different concentrations</li> </ul>	<ul style="list-style-type: none"> <li>Each day of use</li> </ul>
Toxicology <ul style="list-style-type: none"> <li>GC/MS for drug screening</li> <li>Urine drug screen</li> </ul>	<ul style="list-style-type: none"> <li>Analyte-specific control</li> <li>Positive control containing at least one drug representative of each drug class to be reported; must go through each phase of use including extraction</li> </ul>	<ul style="list-style-type: none"> <li>With each run of patient specimens</li> <li>With each run of patient specimens</li> </ul>	<ul style="list-style-type: none"> <li>Analyte-specific control</li> </ul>	<ul style="list-style-type: none"> <li>With each analytical run</li> </ul>
Urinalysis <ul style="list-style-type: none"> <li>Nonwaived instrument</li> <li>Refractometer for specific gravity</li> </ul>			<ul style="list-style-type: none"> <li>Two levels of control material</li> <li>Calibrate to zero with distilled water</li> <li>One level of control material</li> </ul>	<ul style="list-style-type: none"> <li>Each day of use</li> <li>Each day of use</li> </ul>
Blood Gas Analysis			<ul style="list-style-type: none"> <li><u>Calibration</u></li> <li><del>((Two-point calibration and))</del> <u>One ((reference)) level of control material</u></li> <li>One-point calibration or one <del>((reference))</del> <u>control material</u><del>((or</del></li> </ul>	<ul style="list-style-type: none"> <li><u>Follow manufacturer's specifications and frequency</u></li> <li>Each eight hours of testing, <u>using both low and high values on each day of testing</u></li> </ul>

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Subspecialty/Test	Qualitative		Quantitative	
	Control Material	Frequency	Control Material	Frequency
			<ul style="list-style-type: none"> <li>Another calibration and reference material schedule, approved by the department)</li> </ul>	<ul style="list-style-type: none"> <li>Each time patient ((sample)) specimen is tested, unless automated instrument internally verifies calibration every thirty minutes</li> </ul>
Electrophoresis	<ul style="list-style-type: none"> <li>One control containing fractions representative of those routinely reported in patient specimens</li> </ul>	<ul style="list-style-type: none"> <li>In each electrophoretic cell</li> </ul>	<ul style="list-style-type: none"> <li>One control containing fractions representative of those routinely reported in patient specimens</li> </ul>	<ul style="list-style-type: none"> <li>In each electrophoretic cell</li> </ul>

**(b) Hematology.**

- (i) Run patient and quality control samples in duplicate for manual cell counts;
- (ii) If reference material is unavailable, document the mechanism used to assure the quality, accuracy, and precision of the test; and
- (iii) Perform quality control procedures for hematology as described in Table 090-((5)) 4 or follow an equivalent quality testing procedure that meets federal CLIA regulations.

**Table 090-((5))4 Quality Control Procedures—Hematology**

	Control Material	Frequency
Automated	<ul style="list-style-type: none"> <li>Two levels of reference material in different concentrations</li> </ul>	<ul style="list-style-type: none"> <li>((Every eight hours)) Each day that patient samples are tested</li> </ul>
Manual Blood Counts	<ul style="list-style-type: none"> <li>One level of reference material</li> </ul>	<ul style="list-style-type: none"> <li>Every eight hours that patient samples are tested</li> </ul>
Qualitative Tests	<ul style="list-style-type: none"> <li>Positive and negative reference material</li> </ul>	<ul style="list-style-type: none"> <li>Each day of testing</li> </ul>

**(c) Coagulation.**

- (i) Run patient and quality control samples in duplicate for manual coagulation test (tilt tube);
- (ii) If reference material is unavailable, document the mechanism used to assure the quality, accuracy, and precision of the test; and
- (iii) Perform quality control procedures for coagulation as described in Table 090-((6))5 or follow an equivalent quality testing procedure that meets federal CLIA regulations.

**Table 090-((6))5 Quality Control Procedures—Coagulation**

	Control Material	Frequency
Automated	<ul style="list-style-type: none"> <li>Two levels of reference material in different concentrations</li> </ul>	<ul style="list-style-type: none"> <li>Every eight hours that patient samples are tested; and</li> <li>Each time reagents are changed</li> </ul>
Manual Tilt Tube Method	<ul style="list-style-type: none"> <li>Two levels of reference material in different concentrations</li> </ul>	<ul style="list-style-type: none"> <li>Every eight hours that patient samples are tested; and</li> <li>Each time reagents are changed</li> </ul>

**(d) General immunology.**

- (i) Employ reference materials for all test components to ensure reactivity;
- (ii) Report test results only when the predetermined reactivity pattern of the reference material is observed; and
- (iii) Perform quality control procedures for general immunology as described in Table 090-((7)) 6 or follow an equivalent quality testing procedure that meets federal CLIA regulations.

**Table 090-((7))6 Quality Control Procedures—General Immunology**

	<b>Control Material</b>	<b>Frequency</b>
Serologic tests on unknown specimens	<ul style="list-style-type: none"> <li>• Positive and negative reference material</li> </ul>	<ul style="list-style-type: none"> <li>• Each day of testing</li> </ul>
<del>((Moderate complexity))</del> Kits with procedural (internal) controls	<ul style="list-style-type: none"> <li>• Positive and negative reference material (external controls)</li> <li>• Procedural (internal) controls</li> </ul>	<ul style="list-style-type: none"> <li>• When kit is opened; and</li> <li>• <u>Each day of testing, or follow an equivalent quality testing procedure that meets federal CLIA regulations</u></li> <li>• Each time patient sample is tested</li> </ul>

**(e) Syphilis serology.**

(i) Use equipment, glassware, reagents, controls, and techniques that conform to manufacturer's specifications;

(ii) Employ reference materials for all test components to ensure reactivity; and

(iii) Perform serologic tests on unknown specimens ~~((concurrently))~~ each day of testing with a positive serum reference material with known titer or graded reactivity and a negative reference material.

**(f) Microbiology.**

(i) Have available and use:

(A) Appropriate stock organisms for quality control purposes; and

(B) A collection of slides, photographs, gross specimens, or text books for reference sources to aid in identification of microorganisms;

(ii) Document all steps (reactions) used in the identification of microorganisms on patient specimens;

(iii) For antimicrobial susceptibility testing:

(A) Record zone sizes or minimum inhibitory concentration for reference organisms; and

(B) Zone sizes or minimum inhibitory concentration for reference organisms must be within established limits before reporting patient results; and

(C) Perform quality control on antimicrobial susceptibility testing media as described in Table 090-((9))8;

(iv) For noncommercial media, check each batch or shipment for sterility, ability to support growth and, if appropriate, selectivity, inhibition, or biochemical response;

(v) For commercial media:

(A) Verify that the product insert specifies that the quality control checks meet the requirements for media quality control as outlined by the ~~((National Committee for Clinical Laboratory Standards-))~~ NCCLS ~~((+))~~, Quality Assurance for Commercially Prepared Microbiological Culture Media-Second Edition; Approved Standard (1996);

(B) Keep records of the manufacturer's quality control results;

(C) Document visual inspection of the media for proper filling of the plate, temperature or shipment damage, and contamination before use; and

(D) Follow the manufacturer's specifications for using the media; and

(vi) For microbiology subspecialties:

(A) **Bacteriology:** Perform quality control procedures for bacteriology as described in Tables 090-((8))7 and 090-((9))8.

**Table 090-((8))7 Quality Control Procedures—Bacteriology**

	<b>Control Material</b>	<b>Frequency</b>
Reagents, disks, and identification systems	<ul style="list-style-type: none"> <li>• Positive and negative reference organisms, unless otherwise specified</li> </ul>	<ul style="list-style-type: none"> <li>• Each batch, shipment, and new lot number unless otherwise specified</li> </ul>
<u>Catalase, coagulase, oxidase, and Beta-lactamase Cefinase™ reagents</u>		
<u>Bacitracin, optochin, ONPG, X and V disks or strips</u>		
Stains, unless otherwise specified; DNA probes; <del>((catalase, coagulase;))</del> <u>and all beta-lactamase</u> <del>((; and oxidase reagents))</del> <u>methods other than Cefinase™</u>	<ul style="list-style-type: none"> <li>• Positive and negative reference organisms</li> </ul>	<ul style="list-style-type: none"> <li>• Each batch, shipment, and new lot number; and</li> <li>• Each day of use</li> </ul>
Fluorescent stains	<ul style="list-style-type: none"> <li>• Positive and negative reference organisms</li> </ul>	<ul style="list-style-type: none"> <li>• Each batch, shipment, and new lot number; and</li> <li>• Each time of use</li> </ul>

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	Control Material	Frequency
Gram <del>((and acid-fast))</del> stains <del>((, bacitracin, optochin, ONPG, X and V disks or strips))</del>	<ul style="list-style-type: none"> <li>Positive and negative reference organisms</li> </ul>	<ul style="list-style-type: none"> <li>Each batch, shipment, and new lot number; and</li> <li>Each week of use</li> </ul>
Direct antigen detection systems without procedural controls	<ul style="list-style-type: none"> <li>Positive and negative controls that evaluate both the extraction and reaction phase</li> </ul>	<ul style="list-style-type: none"> <li>Each batch, shipment, and new lot number; and</li> <li>Each day of use</li> </ul>
<del>((Moderate complexity))</del> Test kits with procedural (internal) controls	<ul style="list-style-type: none"> <li>Positive and negative reference material (external) controls</li> <li>Procedural (internal) controls</li> </ul>	<ul style="list-style-type: none"> <li>Each batch, shipment, and new lot number; and</li> <li><u>Each day of testing, or follow an equivalent quality testing procedure that meets federal CLIA regulations</u></li> <li>Each time patient sample is tested</li> </ul>
Antisera	<ul style="list-style-type: none"> <li>Positive and negative reference material</li> </ul>	<ul style="list-style-type: none"> <li>Each batch, shipment, and new lot number; and</li> <li><del>((Each))</del> <u>Every six months</u> <del>((of use))</del></li> </ul>

**Table 090-~~((9))~~8 Quality Control Procedures—Bacteriology - Media for Antimicrobial Susceptibility Testing**

	Control Material	Frequency
Check each new batch of media and each new lot of antimicrobial disks or other testing systems (MIC)	<ul style="list-style-type: none"> <li>Approved reference organisms (ATCC organisms)</li> </ul>	<ul style="list-style-type: none"> <li>Before initial use and each day of testing; or</li> <li>May be done weekly if the medical test site can meet the quality control requirements for antimicrobial disk susceptibility testing as outlined by NCCLS Performance Standards for Antimicrobial Disk Susceptibility Tests-<del>((Seventh))</del> <u>Eighth</u> Edition; Approved Standard <del>((2000))</del> <u>2003</u></li> </ul>

(B) **Mycobacteriology:** Perform quality control procedures for mycobacteriology as described in Table 090-~~((10))~~9.

**Table 090-~~((10))~~9 Quality Control Procedures—Mycobacteriology**

	Control Material	Frequency
<del>((Iron uptake test</del>	<ul style="list-style-type: none"> <li><del>Acid-fast organism that produces a positive reaction and with an organism that produces a negative reaction</del></li> </ul>	<ul style="list-style-type: none"> <li><del>Each day of use))</del></li> </ul>
All <del>((other))</del> reagents or test procedures used for mycobacteria identification unless otherwise specified	<ul style="list-style-type: none"> <li>Acid-fast organism that produces a positive reaction <u>and an acid-fast organism that produces a negative reaction</u></li> </ul>	<ul style="list-style-type: none"> <li>Each day of use</li> </ul>
<del>((DNA probes</del>	<ul style="list-style-type: none"> <li><del>Organisms that produce positive and negative reactions</del></li> </ul>	<ul style="list-style-type: none"> <li><del>Each day of use))</del></li> </ul>
Acid-fast stains	<ul style="list-style-type: none"> <li>Acid-fast organism that produces a positive reaction <u>and an organism that produces a negative reaction</u></li> </ul>	<ul style="list-style-type: none"> <li>Each <del>((week))</del> <u>day</u> of use</li> </ul>
Fluorochrome acid-fast stains	<ul style="list-style-type: none"> <li><del>((Organisms that produce positive and negative reactivity))</del> <u>Acid-fast organism that produces a positive reaction and an acid-fast organism that produces a negative reaction</u></li> </ul>	<ul style="list-style-type: none"> <li>Each <del>((week))</del> <u>time</u> of use</li> </ul>

PERMANENT

	Control Material	Frequency
Susceptibility tests performed on <i>Mycobacterium tuberculosis</i> isolates	<ul style="list-style-type: none"> <li>• <del>((Strain of M. tb susceptible to all antimycobacterial agents used))</del> <u>Appropriate control organism(s)</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Each batch of media, and each lot number and shipment of antimycobacterial agent(s) before, or concurrent with, initial use</u></li> <li>• Each week of use</li> </ul>

(C) **Mycology:** Perform quality control procedures for mycology as described in Table 090-~~((44))10~~.

**Table 090-~~((44))10~~ Quality Control Procedures—Mycology**

	Control Material	Frequency
<del>((Auxanographic medium for nitrate assimilation: Nitrate reagent</del>	<ul style="list-style-type: none"> <li>• Peptone control</li> </ul>	<ul style="list-style-type: none"> <li>• <del>Each day of use))</del></li> </ul>
Susceptibility tests: Each drug NOTE: Establish control limits and criteria for acceptable control results prior to reporting patient results <u>Lactophenol cotton blue stain</u>	<ul style="list-style-type: none"> <li>• One control strain that is susceptible to the drug</li> <li>• <u>Appropriate control organism(s)</u></li> </ul>	<ul style="list-style-type: none"> <li>• Each day of use</li> <li>• <u>Each batch or shipment and each lot number</u></li> </ul>
Acid-fast stains	<ul style="list-style-type: none"> <li>• <del>((Organisms))</del> <u>Organisms</u> that produce positive and negative reactions</li> </ul>	<ul style="list-style-type: none"> <li>• Each <del>((week))</del> <u>day</u> of use</li> </ul>
Reagents for biochemical and other identification test procedures	<ul style="list-style-type: none"> <li>• <u>Appropriate control organism(s)</u> <del>((that produces a positive reaction))</del></li> </ul>	<ul style="list-style-type: none"> <li>• Each <del>((week of use))</del> <u>batch or shipment and each lot number</u></li> </ul>
Commercial identification systems utilizing two or more substrates	<ul style="list-style-type: none"> <li>• Organisms that verify positive and negative reactivity of each media type</li> </ul>	<ul style="list-style-type: none"> <li>• Each batch or shipment and each lot number</li> </ul>

**(D) Parasitology:**

(I) Have available and use:

- Reference collection of slides or photographs and, if available, gross specimens for parasite identification; and
- Calibrated ocular micrometer for determining the size of ova and parasites, if size is a critical parameter.

(II) Check permanent stains each month of use with reference materials.

**(E) Virology:**

(I) Have available:

- Host systems for isolation of viruses; and
- Test methods for identification of viruses that cover the entire range of viruses that are etiologically related to the clinical diseases for which services are offered; and

(II) Simultaneously culture uninoculated cells or cell substrate as a negative control when performing virus identification.

(g) **Histopathology:** Include a control slide of known reactivity with each slide or group of slides for differential or special stains and document reactions.

**(h) Cytology.**

(i) Processing specimens:

(A) Stain all gynecological smears using a Papanicolaou or a modified Papanicolaou staining method;

(B) Have methods to prevent cross-contamination between gynecologic and nongynecologic specimens during the staining process; and

(C) Stain nongynecological specimens that have a high potential for cross-contamination separately from other nongynecological specimens, and filter or change the stains following staining.

(ii) Performing specimen examinations:

(A) All cytology preparations must be evaluated on the premises of the medical test site;

(B) Technical personnel must examine, unless federal law and regulation specify otherwise, no more than one hundred cytological slides ~~((by nonautomated microscopic technique))~~ (one patient specimen per slide; gynecologic, nongynecologic, or both) in a twenty-four-hour period and in no less than an eight-hour work period;

(C) Previously examined negative, reactive, reparative, atypical, premalignant or malignant gynecological cases and previously examined nongynecologic cytology preparations and tissue pathology slides examined by a technical supervisor are not included in the one hundred slide limit;

(D) Each nongynecologic slide preparation ~~((technique automated, semi-automated, or liquid-based which))~~ made using liquid-based slide preparatory techniques that result((s)) in cell dispersion over one-half or less of the total available slide ((area and which is examined by nonautomated microscopic technique must)) may be counted as one-half slide; and

(E) Records of the total number of slides examined by each individual at all sites during each twenty-four-hour period must be maintained.

(iii) Establish and implement a quality assurance program that ensures:

(A) There is criteria for submission of material;

(B) All providers submitting specimens are informed of these criteria;

(C) All samples submitted are assessed for adequacy;

(D) Records of initial examinations and rescreening results are available and documented;

(E) Rescreening of benign gynecological slides is:

(I) Performed by an individual who meets the personnel requirements for technical or general supervisor in cytology as defined under 42 CFR Part 493 Subpart M;

(II) Completed before reporting patient results on those selected cases;

(III) Performed and documented on:

- No less than ten percent of the benign gynecological slides; and

- Includes cases selected at random from the total case-load and from patients or groups of patients that are identified as having a high probability of developing cervical cancer, based on available patient information;

(F) The technical supervisor:

(I) Confirms all gynecological smears interpreted to be showing reactive or reparative changes, atypical squamous or glandular cells of undetermined significance, or to be in the premalignant (dysplasia, cervical intraepithelial neoplasia or all squamous intraepithelial neoplasia lesions including human papillomavirus-associated changes) or malignant category;

(II) Reviews all nongynecological cytological preparations; and

(III) Establishes, documents, and reassesses, at least every six months, the workload limits for each cytotechnologist;

(G) All (~~abnormal~~) cytology reports with a diagnosis of high-grade squamous intraepithelial lesion (HSIL), adenocarcinoma, or other malignant neoplasms are correlated with prior cytology reports and with histopathology reports if available, and the causes of any discrepancies are determined;

(H) Review of all normal or negative gynecological specimens received within the previous five years, if available in the laboratory system, or records of previous reviews, for each patient with a current high grade intraepithelial lesion or moderate dysplasia of CIN-2 or above;

(I) Notification of the patient's physician if significant discrepancies are found that would affect patient care and issuance of an amended report;

(J) An annual statistical evaluation of the number of cytology cases examined, number of specimens processed by specimen type, volume of patient cases reported by diagnosis, number of cases where cytology and histology are discrepant, number of cases where histology results were unavailable for comparison, and number of cases where rescreen of negative slides resulted in reclassification as abnormal; and

(K) Evaluation and documentation of the performance of each individual examining slides against the medical test site's overall statistical values, with documentation of any discrepancies, including reasons for the deviation and corrective action, if appropriate.

(i) **Immunohematology/transfusion services.**

(i) Perform ABO grouping, Rh (D) typing, antibody detection and identification, and compatibility testing as described by the Food and Drug Administration (FDA) under 21 CFR Parts 606(;) and ~~((must also comply with 21 CFR Part))~~ 640.

(A) Perform ABO grouping:

(I) By concurrently testing unknown red cells with FDA approved anti-A and anti-B grouping sera;

(II) Confirm ABO grouping of unknown serum with known A1 and B red cells;

(B) Perform Rh (D) typing by testing unknown red cells with anti-D (anti-Rh) blood grouping serum; and

(C) Perform quality control procedures for immunohematology as described in Table 090-~~((42))~~11.

(ii) Blood and blood products:

(A) Collecting, processing, and distributing:

(I) Must comply with FDA requirements listed under 21 CFR Parts 606, 610.40, 610.53, and 640; and

(II) Must establish, document, and follow policies to ensure positive identification of a blood or blood product recipient.

(B) Labeling and dating must comply with FDA requirements listed under 21 CFR 606(;) Subpart G, and 610.53.

(C) Storing:

(I) There must be an adequate temperature alarm system that is regularly inspected.

(II) The system must have an audible alarm system that monitors proper blood and blood product storage temperature over a twenty-four-hour period.

(III) High and low temperature checks of the alarm system must be documented.

(D) Collection of heterologous or autologous blood products on-site:

(I) Must register with the FDA; and

(II) Have a current copy of the form FDA 2830 "Blood Establishment Registration and Product Listing."

(iii) Must have an agreement approved by the director for procurement, transfer, and availability to receive products from outside entities.

(iv) Promptly investigate transfusion reactions according to established procedures, and take any necessary remedial action.

Table 090-~~(42)~~11 Quality Control Procedures—Immunohematology

Reagent	Control Material	Frequency
ABO antisera	• Positive control	• Each day of use
Rh antisera	• Positive and negative controls • Patient control to detect false positive Rh test results	• Each day of use • When required by the manufacturer
Other antisera	• Positive and negative controls	• Each day of use
ABO reagent red cells	• Positive control	• Each day of use
Antibody screening cells	• Positive control using at least one known antibody	• Each day of use

**(j) Histocompatibility.**

(i) Use applicable quality control standards for immunohematology, transfusion services, and diagnostic immunology as described in this chapter; and

(ii) Meet the standards for histocompatibility as listed in 42 CFR Part(~~(493.1265, Condition))~~ 493.1278, Standard: Histocompatibility, available from the department upon request.

**(k) Cytogenetics.**

(i) Document:

(A) Number of metaphase chromosome spreads and cells counted and karyotyped;

(B) Number of chromosomes counted for each metaphase spread;

(C) Media used;

(D) Reactions observed;

~~(E)~~ Quality of banding; and

~~((E))~~ (F) Sufficient resolution ((to support the reported results)) appropriate for the type of tissue or specimen and the type of study required based on the clinical information provided;

(ii) Assure an adequate number of karyotypes are prepared for each patient according to the indication given for performing cytogenetics study;

(iii) Use an adequate patient identification system for:

(A) Patient specimens;

(B) Photographs, photographic negatives, or computer stored images of metaphase spreads and karyotypes;

(C) Slides; and

(D) Records; and

(iv) Perform ~~((confirmatory testing on all atypical results when performing))~~ full chromosome analysis for determination of sex ((by X and Y chromatin counts)).

**(l) Radiobioassay and radioimmunoassay.**

(i) Check the counting equipment for stability each day of use with radioactive standards or reference sources; and

(ii) Meet Washington state radiation standards described under chapter 70.98 RCW and chapters 246-220, 246-221, 246-222, 246-232, 246-233, 246-235, 246-239, 246-247, 246-249, and 246-254 WAC.

**WSR 05-04-042****PERMANENT RULES****DEPARTMENT OF PERSONNEL**

[Filed January 27, 2005, 3:36 p.m., effective March 1, 2005]

Effective Date of Rule: March 1, 2005.

Purpose: These rules pertain to allocation appeals for higher education positions.

Citation of Existing Rules Affected by this Order: Amending WAC 251-06-070.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-01-241 on December 22, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: January 26, 2005.

E. C. Matt  
Director

AMENDATORY SECTION (Amending WSR 98-19-035, filed 9/10/98, effective 10/12/98)

**WAC 251-06-070 Allocation appeal.** (1) ~~((The))~~ Except as provided in WAC 251-06-072, the employee or employee representative may file a written appeal with the director under provisions of WAC 251-06-050 or 251-06-060 when:

(a) The response required in WAC 251-06-060(2) is not issued to the employee or employee representative within the required sixty calendar day period following receipt of the employee request; or

(b) The response fails to address the specific reason(s) that the request was not approved; or

(c) The employee disagrees with the results of a position review conducted by the personnel officer. The written appeal should include information which will assist the director in determining the proper allocation of the position.

(2) The director shall investigate and issue a determination. Within thirty calendar days of the date of service of the director's determination, the employee, employee representative or institution may file written exceptions with the personnel appeals board as provided in Title 358 WAC.

#### NEW SECTION

#### **WAC 251-06-072 Exceptions—Allocation appeal.**

When an employee's position is reallocated to a class with the same salary range maximum based upon the Director implementing a new classification plan under the provisions of RCW 41.06.136, an employee does not have the right to appeal the allocation of the employee's position. The employee may request a position review in accordance with the provisions of WAC 251-06-060. Following the position review, the employee may file an appeal of the results of the position review per WAC 251-06-070.

### **WSR 05-04-043**

#### **PERMANENT RULES**

#### **DEPARTMENT OF PERSONNEL**

[Filed January 27, 2005, 3:38 p.m., effective March 1, 2005]

Effective Date of Rule: March 1, 2005.

Purpose: These rules pertain to allocation reviews for general government state positions.

Citation of Existing Rules Affected by this Order: Amending WAC 356-10-060.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-01-243 on December 22, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: January 26, 2005.

E. C. Matt  
Director

AMENDATORY SECTION (Amending WSR 98-19-034, filed 9/10/98, effective 10/12/98)

**WAC 356-10-060 Allocation—Request for review.** A review by the director of personnel or designee of the allocation, reallocation of a position, or incumbent status may be requested, except as specified in WAC 356-10-065, by the incumbent in the position at the time the reallocation was requested, or on the date the allocation decision was issued, or at the conclusion of a class study, or by the agency director as follows:

(1) The written request for a review must be filed with the director of personnel within 30 calendar days following notification of the effective date of the action and must contain the reasons and basis for the review.

(2) The director of personnel or designee shall acknowledge receipt of the request and send a copy of the request to the agency.

(3) The agency shall make every effort to resolve the disagreement through agency procedures.

(4) During the review, the director of personnel or designee shall conduct a hearing and may investigate and obtain such information as may be deemed necessary.

(5) Within 30 days of the receipt of the request for review, the director of personnel or designee shall set a date for a hearing and shall notify the incumbent employee, employing agency, employee organization, and designated department of personnel analyst: *Provided*, That the notice shall not be less than 20 calendar days. The hearing shall be informal and any of the above designated parties may present their views. The director of personnel or designee will enter a written determination and provide each of the participating parties with a copy.

(6) An employee or agency may appeal the determination of the director of personnel or designee to the personnel appeals board as provided in Title 358 WAC.

(7) Allocation or reallocation reviews which result from a class-wide or broader position survey need not be heard until the director of personnel or designee has had a reasonable period of time to reexamine the position in question and all pertinent facts.

(8) Wherever possible, agencies shall continue employee's duties unchanged, pending an allocation decision.

#### NEW SECTION

#### **WAC 356-10-065 Exceptions—Allocation—Reviews.**

When an employee's position is reallocated to a class with the same salary range maximum based upon the Director implementing a new classification plan under the provisions of RCW 41.06.136, an employee does not have the right to request the director of personnel to review. The employee may request the agency review his/her position in accordance with the provisions of WAC 356-10-030. Following the position review, the employee may request a director's review of the results of the position review per WAC 356-10-060.

## WSR 05-04-048

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 27, 2005, 4:00 p.m., effective February 27, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 458-20-196 (Rule 196) provides information about the tax treatment of bad debts and credit losses under the business and occupation (B&O), public utility, retail sales, and use taxes. Chapter 168, Laws of 2003 and chapter 153, Laws of 2004, amended the bad debt provisions for several Washington taxes. The department is amending Rule 196 to incorporate changes in law, provide additional clarification regarding bad debt computations, and add examples to demonstrate the application of the law. The amended rule also explains that an assignee of an installment sale is entitled to claim a sales tax bad debt credit or refund to the extent a credit or refund would have been available to the original seller. The department anticipates canceling ETA 574.08.198 (Financial institutions incurring bad debts on contract assignments) when a revised Rule 196 becomes effective.

WAC 458-20-198 (Rule 198) explains the tax-reporting responsibilities of persons making installment sales of tangible personal property under the business and occupation (B&O), retail sales, and use taxes. The department is amending Rule 198 to explain that interest income earned on installment sales contracts is subject to service and other activities B&O tax and to refer the reader to Rule 196 for an explanation of how to claim a bad debt deduction/credit when a buyer defaults on an installment obligation.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-196 Bad debts and 458-20-198 Installment sales, method of reporting.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(1), and 34.05.230.

Adopted under notice filed as WSR 04-20-033 on September 29, 2004.

Changes Other than Editing from Proposed to Adopted Version: Two clarifying phrases have been added to subsections (9)(e) and (g) of WAC 458-20-196 as amended, consistent with the example in subsection (9)(f), to clarify that no calculations for accrued interest are shown.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 27, 2005.

Janis P. Bianchi, Manager  
Interpretations and  
Technical Advice Unit

AMENDATORY SECTION (Amending Order ET 83-15, filed 3/15/83)

**WAC 458-20-196 ((Credit losses,)) Bad debts((, recoveries)).**

**~~((Business and Occupation Tax~~**

~~In computing business and occupation tax there may be deducted by taxpayers whose regular books of accounts are kept upon an accrual basis, the amount of business credit losses actually sustained, providing that such deduction will be allowed only with respect to transactions upon which a tax has been previously paid and providing that the amount thereof has not been otherwise deducted and that credits have not been issued with respect thereto.~~

~~Bad debt deductions must be taken by the taxpayer during the tax reporting period during which such bad debts were actually charged off on the taxpayer's books of account.~~

~~In cases where the amount of bad debts legitimately charged off in a particular reporting period exceeds the gross income for such period, the excess of the amount of the bad debts charged off during such period may be deducted from the gross income of the subsequent tax reporting period.~~

~~A dishonored (bad) check which proves to be uncollectible is a bad debt, to the extent it was taken as payment for goods or services on which business tax was previously reported and paid.~~

~~Extracting or manufacturing, special application. Bad debt deductions will be allowed under the extracting or manufacturing classifications only when the value of products is computed on the basis of gross proceeds of sales.~~

**Retail Sales Tax**

~~A seller is entitled to a credit or refund for sales taxes previously paid on debts which are deductible, on and after January 1, 1983, as worthless for federal income tax purposes.~~

**Public Utility Tax**

~~In computing public utility tax credit losses may be deducted under the same conditions set out under the business and occupation tax. However, the special provisions set out for the extracting and manufacturing classifications are not applicable to the public utility tax.~~

~~Methods of determining credit losses. The amount of credit losses actually sustained must be determined in accordance with one of the following methods:~~

~~(1) Specific charge off method. The amount which is charged off within the tax reporting period with respect to debts ascertained to be worthless.~~

~~(a) Worthlessness of a debt is usually evidenced when all the surrounding and attending circumstances indicate that~~

legal action to enforce payment would result in an uncollectible judgment.

(b) A "charge-off" of a debt, either wholly or in part, must be evidenced by entry in the taxpayer's books of account.

(2) Reserve method. In the discretion of the department of revenue a reasonable addition to a reserve for bad debts will be authorized to taxpayers who charge off credit losses at the end of their taxable year but who desire to apportion such losses on a monthly basis.

(a) This will be permitted, in lieu of the specific charge-off method, only to taxpayers who have established or are allowed by the Internal Revenue Service to use for federal income tax purposes, the reserve method of treating bad debts, or who, upon securing permission from the department adopt that method.

(b) What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. The addition to the reserve allowed as a deduction by the Internal Revenue Service for federal income tax purposes, in the absence of evidence to the contrary, will be presumed reasonable.

If the taxpayer actually determines and charges off bad debts on a tax reporting period basis, the amount so charged off each period shall be considered prima facie as a proper deduction for such period.

When bad debt losses are ascertained annually upon specific charge-off method, the deduction must be taken against the gross amount reported for the period in which the bad debts were actually charged off.

When the reserve method is employed in taking deductions for bad debts on returns and the amount of debts actually ascertained to be wholly or partially worthless and charged against the reserve account during the taxable year and reported do not agree with the amount of reserve set up therefor, adjustment of the amount of loss deducted shall be made to make the total amount claimed for the tax year coincide with the amount of loss actually sustained.

Recoveries. Amounts subsequently received on account of a bad debt or on account of a part of such debt previously charged off and allowed as a deduction for business tax purposes, must be included in gross proceeds of sales (including value of products when measured by gross proceeds of sales) or gross income of the business reported for the taxable period in which received. This is true even though the recoveries during such period exceed the amount of the bad debt charge off.) (1) **Introduction.**

(a) **New laws effective July 1, 2004.** This rule provides information about the tax treatment of bad debts under the business and occupation (B&O), public utility, retail sales, and use taxes, and reflects legislation enacted in 2003 and 2004 conforming Washington law to provisions of the national Streamlined Sales and Use Tax Agreement. See chapter 168, Laws of 2003 and chapter 153, Laws of 2004. The new laws related to bad debts are effective July 1, 2004.

(b) **Bad debt deduction for accrual basis taxpayers.** Bad debt credits, refunds, and deductions occur when income reported by a taxpayer is not received. Taxpayers who report using the cash method do not report income until it is

received. For this reason, bad debts are most relevant to taxpayers reporting income on an accrual basis. However, some transactions must be reported on an accrual basis by all taxpayers, including installment sales and leases. These transactions are eligible for a bad debt credit, refund, or deduction as described in this rule. For information on cash and accrual accounting methods, refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods). Refer to WAC 458-20-198 (Installment sales, method of reporting) and WAC 458-20-199(3) for information about reporting installment sales.

(c) **Relationship between retailing B&O tax deduction and retail sales tax credit.** Generally, a retail sales tax credit for bad debts is reported as a deduction from the measure of sales tax on the excise tax return. The amount of this deduction, or the measure of a recovery of sales tax that must be reported, is the same as the amount reported as a deduction or recovery under the retailing B&O tax classification.

(d) **Relationship to federal income tax return.** Washington credits, refunds, and deductions for bad debts are based on federal standards for worthlessness under section 166 of the Internal Revenue Code. If a federal income tax return is not required to be filed (for example, where the taxpayer is an exempt entity for federal purposes), the taxpayer is eligible for a bad debt credit, refund, or deduction on the Washington tax return if the taxpayer would otherwise be eligible for the federal bad debt deduction.

#### (2) Retail sales and use tax.

(a) **General rule.** Under RCW 82.08.037 and 82.12.037, sellers are entitled to a credit or refund for sales and use taxes previously paid on "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003. Taxpayers may claim the credit or refund for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, the amount of any credit or refund must be adjusted to exclude amounts attributable to:

(i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(ii) Expenses incurred in attempting to collect debt; and

(iii) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** If a taxpayer takes a credit or refund for sales or use taxes paid on a bad debt and later collects some or all of the debt, the amount of sales or use tax recovered must be repaid in the tax-reporting period during which collection was made. The amount of tax that must be repaid is determined by applying the recovered amount first proportionally to the taxable price of the property and the sales or use tax thereon and secondly to any interest, service charges, and any other charges.

#### (3) Business and occupation tax.

(a) **General rule.** Under RCW 82.04.4284, taxpayers may deduct from the measure of B&O tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eli-

gible for a bad debt deduction for federal income tax purposes. However, the amount of the deduction must be adjusted to exclude amounts attributable to:

- (i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (ii) Sales or use taxes payable to a seller;
- (iii) Expenses incurred in attempting to collect debt; and
- (iv) The value of repossessed property taken in payment of debt.

**(b) Recoveries.** Recoveries received by a taxpayer after a bad debt is claimed are applied under the rules described in subsection (2)(b) above if the transaction involved is a retail sale. The amount attributable to "taxable price" is reported under the retailing B&O tax classification. If the recovery of debt is not related to a retail sale, recovered amount is applied proportionally against the components of the debt (e.g., interest and principal remaining on a wholesale sale).

**(c) Extracting and manufacturing classifications.** Bad debt deductions are only allowed under the extracting or manufacturing classifications when the value of products is computed on the basis of gross proceeds of sales.

**(4) Public utility tax.** Under RCW 82.16.050(5), taxpayers may deduct from the measure of public utility tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. No deduction is allowed for collection or other expenses.

**(5) Application of payments - general rule.** The special rules for application of payments received in recovery of previously claimed bad debts described in subsections (2)(b) and (3)(b) above are not used for other payments. Payments received before a bad debt credit, refund, or deduction is claimed should be applied first against interest and then ratably against other charges. Another commercially reasonable method may be used if approved by the department.

**(6) Assigned debt and installment sales.**

**(a) General rule.** If a person makes a retail sale under an installment sales contract and then legally assigns his or her rights under the contract to another party, the assignee "steps into the shoes" of the person making the sale and may claim a bad debt credit or refund for unpaid retail sales tax to the extent a credit or refund would have been available to the original seller and to the extent that the assignee actually incurs a loss. The seller's B&O tax deduction for bad debt may not be claimed by an assignee. A retail sales tax bad debt credit or refund for unpaid sales tax is available only to the person who makes the retail sale or an assignee under the contract. For example, a bank that loans money to the purchaser of a vehicle may not claim a retail sales tax bad debt credit or refund. The bank did not sell the vehicle and is not an assignee of the dealer who made the retail sale.

**(b) Discounts.** A person who makes a retail sale on credit and then assigns the sales contract in exchange for less than the face value of the contract may not claim a bad debt credit, refund, or deduction for the difference between the face value and the amount received. The discount is a nonde-

ductible cost of doing business, not a bad debt. An assignee of a retail sales contract that pays less than face value for the contract is not required to reduce the amount of a retail sales tax bad debt credit or refund in proportion to the amount of the discount. The assignee may take a credit or refund for the amount that would have been available to the original seller if the original seller had retained the contract and received the payments made by the buyer.

**(c) Recourse financing.** An assignee who receives payment on a bad debt from the assignor must reduce the sales tax credit in proportion to the payment. The assignor may claim a sales tax credit and retailing B&O tax deduction in proportion to the payment if obligated to make the payment and otherwise qualified under this rule.

**(d) Documentation.** All persons claiming a bad debt credit for installment contracts must retain appropriate documentation, including documentation establishing:

- (i) The amount of the original sale by the seller, and component amounts necessary to determine that amount, such as credits for trade-ins, down payments, and individual amounts charged for different products;
- (ii) The buyer's equity in any trade-in property;
- (iii) The contract principal owed at the time of repossession, if any; and
- (iv) The deductibility of the debt as worthless for federal income tax purposes.

**(7) Reserve method.** Ordinarily, taxpayers must report bad debt refunds, credits or deductions for specifically identified transactions. However, taxpayers who are allowed by the Internal Revenue Service to use a reserve method of reporting bad debts for federal income tax purposes, or who secure permission from the department to do so, may deduct a reasonable addition to a reserve for bad debts. What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. An addition to a reserve allowed as a deduction by the Internal Revenue Service for federal income tax purposes, in the absence of evidence to the contrary, will be presumed reasonable. When the reserve method is employed, an adjustment to the amount of loss deducted must be made annually to make the total loss claimed for the tax year coincide with the amount actually sustained.

**(8) Statute of limitations for claiming bad debts.** No credit, refund, or deduction, as applicable, may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.

**(9) Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

In all cases, an eight percent combined state and local sales tax rate is assumed. Figures are rounded to the nearest dollar. Payments are applied first against interest and then ratably against the taxable price, sales tax, and other charges except when the special rules for subsequent recoveries on a bad debt apply (see subsections (2) and (3) of this rule). It is

assumed that the income from all retail sales described has been properly reported under the retailing B&O tax classification and that all interest or service fees described have been accrued and reported under the service and other activities B&O tax classification.

(a) Seller makes a retail sale of goods with a selling price of \$500 and pays \$40 in sales tax to the department. No payment is received by Seller at the time of sale. One and a half years later, no payment has been received by Seller, and the balance with interest is \$627. Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller is entitled to claim a bad debt sales tax credit or refund in the amount of \$40, a B&O tax deduction of \$500 under the retailing B&O tax classification, and a B&O tax deduction of \$87 under the service and other activities B&O tax classification.

(b) The facts are the same as in subsection (9)(a) above, except that six months after the credit and deduction are claimed, a \$50 payment is received on the debt. Recoveries received on a retail sale after a credit and deduction have already been claimed must be applied first proportionally to the taxable price and sales tax thereon in order to determine the amount of tax that must be repaid. Therefore, Seller must report \$4, or  $\$50 \times (\$40/\$540)$ , of sales tax on the current excise tax return and \$46, or  $\$50 \times (\$500/\$540)$  under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$40 credit is reduced to zero.

(c) Seller makes a retail sale of goods on credit for \$500 and pays \$40 in sales tax to the department. No payment is received at the time of sale. Over the following year, regular payments are received and the debt is reduced to \$345, exclusive of any interest or service charges. The \$345 represents sales tax due to Seller in the amount of \$26, or  $\$345 \times (\$40/\$540)$ , and \$319 remaining of the original purchase price, or  $\$345 \times (\$500/\$540)$ . Payments cease. Six months later the balance with interest and service fees is \$413. Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller is entitled to claim a sales tax refund or credit on the current excise tax return of \$26, a deduction under the retailing B&O tax classification of \$319, and a deduction under the service and other activities B&O tax classification of \$68.

(d) The facts are the same as in subsection (9)(c) above, except that before Seller charges off the debt, Seller repossesses the goods. At that time, the goods have a fair market value of \$250. No credit is allowed for repossessed property, so the value of the collateral must be applied against the outstanding balance. After the value of the collateral is applied, Seller has a remaining balance of \$163, or  $\$413 - \$250$ . The allocation rules for recoveries do not apply because a bad debt credit or refund has not yet been taken. The value is applied first against the \$68, or  $\$413 - \$345$ , of interest, so the \$163 remaining is attributable entirely to taxable price and sales tax. Any costs Seller may incur related to locating, repossessing, storing, or selling the goods do not offset the value of the collateral because no credit is allowed for collection costs. Seller is entitled to a sales tax refund or credit in the amount of \$12, or  $\$163 \times (\$40/\$540)$  and deduction of \$151, or  $\$163 \times (\$500/\$540)$  under the retailing B&O tax classification. If Seller later sells the repossessed goods,

Seller must pay B&O tax and collect retail sales tax as applicable. If the sales price of the repossessed goods is different from the fair market value previously reported and the statute of limitations applicable to the original transaction has not expired, Seller must report the difference between the selling price and the claimed fair market value as an additional bad debt credit or deduction or report it as an additional recovery, as appropriate.

(e) Seller sells a car at retail for \$1000, Seller's extended service warranty for \$200, and charges the buyer an additional \$50 for license and registration fees. (The amount received for the warranty is subject to service and other activities B&O tax. Refer to WAC 458-20-257 for information about the tax treatment of warranties.) Seller accepts trade-in property with a value of \$500 in which the buyer has \$300 of equity. (The value of trade-in property of like kind is excluded from the selling price for purposes of the retail sales tax. Refer to WAC 458-20-247 for further information.) Seller properly bills the buyer for \$40 of sales tax, for a total of \$1290 owed to Seller by the buyer. Seller pays the department the \$40 in sales tax. No payment other than the trade-in is received by Seller at the time of sale. Eight months later, Seller has not received any payment. Seller is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$990, or  $\$1290 - \$300$ . Seller is entitled to claim a sales tax credit or refund of \$31, or  $\$990 \times (\$40/\$1290)$  of sales tax, a deduction of \$767, or  $\$990 \times (\$1000/\$1290)$  under the retailing B&O tax classification, and a deduction of \$153, or  $\$990 \times (\$200/\$1290)$  under the service and other activities B&O tax classification, exclusive of any deduction for accrued interest.

(f) Seller sells a car at retail for \$1000, Seller's extended warranty for \$200, and charges the buyer an additional \$50 for license and registration fees. (The amount received for the warranty is subject to service and other activities B&O tax. Refer to WAC 458-20-257 for information about the tax treatment of warranties.) Seller properly bills the buyer for \$80 of sales tax and remits it to the department. No money is received from the buyer at the time of sale. Eight months later Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller claims an \$80 sales tax credit, a \$1000 retailing B&O tax deduction, a \$200 deduction under the service and other activities B&O tax classification, and an additional amount under the service and other activities classification for accrued interest. Six months after that, Seller receives a \$200 payment from the buyer. Recoveries must be allocated first to taxable price (the measure of the sales tax), and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Seller must report \$15, or  $\$200 \times (\$80/\$1080)$  of sales tax and \$185, or  $\$200 \times (\$1000/\$1080)$  of income under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$80 sales tax credit is reduced to zero.

(g) Seller sells a car at retail for \$1000, Seller's extended warranty for \$200, and charges the buyer an additional \$50 for license and registration fees. Seller accepts trade-in property with a value of \$500 in which the buyer has \$300 of

equity. Seller properly bills the buyer for \$40 of sales tax for a total of \$1290 owed to Seller by the buyer. No payment other than the trade-in is received by Seller at the time of sale. Eight months later, no payment has been received by Seller. Seller is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$990, or \$1290 - \$300. Seller is entitled to claim a sales tax credit or refund of \$31, or \$990 x (\$40/\$1290) of sales tax, a deduction of \$767, or \$990 x (\$1000/\$1290) under the retailing B&O tax classification, and a deduction of \$153, or \$990 x (\$200/\$1290) under the service and other activities B&O tax classification, exclusive of any deduction for accrued interest. Six months after that, Seller receives a \$200 payment from the buyer. Recoveries must be allocated first to taxable price (the measure of the sales tax), and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Seller must report \$15, or \$200 x (\$40/\$540) in sales tax, and \$185, or \$200 x (\$500/\$540) under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$31 sales tax credit is reduced to zero.

(h) The facts are the same as in subsection (9)(e) above, except that immediately after the sale, Seller assigns the contract to a finance company without recourse, receiving face value for the contract. The finance company may claim the retail sales tax credit or refund of \$31. The finance company may not claim any deductions for Seller's B&O tax liability. No bad debt deduction or credit is available to Seller.

(i) The facts are the same as in subsection (9)(h) above, except that the Seller receives less than face value for the contract. The result is the same as in subsection (9)(h) above for both parties. The finance company may claim a \$31 retail sales tax bad debt credit or refund, but may not claim a B&O bad debt deduction for Seller's B&O tax liability. No bad debt deduction or credit is available to Seller.

**AMENDATORY SECTION** (Amending Order ET 83-15, filed 3/15/83)

**WAC 458-20-198 ((Conditional and)) Installment sales, method of reporting.**

**((Business and Occupation Tax**

~~Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax reporting period in which the sale is made.~~

~~A deduction from gross proceeds of sales as a credit loss is allowed to such sellers for the amount of the unpaid balance of the contract price on any installment sale if and when the property purchased is repossessed upon default by the buyer.~~

**Retail Sales Tax, Use Tax**

~~Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax period in which the sale is made.~~

~~The foregoing is true irrespective of the fact that such sellers arrange to receive payment of tax in installments or that a contract may be discounted or pledged with or sold to a finance company. In the latter case, although as a part of the agreement with the seller the finance company actually makes collection of the tax from the buyer as the installments fall due, the finance company should not report to the department of revenue the amount of tax collected since the total tax already has been reported by the seller.~~

~~Revised July 1, 1956.)~~ (1) **Introduction.** This rule explains the tax-reporting responsibilities of persons making installment sales of tangible personal property under the business and occupation (B&O), retail sales, and use taxes.

(2) **How is income from installment sales of tangible personal property reported?** The seller must report the full selling price of installment sales of tangible personal property in the tax-reporting period during which the sale is made. This is true even when the buyer pays the tax to the seller in installments over time.

(a) **Leases not taxable as installment sales.** A lease under WAC 458-20-211 (Leases or rentals of tangible personal property, bailments) is not taxable as an installment sale.

(b) **Interest income.** Persons who receive interest or finance charges from an installment sale must pay B&O tax under the service and other business activities classification on receipt of these amounts. Retail sales and use taxes do not generally apply to these amounts. Refer to WAC 458-20-109 (Finance charges, carrying charges, interest, penalties) for further information.

(c) **Assignment of rights to receive payments.** A seller may sell or assign the right to receive payments on an installment sale to another business. The assignee should not report any sales or use taxes on such payments because the seller is responsible for remitting the full amount of sales tax. For information on how to report a buyer's default on an installment obligation, refer to WAC 458-20-196 (Bad debts).

**WSR 05-04-050**

**PERMANENT RULES**

**DEPARTMENT OF LICENSING**

[Filed January 28, 2005, 12:29 p.m., effective February 28, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 308-13-150 Reduction in licensing and renewal fees, amending the rule with a fee decrease will ensure there is a sufficient level of revenue to defray program administration costs as required under RCW 43.24.086.

Citation of Existing Rules Affected by this Order: Amending WAC 308-13-150.

Statutory Authority for Adoption: RCW 18.96.080 Applications—Contents—Fees.

Other Authority: RCW 43.24.086 Fee policy for professions, occupations and businesses; requires fees to be at a sufficient level to defray the costs of administering the program.

Adopted under notice filed as WSR 05-01-094 on December 13, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 28, 2005.

January 28, 2005  
 Andrea C. Archer  
 Assistant Director

**AMENDATORY SECTION** (Amending WSR 04-17-026, filed 8/9/04, effective 9/9/04)

**WAC 308-13-150 Landscape architect fees and charges.** The following fees will be collected from the candidates:

Title of Fee	Fee
Application fee	\$ <del>((150.00))</del> <u>50.00</u>
Reexamination administration fee	50.00
<del>((Exam proctor</del>	<del>100.00))</del>
Renewal (2 years)	<del>((300.00))</del> <u>200.00</u>
Late renewal penalty	100.00
Duplicate license	25.00
Initial registration (2 years)	<del>((300.00))</del> <u>200.00</u>
Reciprocity application fee	200.00
<del>((Certification</del>	<del>45.00))</del>
Replacement wall certificate	20.00

The following charges assessed by the Council of Landscape Architectural Registration Boards (CLARB), collected from candidates for the costs of the examinations shall be paid to CLARB.

Examination and Sections	Charges
Entire examination	\$470.00
Section C:	
Planning and site design	235.00
Section E:	
Grading, drainage and storm water management	235.00

The following sections of the examination will only be administered by CLARB:

Section A:

Legal and administrative aspects of practice

Section B:

Analytical aspects of practice

Section D:

Structural considerations and materials and methods of construction

**WSR 05-04-053**

**PERMANENT RULES**

**DEPARTMENT OF TRANSPORTATION**

[Filed January 28, 2005, 2:06 p.m., effective February 28, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Over time the rules of chapter 468-38 WAC have taken on a patchwork condition that includes some inconsistencies, ambiguities, techno-jargon and holes where office policy has been used to fill in where the rule did not provide adequate direction. The primary purpose of amending the rule is to create a user-friendlier document that provides adequate direction for the administration and enforcement of federal and state vehicle size and weight parameters. The revision includes a complete rewrite of the chapter into a "question and answer" format. Sections with like content have been consolidated. Sections that merely restate law have been proposed for repeal. Where necessary, clarifying language has been added for better understanding. The revision also incorporates long-standing office policy into rule, and includes some negotiated rule changes.

**Summary of Changes to Chapter 468-38 WAC:**

**General:** All sections included in the proposal have been written in a "question and answer" format to enhance communications with stakeholders. Each subsection is addressed below regarding any additional changes.

**Chapter 468-38 WAC,** the title has been modified to more accurately reflect the chapter subject matter. The title "Vehicle size and weight—Restricted highways—Equipment" should be replaced with "Vehicle size and weight—Highway restrictions—Equipment."

**WAC 468-38-001 Purpose and scope,** a new section stating the purpose and scope of the chapter.

**WAC 468-38-005 Definitions,** a new section providing definitions of technical terms associated with vehicle size and weight.

**WAC 468-38-010 Three-vehicle combinations,** to be repealed. The section is a restatement of RCW 46.44.036.

**WAC 468-38-020 Temporary additional tonnage permits,** to be repealed. The section was part restatement of RCW 46.44.095 with references to RCW 46.44.041 and 46.44.042. The remainder is incorporated in the revised WAC 468-38-080.

**WAC 468-38-030 Temporary additional tonnage permits,** adds clarifying information on the maximum of additional tonnage that can be purchased.

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**WAC 468-38-040 Special log tolerance transportation permits**, to be repealed. The section is a restatement of RCW 46.44.047.

**WAC 468-38-050 Special permits for extra-legal loads**, clarifying language added regarding load configuration criteria that must be met to qualify for a special permit. Expanded the language regarding special permit purchasing options. Incorporated permittee liability information from WAC 468-38-060 and days and times when permits can be acquired from WAC 468-38-250.

**WAC 468-38-060 Liability of permittee**, to be repealed. Content was incorporated into WAC 468-38-050.

**WAC 468-38-070 Maximums for special permits—Nondivisible**, adds minor clarifying language to existing content on overwidth and overheight. Adds the use of manufacturers rating as additional criteria for tire loading limits under special permit. Clarifies use of overwidth trailers in combination. Expands use of overlength on truck and trailer combination. Adds extensive clarifying language to the use of an unladen truck and trailer. Places the long-standing office policy regarding front-hauls and back-hauls into rule.

**WAC 468-38-071 Maximums for special permits—Divisible**, adds clarifying language regarding type of permit and how it is to be measured when issued to a divisible load, particularly; use of draw bar and restrictions when the tractor has a dromedary box. Places the long-standing office policy to allow an exemption for front pilot/escort vehicles at department discretion on certain overheight permits. The section also incorporates from WAC 468-38-390 the ability to permit state vehicles during emergent situations.

**WAC 468-38-075 Special permit exemptions for authorized vehicles/or loads**, this section has been renamed and expanded to include long-standing office policy on exemptions for height, width and weight within specified parameters. The section also adds to the list for exemptions a vehicle combination described in the proposed WAC 468-38-070.

**WAC 468-38-080 Emergency load restrictions for heavy vehicles**, renamed to more accurately reflect the content. Adds minor clarifying words that indicate a road may be restricted rather than just closed. Clarifies actual intent.

**WAC 468-38-095 Emergency road restrictions due to weather or other conditions**, this is a new section created to combine WAC 468-38-135, 468-38-310, 468-38-320, and 468-38-390 under their common theme. Minor clarifying language added with no change in intent.

**WAC 468-38-100 Pilot/escort vehicle and operator requirements**, the section incorporates WAC 468-38-110, which referenced when pilot/escort vehicles are needed, and changes how long-loads are measured when determining the need for a pilot/escort vehicle. The final authorization for assigning additional pilot/escort vehicles has been centralized to reduce confusion and simplify the contact point. Where overall length was criteria the focus has shifted to trailing units, eliminating the variable of different size tractors. Added to the section is the measurement for overlength single unit vehicles. The section also now addresses the temporary reassignment of a pilot/escort vehicle's position relative to the load when certain road conditions dictate. Pilot/

escort lighting has been expanded to include a light bar with appropriate colored lights and visibility.

**WAC 468-38-110 Escort vehicle requirements**, to be repealed. Content was incorporated into WAC 468-38-100.

**WAC 468-38-120 Transport of extra-legal manufactured housing**, adds lighting requirements to the front of the transported housing unit and clarifies where the lighting is to be located, both front and rear.

**WAC 468-38-130 Lights—Stop and turn signals**, to be repealed. Content was incorporated into WAC 468-38-155.

**WAC 468-38-135 Transportation of radioactive or hazardous materials**, to be repealed. Content was incorporated into WAC 468-38-095.

**WAC 468-38-140 Flags**, to be repealed. Content was incorporated into WAC 468-38-155.

**WAC 468-38-155 Safety equipment for special permit moves**, this new section creates a central location to consolidate the safety equipment content of WAC 468-38-130, 468-38-140, 468-38-160, 468-38-180, 468-38-190, and 468-38-200. There is minor clarifying language added regarding the placement of signs on oversize loads and towing vehicles.

**WAC 468-38-160 Rear-view mirrors for overwidth loads**, to be repealed. Content was incorporated into WAC 468-38-155.

**WAC 468-38-175 Travel restrictions—Days, times and highway use**, this new section creates a central location to consolidate travel restriction content of WAC 468-38-220, 468-38-230, 468-38-235, 468-38-240, 468-38-260, and 468-38-340. Adds the day after Thanksgiving as a restricted travel day. Adds that commuter traffic restrictions will be posted on the internet and recognizes existing office policy to include width as a restriction variable. Language designating extra restrictions when the holiday falls on a weekend has been removed as obsolete.

**WAC 468-38-180 Brakes**, to be repealed. Content was incorporated into WAC 468-38-155.

**WAC 468-38-190 Signs**, to be repealed. Content was incorporated into WAC 468-38-155.

**WAC 468-38-200 Safety chains and devices**, to be repealed. Content was incorporated into WAC 468-38-155.

**WAC 468-38-220 Moves in convoy**, to be repealed. Content was incorporated into WAC 468-38-175.

**WAC 468-38-230 Days on which permit moves are prohibited**, to be repealed. Content was incorporated into WAC 468-38-175.

**WAC 468-38-235 Commuter traffic restrictions**, to be repealed. Content was incorporated into WAC 468-38-175.

**WAC 468-38-240 Cargo prohibition on reversible lane roads**, to be repealed. Content was incorporated into WAC 468-38-175.

**WAC 468-38-250 Days on which permits are issued**, to be repealed. Content was incorporated into WAC 468-38-050.

**WAC 468-38-260 Nighttime movements**, to be repealed. Content was incorporated into WAC 468-38-175.

**WAC 468-38-265 Tow trucks—Permitting for oversize/overweight**, the section was revised and adopted with an effective date of August 31, 2004. The section has not been included as part of the text accompanying the CR-102.

**WAC 468-38-270 Construction equipment**, the section is being dramatically expanded and will be a separate submission at a later date. The section has not been included as part of the text accompanying the CR-102.

**WAC 468-38-280 Retractable axles**, this section, formerly titled "Special equipment," has been revised. Weight carried on a retractable axle will be governed by the design load capacity of the axle. Additionally, manufacturer's load rating of the tires will also regulate weight carried on the axle.

**WAC 468-38-290 Farm implements**, adds clarifying language regarding eligibility for permits of self-propelled implements. Adds clarifying language and long-standing office policy regarding movement of implements on a transporting vehicle(s). Adds long-standing office policy on how to acquire a special permit for moving extra-legal farm implements. Amends permit coverage area from three to six contiguous counties, with ability to expand when justified. The premove notification is set at eight hours, with clarifying language to explain the purpose of the notification.

**WAC 468-38-300 Drawbar—Towline**, to be repealed. Content was incorporated into WAC 468-38-155.

**WAC 468-38-310 Adverse weather**, to be repealed. Content was incorporated into WAC 468-38-095.

**WAC 468-38-320 Enforcement officer may restrict movements**, to be repealed. Content was incorporated into WAC 468-38-095.

**WAC 468-38-330 Consideration of traveling public**, to be repealed. This section was a restatement of RCW 46.61.427.

**WAC 468-38-340 Speed limits**, to be repealed. Content was incorporated into WAC 468-38-175.

**WAC 468-38-350 Lane of travel**, to be repealed. This section was a restatement of RCW 46.61.100.

**WAC 468-38-360 Building/house moves**, minor clarifying information has been added regarding contact information and railroad crossing clearance.

**WAC 468-38-390 Winter road restrictions**, to be repealed. The content was incorporated into WAC 468-38-095.

**WAC 468-38-405 Superload moves**, clarifying language added regarding measurement. Explanation of necessary lead-time when requesting special permits. Modification regarding additional information to accompany standard application, from "at a minimum" requirement to "may be required." When necessary, a pretrip analysis of railroad crossings for clearance has been added. Clarifying information about potential cost sharing of a superload analysis has also been added. Also added is a reference to the potential need for added pilot/escort vehicles due to the size of the load.

**WAC 468-38-410 Bridge restrictions**, adds clarifying information regarding the difference between posted and restricted bridges. Adds where the posted and restricted bridge information can be found.

Citation of Existing Rules Affected by this Order: See above.

Statutory Authority for Adoption: RCW 46.44.090.

Adopted under notice filed as WSR 05-01-146 on December 17, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 468-38-060 has been added to the repeal list. This section was erroneously omitted from the CR-102 draft submission. WAC 468-38-175 was further amended to remove an obsolete sentence relating to days when travel is restricted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 13, Repealed 25.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 13, Repealed 25.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 28, 2005.

John F. Conrad  
Assistant Secretary  
Engineering and  
Regional Operations

## Chapter 468-38 WAC

### VEHICLE SIZE AND WEIGHT—(~~RESTRICTED~~) HIGHWAY(~~S~~) RESTRICTIONS—EQUIPMENT

#### NEW SECTION

**WAC 468-38-001 Purpose and scope. What is the purpose and scope of this administrative code chapter for vehicle size and weight?** (1) This chapter provides rules necessary for the implementation of certain sections of chapter 46.44 RCW, to include the issuance of special permits that allow vehicles, or combinations of vehicles, to move in a legal or extra-legal configuration on the public highways. The chapter also includes rules on safety and operations as they relate to the permitting of extra-legal configurations.

(2) The chapter avoids, where possible, the restating of revised code and therefore should be used in conjunction with the revised code.

(3) The chapter has been written in a "question and answer" format to enhance communication with users.

#### NEW SECTION

**WAC 468-38-005 Definitions. What vehicle size and weight words and phrases are used commonly in addition to those codified in chapter 46.04 RCW?**

**A-dolly:** A converter dolly that is towed from a single hitch at the center line of the tow vehicle and contains the lower half of the fifth wheel assembly that when connected by kingpin to a semi-trailer converts the combined configuration into a full trailer.

PERMANENT

**A-train double:** A combination of vehicles composed of a tractor, a semi-trailer and either an A-dolly and a semi-trailer or a full trailer attached to the rear of the forward semi-trailer as if an A-dolly were used.

**Axle:** The common axis of rotation of one or more wheels, either power-driven or freely rotating, in one or more segments in the same transverse plan. (Expanded from the definition in chapter 46.04.060 RCW.)

**Axle group:** Any set of two or more parallel axles associated with a single vehicle or vehicle combination.

**Axle group weight:** The part of the gross vehicle weight transmitted to the highway by the defined axle group.

**Axle spacing (spread):** The longitudinal distance between the centers of the foremost and rearmost axles of an axle group measured from center to center of the defined axles.

**B-train double:** A combination of vehicles composed of a tractor, a semi-trailer and a second semi-trailer connected by kingpin to the lower half of a fifth wheel assembly mounted on the rear of the forward semi-trailer.

**C-dolly:** A converter dolly that is equipped with a single axle that is self-steering, towed from two hitches located in a horizontal transverse line on the towing unit, and is so designed that when the trailer converter dolly is coupled to a towing trailer, the trailer converter dolly cannot pivot horizontally with respect to the towing trailer.

**Axle spacing report:** A report stating the maximum amount of weight a vehicle, or vehicle combination, can carry, both legally and under permit, based on the number of axles, the axle spacings, and the number and sizes of tires on the vehicle, or vehicle combination.

**Combination length:** The total length of a combination of vehicles, i.e., truck-tractor—semi-trailer—trailer combination, measured from front extremity of the first vehicle to the rear extremity of the last vehicle, including the connecting space between vehicles and any overhanging load.

**Combined trailer length:** The total length of a combination of trailers measured from the front extremity of the first trailer to the rear extremity of the last trailer including the connecting space and any overhanging load.

**Converter dolly:** A vehicle unit that is designed, usually with the bottom half of a fifth wheel assembly, to convert a semi-trailer with kingpin into a full trailer.

**C-train double:** A combination of vehicles composed of a tractor, a semi-trailer, a C-dolly and a second semi-trailer.

**Daylight hours:** One-half hour before sunrise until one-half hour after sunset.

**Extra-legal vehicle:** A vehicle, laden or unladen, which exceeds legal dimensions and/or weights and operates on highways by permit.

**Gross weight:** The weight of a vehicle and/or combination of vehicles plus the weight of any load thereon.

**Height:** The total vertical dimension of a vehicle above the ground surface including any load or appurtenance.

**Length:** The total longitudinal dimension of a single vehicle, vehicle combination (see combination length), or individual trailer or semi-trailer. Trailer length is measured from the front of the cargo-carrying unit to its rear, exclusive of all overhangs from safety or energy efficiency devices (see

also measurement exclusive devices). Length of a loaded trailer must include any overhangs of load when determining compliance with length limits or the need for a special permit.

**Longer combination vehicle:** A combination of truck tractor, semi-trailer, and trailer that exceeds legal length dimensions and operates on highways by permit for transporting reducible loads.

**Maximum off track:** The maximum difference in the path created by the center of the steering axle and the center of the rearmost axle of the vehicle or vehicle combination during the negotiation of a turn.

**Multilane highway:** A highway with two or more lanes of travel in the same direction.

**Measurement exclusive devices:** Certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed to carry cargo.

**National network:** Those interstate and other federal-aid primary highways on which commercial vehicles of the dimensions authorized by the Surface Transportation Assistance Act of 1982 are allowed to operate.

**Night:** Night means one-half hour after sunset to one-half hour before sunrise.

**Nondivisible load:** A load that cannot be readily or reasonably dismantled and is reduced to a minimum practical size and weight. Portions of a load can be detached and reloaded on the same hauling unit when the separate pieces are necessary to the operation of the machine or equipment which is being hauled: Provided, That the arrangement does not exceed permit limits for the configuration without the reloaded pieces. The federal definition of nondivisible load to be used for vehicles operating on the interstate is as follows: Any load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would: Compromise the intended use of the vehicle, destroy the value of the load or vehicle, require more than eight work hours to dismantle using appropriate equipment.

**Permit:** A written or electronic authorization to:

- (a) Move or operate a vehicle, or combination of vehicles, on a highway;
- (b) With or without a load;
- (c) Of size and/or weight exceeding the limits prescribed for vehicles in regular operation.

**Pilot/escort vehicle:** A motor vehicle used for the express purpose as a warning and guide vehicle for extra-legal vehicles.

**Pounds per inch of tire width:** A measure of load restriction based on rated tire size. The pounds per inch of tire width are determined by dividing the weight carried on the axle group by the number of tires in the group and dividing again by the manufacturer's rated tire width as indicated on the sidewall of the tire.

**Rear overhang:** The distance from the center of the last axle to the end of the load, or portion of the vehicle which ever is longer.

**Regional permit:** Permits issued for interstate movement of certain nondivisible overweight and/or oversize vehicles and/or loads on highways designated by the jurisdictions participating in the "Western Regional Agreement for the

*Issuance of Permits for Overweight and/or Oversize Vehicles and/or Loads Involved in Interstate Travel."*

**Regular operation:** The movement over highways of motor vehicles with dimensions and weights specified by state and federal codes.

**Retractable axle:** An axle that can be separately raised and lowered by the driver of the vehicle but may not have its weight bearing capacity regulated from within reach of the driver's compartment. Also known as "lift axle" and "booster axle," or more formally known as a "variable load suspension" (VLS) axle.

**Rocky mountain double:** A combination of vehicles including a truck-tractor pulling a long semi-trailer and a shorter trailer.

**Single axle:** An assembly of two or more wheels whose centers are in one transverse vertical plane and which are transmitting weight to the highway.

**Single unit:** A motor vehicle with no attached vehicles, i.e., truck, bus, truck-tractor.

**Steering axle:** The axle or axles on the front of a motor vehicle that are activated by the operator to directly accomplish guidance or steering of the vehicle and/or a combination of vehicles.

**Superload:** A superload is any load that would require special analysis and approval by one or more state permit offices because of dimensions or weight. Criteria for superloads in Washington state are found in WAC 468-38-405.

**Tandem axle:** Any two consecutive single axles whose centers may be included between parallel transverse vertical planes spaced at least four feet but not more than eight feet apart, extending across the width of the vehicle, articulating from a common attachment, or designed to automatically equalize the load between the two axles. This working definition is extrapolated from RCW 46.44.041.

**Tote:** Common term for a motor vehicle used to transport manufactured housing.

**Tridem axle:** Any three consecutive single axles whose extreme centers may be included between parallel transverse vertical planes spaced not more than twelve feet apart, extending across the width of the vehicle, and are articulated from a common attachment to the vehicle, or are designed to automatically equalize the load between the three axles.

**Truck-tractor:** A motor vehicle used primarily for pulling other vehicles but not specifically constructed to carry a load other than a part of the weight of the vehicle and load being pulled. This vehicle may include a small freight compartment (also referred to as a dromedary box), deck or plate not more than eight feet in length used for carrying a load. Federal rule allows the interstate use of a vehicle with a dromedary box only if the vehicle was in operation prior to December 1, 1982, proof to be provided by the vehicle operator. This working definition was extrapolated from RCW 46.04.655, 46.44.037 and Code of Federal Regulation, 23 CFR 658.13(f).

**Trunnion axle:** An axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle, connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.

**Trunnion axle group:** Two or more consecutive trunnion axles, that are individually attached to, and/or articulated from, the vehicle, and may include a weight equalizing suspension system.

**Turnpike double:** A combination of vehicles including a truck-tractor pulling a long semi-trailer and an additional long trailer.

**Wide base tire:** A tire whose nominal section (sidewall to sidewall) width, as identified by tire nomenclature, is over fourteen inches.

**Width:** The total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding approved safety devices and tire bulge due to load.

AMENDATORY SECTION (Amending Order 142, filed 3/11/94, effective 3/11/94)

**WAC 468-38-030** (~~Issuance of~~) **Temporary additional tonnage permits.** (~~(1) Temporary additional tonnage permits will be issued only to the following types of vehicles: Three or more axle full trucks; three or more axle truck tractors; three or more axle dromedary truck tractors, and two axle tractors to pull double trailers.~~

~~(2) Permits will not be issued to semi-trailers.~~

~~(3) The fees for temporary additional tonnage permits shall not be prorated.~~

~~(4) Temporary additional tonnage permits may be purchased when the applicant has licensed tonnage in effect for the period for which he is applying. A trip permit may be used in lieu of licensed tonnage when the requirements of RCW 46.16.160 have been met.)~~ **(1) What vehicle type or vehicle combination is eligible for the temporary additional tonnage permit provided in RCW 46.44.095?** Temporary additional tonnage permits may be issued to the following types of vehicles: Three or more axle single unit trucks; three or more axle truck-tractors, including those equipped with a legal dromedary area; and a truck-tractor with two axles pulling double trailers.

**(2) What is the maximum amount of additional tonnage that can be purchased?** Tonnage may be purchased up to the legal capacity of the vehicle(s), not to exceed one hundred five thousand five hundred pounds, based on number of axles and axles spacings (RCW 46.44.041), and number and size of tires.

**(3) Are temporary additional tonnage permits ever issued to the trailer?** Temporary additional tonnage permits are only issued to power units.

**(4) Can a department of licensing trip permit be used in lieu of licensed tonnage, to meet the forty thousand pound (single unit) or eighty thousand pound (combination) requirement needed before an additional tonnage permit can be issued?** Yes, as provided for in RCW 46.16.-160.

**(5) Can the additional tonnage permit extend beyond the valid license period?** The additional tonnage permit may not extend beyond the valid license period. In the case where department of licensing trip permits are used in lieu of licensed tonnage, a minimum of two three-day trip permits must be used because the additional tonnage permit is sold

for a minimum of five days. Only three trip permits can be issued to a vehicle within a thirty-day period, allowing for a maximum of nine days of additional tonnage in any thirty-day period.

**AMENDATORY SECTION** (Amending Order 71, filed 4/23/91, effective 5/24/91)

**WAC 468-38-050 Special permits for ((movement of overlegal size or weight)) extra-legal loads.** ((The department of transportation may issue permits for movement of overlegal size or weight loads when:

(1) Application has been made to the department and the applicant has shown that there is good cause for the move, and that the applicant is capable of making the move.

(2) The applicant has shown that the load cannot reasonably be dismantled or disassembled.

(3) The vehicle, combination, or load has been dismantled and made to conform to legal limitations where practical. Reductions shall be made even though the use of additional vehicles becomes necessary.

(4) The vehicle(s) and load have been thoroughly described and identified; the points of origin and destination and the route of travel have been stated and approved.

(5) The proposed move has been determined to be consistent with public safety and the permittee has shown proof of seven hundred fifty thousand dollars liability insurance for the cost of any accident, damage, or injury to any person or property resulting from the operation of the vehicle covered by the permit upon the public highways of this state: Provided, That a noncommercial operator shall have at least three hundred thousand dollars liability insurance.

(6) The permittee affirms that:

(a) The vehicles have been properly licensed to make the proposed move or carry the load described in accordance with the provisions of Washington law;

(b) The drivers are properly licensed to operate in Washington in the manner proposed.

(7) The permittee will comply with all applicable rules pertaining to the issuance of any special permit.

(8) Except as provided for in RCW 46.44.140, the original permit or certified copy must be carried on the power unit at all times the permit is in effect. Tow truck operators who have received approval by telephone to operate under permit are exempt from this requirement.)) (1) **When can the department or its agents issue a permit for an extra-legal move?** The following general conditions must be met:

(a) Application has been made in written or electronic format to the department or its agents (oral application is acceptable in face-to-face over-the-counter transactions) and the applicant has shown there is good cause for the move.

(b) The applicant has shown the configuration is eligible for a permit.

(c) The vehicle, vehicle combination and/or load has been thoroughly described and identified.

(d) The points of origin and destination and the route of travel have been stated and approved.

(e) The move has been determined to be consistent with public safety. The permit applicant has indicated that appro-

appropriate safety precautions will be taken as required by state law, administrative rule or specific permit instruction.

(2) **How must a vehicle(s), including load, be configured to be eligible for a special permit to move on the state highways?** A vehicle(s), including load, that can be readily or reasonably dismantled must be reduced to a minimum practical size and weight. Portions of a load may be detached and reloaded on the same hauling unit when the separate pieces are necessary to the operation of the machine or equipment which is being hauled: Provided, That the arrangement does not exceed special permit limits. Detached and reloaded pieces must be identified on the special permit.

(3) **Are there any exceptions to dismantling the configuration?** Yes. A vehicle, vehicle combination or load may stay assembled if by separating it into smaller loads or vehicles the intended use of the vehicle or load would be compromised (i.e., removing the boom from a self-propelled crane), the value of the load or vehicle would be destroyed (i.e., removing protective packaging), and/or it would require more than eight work hours to dismantle using appropriate equipment. The permit applicant has the burden of proof in seeking an exception. Configurations that fall under the exception must not exceed special permit limits.

(4) **What does the applicant affirm when he/she signs the permit?** The permit applicant affirms:

(a) The vehicle or vehicle combination and operator(s) are properly licensed to operate and carry the load described in accordance with appropriate Washington law and administrative code.

(b) They will comply with all applicable requirements stipulated in the permit to move the extra-legal configuration.

(c) The move (vehicle and operator) is covered by a minimum of seven hundred and fifty thousand dollars liability insurance: Provided, That a noncommercial move (vehicle and operator) shall have at minimum three hundred thousand dollars liability insurance for the stated purpose.

(d) Except as provided in RCW 46.44.140, the original permit (permit with original signature) or certified copy will be carried on the power unit at all times while the permit is in effect. Moves made by designated emergency vehicles, receiving departmental permit authorization telephonically, are exempt from this requirement.

(5) **What specific responsibility and liability does the state assign to the permit applicant through the special permit?** Permits are granted with the specific understanding that the permit applicant shall be responsible and liable for accidents, damage or injury to any person or property resulting from the operation of the vehicle covered by the permit upon public highways of the state. The permit applicant shall hold blameless and harmless and shall indemnify the state of Washington, department of transportation, its officers, agents, and employees against any and all claims, demands, loss, injury, damage, actions and costs of actions whatsoever, that any of them may sustain by reason of unlawful acts, conduct or operations of the permit applicant in connection with the operations covered by the permit.

(6) **When and where can a special permit be acquired?** The following options are available: -

(a) Special permits may be purchased at any authorized department of transportation office or agency Monday through Friday during normal business hours.

(b) An application for a permit may be submitted by facsimile, including charge card information to an authorized location. The special permit will be issued and returned by facsimile subject to normal business hours.

(c) Companies that would like to self-issue permits for their own vehicles may apply to the department for this privilege. Department representatives will work with the company to determine if self-issuing is appropriate.

(d) The department will maintain and publish a list of authorized permit offices and agencies.

AMENDATORY SECTION (Amending Order 197, filed 5/9/00, effective 6/9/00)

**WAC 468-38-070 Maximums and other criteria for special permits—Nondivisible.** (1) ((Overwidth: 14 feet on any two-lane highway; 20 feet on any multiple-lane highway where a physical barrier serving as a median divider separates the oncoming and opposing traffic lanes; 32 feet on any multiple-lane undivided highway.

The regulations on movement of buildings are in WAC 468-38-360.

(2) Overheight: A load over 14 feet high must be moved by permit, but the permittee is to be governed by the clearance of overhead obstructions such as bridges, underpasses, wires, overhead signs and other objects. The issuance of a permit does not insure the route to be free of low overhead structures. It is the responsibility of the permittee to check the proposed route and detour when necessary. County or city road detours for this purpose require authorization from respective jurisdictions.

(3) Overlength: The permit will allow movement on routes on which the permittee can negotiate curves, interchanges, entrance and exit roadways and other obstacles. In all instances the general safety of the public is considered paramount.

(4) Loading restrictions: The load must be reduced to a practicable minimum, even if additional vehicles are required to transport the divided item. Loads created by welding, bolting or tying will be construed as divisible, unless proven with good cause not to be divisible.

(5) Overweight loads: Restricted to the limits established in RCW 46.44.091 Special permits—Gross weight limit. In addition, tire loadings are limited to a maximum of six hundred pounds per inch width of tire.

(6) Allowable vehicle configurations:

(a) Tractor (or unladen truck) and semi-trailer or full trailer. Jeeps and/or boosters may be added to the trailer as necessary. Trailers in excess of the legal width of eight feet six inches, or legal length of fifty three feet, or the permitted length of fifty six feet, shall not exceed the length or width of the load, unless, the added dimension is necessary to spread the weight of load to comply with requirements established by the department to protect the infrastructure. A "pusher" power unit may be added to the configuration upon approval.

(b) Tractor with semi-trailer and full trailer. Combined trailer length, including space between trailers, may not

exceed sixty-one feet. This combination is limited to nondivisible loads not to exceed ten feet wide. Both trailers may carry nondivisible loads with the widest load contained on the first trailer. This configuration may not carry over height, over length or over weight loads.

(c) Truck and trailer. Combined overall length when carrying an over length load may not exceed eighty five feet, with the nondivisible over length load restricted to the trailing unit, overhang loaded entirely to the rear of the trailer. An over width or over height nondivisible load may be carried on the truck and/or trailing unit. This configuration may not carry overweight loads.

(7) Loads with multiple pieces: An over-dimensional load may include multiple pieces, provided:

(a) The vehicle(s) and load are transported at legal weights.

(b) The largest nondivisible piece(s) must be loaded to its practicable minimum. No single piece may create a dimension greater than the dimension it would create if carried by itself.

(c) Additional pieces may not exceed the outside envelope (rectangular) dimension created by the largest piece(s) loaded in its smallest configuration. No piece shall be added to a load for the sole purpose of creating a larger envelope. It shall be the responsibility of the carrier to provide proof that all pieces are necessary to the move.) **Are there maximum dimensions established for moving nondivisible over-dimensional vehicles and/or loads?** Yes. In all instances the general safety of the public is considered paramount and will ultimately govern over-dimensional moves. There are some general rules; however, physical barriers determine most maximums for over-dimensional moves. Over-dimensional maximums are addressed as follows:

(a) Overwidth: As stipulated in RCW 46.44.092, four-teen feet on any two-lane highway; twenty feet on any multiple-lane highway where a physical barrier serving as a median divider (i.e., jersey barrier, cyclone fence, guardrail, etc.) separates the oncoming and opposing traffic lanes; thirty-two feet on any multiple-lane undivided highway. Permits may be issued for widths in excess of the preceding limits when traveling on highway segments that by design can accommodate the greater width.

(b) Overheight: Any move involving height, especially permitted moves exceeding fourteen feet, are governed by the ability to clear overhead obstructions such as bridges, underpasses, wires, overhead signs, and other objects. The issuance of a permit does not insure the route to be free of overhead obstructions. It is the responsibility of the permit applicant to check, or prerun, the proposed route and provide for safe maneuvers around the obstruction or detours as necessary. Structures owned by the state should be reviewed with department field personnel to determine safe navigation of the move, including options for temporary removal of obstructions. Detours off the state route onto county or city roads require authorization from those jurisdictions. A traffic control plan (see WAC 468-38-405 (3)(d)) may be requested for approval by the department before a permit is issued.

(c) Overlength: Routes will be limited to over-dimensional moves based on ability to negotiate curves, interchanges, entrance and exit roadways and other obstacles.

(2) Are there maximum weights established for moving nondivisible overweight vehicles and/or loads? Yes. Weight maximums for the movement of a nondivisible load under special permit are established in RCW 46.44.091. In addition, tire loading for the movement of a nondivisible load is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire.

(3) Are there maximums and/or other criteria established for the use of specific vehicle combinations when moving over-dimensional nondivisible loads? Yes. The maximums for specific vehicle combinations are as follows:

(a) Truck-tractor pulling a semi-trailer or full trailer: Trailers in excess of legal length and/or width dimensions, or the permitted length of fifty-six feet, shall not exceed the length or width of the nondivisible load being transported. The department may grant an exception when the added dimension is necessary to spread the weight of the load to comply with requirements established by the department to protect the infrastructure. Jeeps and/or boosters may be added to the trailer to help distribute weight as necessary. A "pusher" power unit may also be added to the configuration upon approval of the department. Jeeps, boosters and pusher power units will be considered part of the trailing unit plus load measurement.

(b) Truck-tractor pulling semi-trailer and full trailer (or two semi-trailers in B-train configuration): The combined trailer length, including the space between trailers, may not exceed sixty-one feet. This combination is limited to nondivisible loads not to exceed ten feet wide. Both trailers may carry a nondivisible load, with the widest load carried on the first trailer. Trailers in excess of legal width shall not exceed the width of the nondivisible load being transported. This combination may not carry overheight, overlength or overweight loads.

(c) Truck and trailer: There are two scenarios for this combination:

(i) Both truck and trailer carrying loads: The combined overall length of the combination when carrying a nondivisible overlength load must not exceed eighty-five feet. Any nondivisible overlength load is restricted to only one vehicle. The trailer may be loaded with the overhang entirely to the rear of the trailer, or the truck may be loaded with the overhang entirely to the front of the truck. Both truck and trailer may carry overwidth and overheight loads. The truck and/or trailer in this configuration may not carry an overweight nondivisible load.

(ii) Unladen truck and trailer: The unladen truck may be treated as a truck-tractor and the combination addressed as described in (a) of this subsection: Provided, That the truck-tractor is not carrying any load of any kind, and that its use as an unladen truck is specified on the special permit. The trailing unit is measured from the foremost point of the draw bar or load, whichever is greater, to the rearmost part of the trailer or load, whichever is greater. This combination may carry a nondivisible overweight load on the trailer. For example, an unladen dump truck may acquire a special permit to pull a tilt trailer with a dozer or backhoe where the trailer load causes the axles to exceed legal weight.

(4) Can a vehicle, or vehicle combination, carry multiple pieces when using an over-dimensional nondivisible special permit? Yes, under the following conditions:

(a) The vehicle(s) and load are transported at legal weights.

(b) The largest nondivisible piece(s) must be loaded to its practicable minimum. No single piece may create a dimension greater than the dimension it would create if loaded properly and carried by itself.

(c) Additional pieces may be added within the envelope dimension created by the largest piece(s) loaded to its practicable minimum. The envelope should be viewed as an imaginary cube with height, length and width defined by the extremities, regardless of shape, of the over-dimensional piece(s) and other legal dimensions as necessary. The department will provide an illustrative example upon request.

(5) Are there any circumstances when an over-dimensional vehicle(s) can move a legal size load? Yes, when the following conditions have been met:

(a) The vehicle(s) are making the move in conjunction with being in route to pick up a nondivisible load under special permit (front haul); or

(b) The vehicle(s) are making the move in conjunction with returning from a delivery of a nondivisible load under special permit (back haul); and

(c) The route traveled is the same route that would have been used if a legal load had not been moved; and

(d) The front haul or back haul is noted on the special permit used for the nondivisible move.

**AMENDATORY SECTION** (Amending Order 183, filed 10/13/98, effective 11/13/98)

**WAC 468-38-071 Maximums and other criteria for special permits—((Reduceable)) Divisible.** (1) ((Overlength: Permits for reduceable loads shall not exceed 56 feet for a single trailer and 68 feet for double trailers. Measurement for a single trailer will be from the front of the trailer, or load, to the rear of the trailer, or load, whichever provides the greater distance up to 56 feet. Measurement for double trailers will be from the front of the first trailer, or load, to the rear of the second trailer, or load, whichever provides the greatest distance up to 68 feet. A log truck pulling a pole trailer, trailer combination, carrying two distinct and separate loads will be treated as a tractor-semitrailer-trailer (doubles). Measurement for the log truck, pole trailer, trailer combination will be from the front of the first bunk on the truck to the rear of the second trailer, or load, whichever provides the greatest distance up to 68 feet. Measurements shall not include non-load carrying devices designed for the safe and efficient operation of the semitrailer or trailer; for example: External refrigeration unit, resilient bumper, and aerodynamic shells.

(2) Overheight: A vehicle, or vehicle combination, hauling empty apple bins, or owned and operated by a rancher hauling hay from the rancher's own fields for use with the rancher's own livestock, may be issued a permit, for vehicle and load, not to exceed fifteen feet high, measured from a level road bed. This permit may be used in conjunction with the overlength permit described in subsection (1) of this section.) **Can a vehicle, or vehicle combination, acquire a**

**permit to exceed the dimensions for legal vehicles in regular operation when moving items of a divisible nature?**

Yes. There are some very specific configurations that can receive extra length or extra height when carrying a divisible load.

**(2) What configurations can be issued a permit, and how are they measured?** The configurations and measurement criteria are:

(a) An overlength permit may be issued to a truck-tractor to pull a single trailer or semi-trailer, with a trailer length not to exceed fifty-six feet. The measurement for the single trailing unit will be from the front of the trailer (including draw bar when used), or load, to the rear of the trailer, or load, whichever provides the greater distance up to fifty-six feet. Rear overhang may not exceed fifteen feet.

(b) An overlength permit may be issued to a truck-tractor to pull a set of double trailers, composed of a semi-trailer and full trailer or second semi-trailer, with a combined trailer length not to exceed sixty-eight feet. The measurement for double trailers will be from the front of the first trailer, or load, to the end of the second trailer or load, whichever provides the greatest distance up to sixty-eight feet. Note: If the truck-tractor is carrying an allowable small freight compartment (dromedary box), the total combined length of the combination, combined trailer length notwithstanding, is limited to seventy-five feet.

(c) An overlength permit may be issued to a log truck pulling a pole-trailer, trailer combination, carrying two distinct and separate loads, as if it was a truck-tractor pulling a set of double trailers. Measurement for the log truck, pole-trailer, trailer combination will be from the front of the first bunk on the truck to the rear of the second trailer, or load, whichever provides the greatest distance up to sixty-eight feet.

(d) An overheight permit may be issued to a vehicle or vehicle combination, hauling empty apple bins, not to exceed fifteen feet high. Measurement is taken from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(e) An overheight permit may be issued to a vehicle or vehicle combination owned by a rancher and used to haul his own hay from his own fields to feed his own livestock, not to exceed fifteen feet high, measured from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

**(3) Are there any measurement exclusive devices related to these permits?** Measurements should not include nonload-carrying devices designed for the safe and/or efficient operation of the vehicle, or vehicle combination components, for example: An external refrigeration unit, a resilient bumper, an aerodynamic shell, etc. Safety and efficiency appurtenances, such as, but not limited to, tarp rails and splash suppression devices, may not extend more than three

inches beyond the width of a vehicle. The examples are not all inclusive.

**(4) Are overweight permits available for divisible loads?** The secretary of transportation, or designee, may issue permits to department vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., snow removal, sanding highways during emergency winter conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent work site. The special permits may allow:

(a) Weight on axles in excess of what is allowed in RCW 46.44.041;

(b) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;

(c) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual; and

(d) Movement at night, that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for emergency maintenance vehicles established by the commission on equipment.

AMENDATORY SECTION (Amending WSR 02-06-106, filed 3/5/02, effective 4/5/02)

**WAC 468-38-075 ((Overlength exemptions)) Special permit exemptions for authorized vehicles and/or loads.** ~~((Vehicles may move by special motor vehicle permit without regard to oversize load signs (WAC 468-38-190), week-end curfew or holiday restrictions (WAC 468-38-230), commuter traffic restrictions (WAC 468-38-235), or night time movement restrictions (WAC 468-38-260), when they meet the following overlength conditions:~~

~~Tractor/trailer combinations with:~~

~~-A single trailer not exceeding fifty six feet (including load)~~

~~-Double trailers not exceeding sixty eight feet (including load)~~

~~-Nonreducible loads (including trailer) not exceeding sixty one feet~~

~~-Vehicles with front overhang not exceeding four feet beyond the three foot legal limit set in RCW 46.44.034 (see also bumper criteria set in RCW 46.37.517)~~

~~-Single unit fixed load vehicles not exceeding an overall length of forty five feet including a four foot front overhang beyond the legal three foot limit and a rear overhang not to exceed fifteen feet measured from the center of the last axle.~~

~~The aforementioned vehicles, when in compliance with WAC 204-24-050 Use of tire chains or other traction devices, are also exempt from that portion of the winter road restrictions (WAC 468-38-390) prohibiting movement in areas where the following sign is displayed: "traction advisory/oversized vehicles prohibited.")~~ **(1) What special permit requirements/restrictions are exempted for an authorized overlength vehicle and/or load?** The following exemptions for authorized overlength vehicles and/or loads include:

(a) The requirement to display "OVERSIZE LOAD" signs (WAC 468-38-155(7));

(b) The requirement to cease operation on routes governed by commuter hour restrictions, and during holiday travel restrictions (WAC 468-38-175 (1) and (2));

(c) The requirement that approved night movement be stated on the special permit (WAC 468-38-175(3)); and

(d) The restriction for movement during winter road conditions when the following sign is displayed: "TRACTION ADVISORY/OVERSIZE VEHICLES PROHIBITED" (WAC 468-38-095(8)). In addition to being an authorized vehicle, the vehicle must also comply with WAC 204-24-050 Use of tire chains or other traction devices.

**(2) What overlength vehicles and/or loads are authorized to receive the exemptions?** The following vehicles and/or loads are exempted from the requirements/restrictions identified in subsection (1) of this section:

(a) A truck-tractor/semi-trailer combination where the single trailer does not exceed fifty-six feet, including load;

(b) A truck-tractor/semi-trailer/trailer combination where the combined trailer length does not exceed sixty-eight feet, including load;

(c) A vehicle or vehicle combination with a front overhang not exceeding four feet beyond the three foot legal limit set in RCW 46.44.034 (see also bumper criteria set in RCW 46.37.517), and/or a rear overhang not exceeding fifteen feet;

(d) A single unit fixed load vehicle not exceeding an overall length of forty-five feet including the allowable overhangs in (c); and

(e) A nondivisible load, including the trailer upon which it is carried, not exceeding sixty-one feet.

**(3) Are there exemptions for permitted vehicles exceeding legal height or width?** Yes. A vehicle or vehicle combination that does not exceed a defined envelope of twelve feet wide, fourteen feet six inches high and an overall combined length of one hundred feet is exempt from the restriction on movement at night, as referenced in subsection (1)(c) of this section.

**(4) Are there exemptions for vehicles operating with an overweight special permit?** Yes. A vehicle or vehicle combination operating on a special permit for overweight only, in compliance with all legal dimension limits, is exempt from all of the requirements/restrictions included in subsection (1)(a) through (d) of this section: Provided, That the vehicle or vehicle combination can maintain posted speed limits. This exemption may be used in conjunction with the height and width exemption in subsection (3) of this section.

**AMENDATORY SECTION** (Amending Order 31, Resolution No. 156, filed 8/20/82)

**WAC 468-38-080** (~~Emergency closure and load restrictions on state highways.~~) **Emergency load restrictions for heavy vehicles.** ((1) Pursuant to RCW 46.44.080, when the department of transportation determines that, because of emergency conditions, vehicles whose gross tire loads exceed those described in subsection (2) of this section and will damage a highway or will endanger other traffic using a highway, it shall without delay close that highway temporarily to all vehicles or to a designated class of vehicles. Notices shall be posted at each end of the closed portion of highway and at all intersecting state highways.

(2) ~~The department shall impose load restrictions as needed by posting either of the following signs. The conditions existing at the time shall determine which schedule of emergency load restrictions will be imposed.~~

**EMERGENCY LOAD RESTRICTIONS**

CONVENTIONAL TIRES		TUBELESS OR SPECIAL WITH .5 MARKING	
Tire Size	Gross Load Each Tire	Tire Size	Gross Load Each Tire
7.00	1800 lbs.	8-22.5	2250 lbs.
7.50	2250 lbs.	9-22.5	2800 lbs.
8.25	2800 lbs.	10-22.5	3400 lbs.
9.00	3400 lbs.	11-22.5	4000 lbs.
10.00	4000 lbs.	11-24.5	4000 lbs.
11.00	4500 lbs.	12-22.5	4500 lbs.
12.00		12-24.5	
& over	4500 lbs.	& over	4500 lbs.

**SEVERE EMERGENCY LOAD RESTRICTIONS**

CONVENTIONAL TIRES		TUBELESS OR SPECIAL WITH .5 MARKING	
Tire Size	Gross Load Each Tire	Tire Size	Gross Load Each Tire
7.00	1800 lbs.	8-22.5	1800 lbs.
7.50	1800 lbs.	9-22.5	1900 lbs.
8.25	1900 lbs.	10-22.5	2250 lbs.
9.00	2250 lbs.	11-22.5	2750 lbs.
10.00	2750 lbs.	11-24.5	2750 lbs.
11.00		12-22.5	
& over	3000 lbs.	& over	3000 lbs.

(a) ~~No allowance will be made for any second rear axle that is suspended from the frame of a vehicle independent of the regular driving axle, commonly known as a "rigid trail axle." Allowance will be made for single tires only on the front axle of any truck.~~

(b) ~~The load distribution on any one axle of any vehicle shall be such that it will not load the tires on that axle in excess of the prescribed load listed above: Provided, That a truck, truck tractor, passenger bus or school bus having conventional 10:00 x 20 tires or 11:00 x 22.5 tires, or larger, may carry a maximum load of 10,000 pounds on the front axle over any state highway placed under emergency load restrictions.~~

(3) ~~Permits may be issued by the department of transportation to allow the operation of school buses and motor trucks transporting perishable commodities or commodities necessary for the health and welfare of local residents on such state highways as may be closed, subject to specific weight and speed restrictions as may be deemed necessary by the department of transportation.~~

(4) ~~This rule shall not supersede or modify any rule in force establishing load limitations on state highway bridges.~~ **(1) When would the department implement a load restriction?** Pursuant to RCW 46.44.080, when the department determines that an emergency road condition

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exists, a freeze thaw condition for example, and that vehicles with gross tire loadings exceeding acceptable limits will damage the highway or endanger other traffic using the highway, the department shall without delay restrict or close that highway segment temporarily to all vehicles or to a designated class of vehicle.

**(2) How will vehicle operators be notified of the restrictions?** Signs will be erected at each end of the closed/restricted highway segment, and at all intersecting state highways. Depending upon conditions, one of the following signs will be in use:

(a)

EMERGENCY LOAD RESTRICTIONS			
CONVENTIONAL TIRES		TUBELESS OR SPECIAL WITH .5 MARKING	
Tire Size	Gross Load Each Tire	Tire Size	Gross Load Each Tire
7.00	1800 lbs.	8-22.5	2250 lbs.
7.50	2250 lbs.	9-22.5	2800 lbs.
8.25	2800 lbs.	10-22.5	3400 lbs.
9.00	3400 lbs.	11-22.5	4000 lbs.
10.00	4000 lbs.	11-24.5	4000 lbs.
11.00	4500 lbs.	12-22.5	4500 lbs.
12.00		12-24.5	
& over	4500 lbs.	& over	4500 lbs.

(b)

SEVERE EMERGENCY LOAD RESTRICTIONS			
CONVENTIONAL TIRES		TUBELESS OR SPECIAL WITH .5 MARKING	
Tire Size	Gross Load Each Tire	Tire Size	Gross Load Each Tire
7.00	1800 lbs.	8-22.5	1800 lbs.
7.50	1800 lbs.	9-22.5	1900 lbs.
8.25	1900 lbs.	10-22.5	2250 lbs.
9.00	2250 lbs.	11-22.5	2750 lbs.
10.00	2750 lbs.	11-24.5	2750 lbs.
11.00		12-22.5	
& over	3000 lbs.	& over	3000 lbs.

Note: The department recommends that carriers check the department's website [www.wsdot.wa.gov/freight/mcs](http://www.wsdot.wa.gov/freight/mcs) for possible advance warning on road restrictions.

**(3) Are the tires identified in the aforementioned table the only tires authorized for use under permit when the signs in subsection (2) of this section are posted?** During periods when "emergency load restrictions" or "severe emergency load restrictions" are in effect, only vehicles equipped with tires required by the table in subsection (2) of this section may operate under permit.

**(4) Will there be an allowance for any second axle that is suspended from the frame of a vehicle independent of the regular drive axle, commonly known as a "rigid trail axle"?** No.

**(5) Will there be an allowance for more than two tires on the steering, or front, axle?** No.

**(6) What restrictions are there on axle load distributions?** The load distribution on any axle must not load the tires on that axle in excess of the prescribed load listed in subsection (2) of this section: Provided, That a truck, truck-tractor, passenger bus or school bus having conventional 10:00 x 20 tires or 11:00 x 22.5 tires, or larger, may carry a maximum load of ten thousand pounds on the front axle over any highway placed under emergency load restrictions.

**(7) Is there a permitting process to allow necessary vehicles to use the restricted highway segment?** Permits may be issued by the department to allow the operation of school buses and vehicles transporting perishable commodities or commodities necessary for the health and welfare of local residents. These vehicles will be subject to specific weight and speed restrictions, as directed by the department.

**(8) Will a temporary additional tonnage permit supersede the restrictions?** Operators of vehicles that have been issued a temporary additional tonnage permit must comply with the posted restriction and related rules.

**(9) Can this rule supersede or modify any rule in force that has established a lower load limitation on a state highway bridge?** No.

**NEW SECTION**

**WAC 468-38-095 Emergency road restrictions due to weather or other conditions.** (1) Who has the authority to implement emergency procedures to restrict the movement of a vehicle(s) operating on state highways? RCW 47.48.031 and 46.44.080 provide authority for the chief or another officer of the state patrol, or the secretary of transportation or designee, to restrict vehicle movement by closing or restricting movement on a section(s) of state highway(s) to all vehicles or specific class of vehicles.

**(2) Under what conditions would a road restriction be put in place?** A restriction or closure may be put in place whenever the department or the state patrol believe that weather or other conditions have created a substantial risk to public safety.

**(3) How are the restrictions maintained?** The department and the state patrol shall exchange notices of conditions that require a restriction(s) or closure to be placed on the highway, and notices when conditions change that will allow the restriction to be terminated. Either the department or the state patrol, whichever agency can best respond to the condition, shall manually control traffic as needed until the restriction is terminated or until the department can install traffic control devices.

**(4) How will the notification of a restriction be communicated to the highway users?** The department and the state patrol have a joint responsibility to provide notice of both the placement and removal of highway restrictions/closures. Notices shall be provided to the news media, affected law enforcement agencies, and other appropriate organizations, both public and private. For areas requiring vehicles to apply tire chains, see subsection (8) of this section.

**(5) At what point does visibility play a factor in the movement of a vehicle operating under special permit?** Moves must not be made when visibility is reduced to one thousand feet or less. If visibility is reduced during transport,

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the vehicle or vehicle combination must clear the highway at the nearest safe location.

(6) **Can an individual move under special permit be restricted through enforcement intervention?** Yes. An enforcement officer, at his/her discretion, may require the driver of the permitted vehicle or vehicle combination to pull off of the highway when weather or other conditions become unsafe for further movement. The enforcement officer may direct or escort the permitted vehicle to a place of safety where it may be parked until the unsafe conditions abate.

(7) **Do vehicles carrying hazardous or radioactive cargo have greater opportunity of being affected by restrictions?** Yes. Due to the potential risks to the public, RCW 47.01.270 and 47.48.050 have provided the department and the state patrol with the specific authority to close a section(s) of the highway(s) to transporters of placarded radioactive or hazardous cargo. The basis for closure is the same as stated in subsection (2) of this section.

(8) **Who has authority to prohibit permitted vehicles from chain/approved traction device control areas, and how is this communicated?** The department and the state patrol may prohibit a vehicle, whether moving under special permit for oversize/overweight or not, from entering chain/approved traction device control areas. Prohibitions are put in place when it is determined the vehicle will experience difficulty in safely traveling the area. Traffic control signs will generally communicate prohibitions (i.e., "TRACTION ADVISORY/OVERSIZE VEHICLES PROHIBITED," "CHAINS REQUIRED ON ALL VEHICLES EXCEPT ALL WHEEL DRIVE," "VEHICLES OVER 10,000 GVWR CHAINS REQUIRED," etc.). In addition, specific vehicle combinations may be required to operate with specified traction devices (i.e., "TRACTORS PULLING DOUBLE TRAILERS MUST CHAIN UP"). Also, refer to WAC 204-24-050 (2)(h) for a list of areas where sufficient tire chains must be carried on the vehicle(s) between November 1 and April 1 of each year.

(9) **What penalties are in place for vehicles moving in prohibited areas?** Movement into a restricted area when the vehicle is prohibited, or without the specified traction device, is a violation of the special permit, which is a traffic infraction, and subject to the penalties of RCW 46.44.105.

(10) **What responsibilities must the operator of a vehicle(s) operating under special permit, during winter road conditions, assume when signs or other traffic control devices are not present?** A vehicle, or vehicle combination, operating under special permit for oversize, must stop movement at the nearest safe location during periods when:

(a) Snow is falling to a degree that visibility is limited to less than one thousand feet; or

(b) Immediately following a severe storm when snow removal equipment is operating; or

(c) When fog or rain limits visibility to less than one thousand feet; or

(d) When compact snow and ice conditions require the use of chains.

Movement must not resume until conditions have abated and clearance obtained from the nearest department or state patrol office. Failure to stop is a violation of the permit and subject to the penalties of RCW 46.44.105.

AMENDATORY SECTION (Amending Order 68, filed 11/22/89, effective 12/23/89)

WAC 468-38-100 ((Escort car requirements.))  
Pilot/escort vehicle and operator requirements. ((Escort cars are required:

(1) ~~When vehicle, vehicles or load is over eleven feet in width, escort cars (both front and rear) are required on a two-lane highway.~~

(2) ~~When vehicle, vehicles or load is over fourteen feet wide, one escort car in rear of movement is required on multiple-lane highways.~~

(3) ~~When vehicle, vehicles or load is over twenty feet wide, escort cars in both front and rear of movement are required when the highway is a multiple-lane, undivided highway.~~

(4) ~~When overall length of load, including vehicles, exceeds one hundred feet or when rear overhang of load measured from the last axle exceeds one-third of the total length, one escort car is required on two-lane highways. The permit may authorize a riding flagperson in lieu of an escort car.~~

(5) ~~When overall length of load, including vehicles, exceeds one hundred forty feet, one rear escort car is required on multiple-lane highways.~~

(6) ~~When in the opinion of the department of transportation, escort cars are necessary to protect the traveling public, for any overdimension and/or overweight move either across, upon, or along a highway.))~~

(1) When is a pilot/escort vehicle(s) required to accompany an extra-legal vehicle or load? A pilot/escort vehicle(s) must accompany an extra-legal load when:

(a) The vehicle(s) or load is over eleven feet wide. Two pilot/escort vehicles are required on two-lane roads, one in front and one in back.

(b) The vehicle(s) or load is over fourteen feet wide. One escort vehicle is required at the rear of the movement on multilane highways.

(c) The vehicle(s) or load is over twenty feet wide. Two pilot/escort vehicles are required on multilane undivided highways, one in front and one in back.

(d) The trailer length, including load, of a tractor/trailer combination exceeds one hundred five feet, or when the rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length plus load of a tractor/trailer combination. One pilot/escort vehicle is required at the rear of the movement on two-lane highways.

(e) The trailer length, including load, of a tractor/trailer combination exceeds one hundred twenty-five feet. One pilot/escort vehicle is required at the rear of the movement on multilane highways.

(f) The front overhang of a load measured from the center of the front steer axle exceeds twenty feet. One pilot/escort vehicle is required at the front on all two-lane highways.

(g) The rear overhang of a load measured from the center of the rear axle exceeds one-third the total length of a single unit vehicle with load. One pilot/escort vehicle is required at the rear of the movement on two-lane highways.

(h) The height of the vehicle(s) or load exceeds fourteen feet six inches. One pilot/escort vehicle with height measur-

ing device (pole) is required at the front of the movement on all state highways and roads.

(i) The operator, using rearview mirrors, cannot see two hundred feet to the rear of the vehicle or vehicle combination.

(j) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assignments of this nature must be authorized through the department's administrator for commercial vehicle services.

**(2) Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move?** When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

**(3) Can a certified flag person ever substitute for a pilot/escort vehicle?** In subsection (1)(d) and (e) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration.

**(4) Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington?** Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator. A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties. Escort vehicle operators with a driver's license from a jurisdiction other than Washington state may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office. Washington state pilot/escort vehicle operator cards must be renewed every three years.

**(5) What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?**

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehicle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) Assure availability of additional certified flag persons if stated as a condition of the oversize/overweight special permit.

(f) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

(g) Check two-way communication system to ensure clear communications and predetermine the channel to be used.

(h) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

**(6) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement?** The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent, considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between pilot/escort vehicle and extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

**(7) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement?** The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any

condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

**(8) What kind of vehicle can be used as a pilot/escort vehicle? In addition to being in safe and reliable operating condition, the vehicle shall:**

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck;

(b) Not exceed a maximum gross vehicle weight rating of fourteen thousand pounds;

(c) Have a body width of at least sixty inches but no greater than one hundred two inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW; and

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle.

**(9) In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?**

(a) A minimum of two flashing or rotating amber (yellow) lights, positioned above the roof line, visible from a minimum of five hundred feet to approaching traffic from the front or rear of the vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements during the prerunning of a planned route. The vehicle's head-

lights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, ten inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle(s).

**(10) What additional or specialized equipment must be carried in a pilot/escort vehicle?**

(a) A standard eighteen-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. The acceptable high visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red.

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The pole may be carried outside of the vehicle when not in use. See also subsection (14) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

**(11) Can the pilot/escort vehicle carry passengers? A pilot/escort vehicle may not contain passengers, human or animal, except for a certified individual in training status or necessary flag person.**

**(12) Can the pilot/escort vehicle carry any other items, equipment, or load? Yes, as long as the items, equipment or load have been properly secured: Provided, no equipment or load may be carried in or on the pilot/escort vehicle that:**

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator or the pilot/escort vehicle of the duties required by these rules.

**(13) Can a pilot/escort vehicle escort more than one extra-legal load at the same time? No, unless the depart-**

ment determines there are special circumstances that have resulted in an express authorization on the special permit.

**(14) When and how must a pilot/escort vehicle use a height-measuring device?** The height-measuring device (pole) must be used when escorting an extra-legal load in excess of fourteen feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit, or in rule. The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. When not in the act of escorting an extra-legal move, or prerunning a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

**(15) Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function?** While the spirit of the rules remain the same, specific rules may be modified to fit the situation.

**AMENDATORY SECTION** (Amending WSR 02-17-004, filed 8/8/02, effective 9/8/02)

**WAC 468-38-120 Transport of extra-legal manufactured housing.** (1) ((Purpose: To supplement the provisions of chapter 468-38 WAC as they relate to the transport of extra-legal manufactured housing on state highways. Where conflicts with other sections of this chapter occur, the following rules apply:

(2) Vehicle combination and size limits:

(a) Combination of vehicles—The combination shall be limited to two vehicles composed of the towing vehicle and the semi-trailer designed housing unit.

(b) Length—The length of the manufactured housing unit must not exceed seventy-five feet, including tongue.

(c) Width—The width of the manufactured housing unit must not exceed a box (base) width of sixteen feet. The unit may have an eave provided it does not extend beyond either side by:

(i) More than thirty inches for units with box width less than sixteen feet; or

(ii) More than sixteen inches for units with box width of sixteen feet, however, the overall width shall not, under any circumstance, exceed eighteen feet.

(d) Width exemptions—External features, such as door-knobs, window fasteners, eave cap, clearance lights, and load securing devices, that extend no more than two inches on each side of the unit, are exempt from the overall width measurement.

(e) Height—The height of the unit is limited to the actual overhead clearance of the route.

(3) Permits for transport: Permits to transport extra-legal manufactured housing units are issued as follows:

(a) Annual/monthly permits are issued only to dealers or manufacturers described in chapter 46.70 RCW or to licensed transporters described in chapter 46.76 RCW. Annual/monthly permits are restricted to units with a width less than, or equal to, a fourteen foot box plus twelve inch eave and/or a height of fifteen feet or less measured from level ground.

(b) Single trip permits are required for units with an overall width greater than fifteen feet or greater and/or height greater than fifteen feet measured from level ground. A single trip permit may also be issued for any unit of a lesser dimension. Units with an overall width or height greater than sixteen feet must comply with WAC 468-38-405, superloads prior to having a permit issued.

(c) Permits issued in accordance with the Uniform Mobile and Modular Home Transportation Regulations of WASHTO will be subject to those regulations and will be honored by the state of Washington if issued by other states.

(4) Escort vehicles: Escort vehicles must comply with WAC 468-38-100, except a front escort vehicle with height pole is not required until the overall height of the unit, measured from the road surface, exceeds fifteen feet. Vehicle or load width referenced in WAC 468-38-100 must be interpreted as overall width.

(5) Insurance:

(a) The transporter must have insurance in effect while operating under the permit in the minimum amounts of one hundred thousand/three hundred thousand dollars bodily injury and fifty thousand dollars property damage. Escort vehicle operators shall meet the insurance requirements of RCW 46.44.180.

(b) If an accident occurs while transporting a manufactured home under permit, the transporter must immediately notify the nearest state patrol office if the damage is greater than two hundred fifty dollars to the manufactured home or greater than one hundred dollars to other vehicles or structures. Permission to continue the movement must be obtained from the state patrol.

(6) Axles, tires and brakes for manufactured housing unit:

(a) Housing units manufactured after January 1, 2002, (labeled pursuant to 24 CFR 3282.362 (c)(2)(i)), and housing units with no verifiable date of manufacture, must not be transported with tire loadings in excess of the manufacturer's rating as marked on the sidewall or, in the absence of such a marking, the load rating specified in any of the publications of any organization listed in the Federal Motor Carrier Safety Standard (FMCSS) No. 119 (49 CFR 571.119, S5.1 (b)).

(b) Housing units manufactured on or before January 1, 2002, (labeled pursuant to 24 CFR 3282.362 (c)(2)(i)) must not be transported with tire loadings more than eighteen percent over the manufacturer's rating as marked on the sidewall or, in the absence of such a marking, the load rating specified in any of the publications of any organization listed in FMCSS No. 119 (49 CFR 571.119, S5.1 (b)). Housing units transported on tires overloaded by nine percent or more must not be moved at speeds exceeding 50 mph (80 km/hr).

(c) Brakes must be designed and installed to also activate if the unit accidentally breaks away from the towing vehicle. Brakes must be operational on all wheels, except for housing units manufactured prior to June 15, 1976, that must comply as follows:

WIDTH OF UNIT AT BASE	NUMBER OF AXLES REQUIRED	WHEELS W/ BRAKES
> 8' 6" but < 10'	2 or more	all wheels on 2 axles (towing unit w/min. 9,000 GVWR, all wheels on 1 axle)
10' to 14' (under 60' long)	2 or more (3 or more if > 60' long)	all wheels on 2 axles (tires minimum 8.00 x 14.5, 10-ply)

(d) Each unit in transport must have sufficient axles to support enough tires to comply with (a) or (b) of this subsection, as applicable. Any unit exceeding fourteen feet wide (box width) must have a minimum of four axles. Each unit must also:

- (i) Not exceed the manufacturer's rating for any wheel, axle, drawbar, hitch, or other suspension component; and
- (ii) Carry a minimum of two spare tires, inflated and ready for use.

(7) Towing vehicle requirements:

- (a) Towing vehicles must be equipped with dual wheels on the drive axle; and
- (b) If the unit exceeds fourteen feet in width, the towing vehicle must have a minimum GAWR<sub>2</sub> of thirty-two thousand (32,000) pounds.

((2) Gross axle weight rating which is the sum of the axle ratings assigned by the axle manufacturer.

(e) Engine horsepower must be enough to maintain speeds of 45 MPH on the interstate and 35 MPH on other highways.

(8) Signs and lights:

(a) The oversize load sign must be mounted on the rear of the unit, on a horizontal plane, between five and seven feet above the road surface.

(b) In addition to any other lighting requirements by law or rule, two six-inch flashing amber lights, with a minimum of thirty-five candle power, a flashing cycle of sixty to one hundred twenty times per minute during transit, must be mounted at the rear of the trailing unit, on a horizontal plane, at least ten feet above the road surface, and above the roof line of the towing vehicle. The lights at both locations must be separated as far as practical.

(9) Travel requirements:

(a) Routes: Extra-legal units must comply with the route restrictions published by the department. All units with an overall width or height of sixteen feet or greater must be approved for travel by the department on a case-by-case basis, see also WAC 468-38-405, superloads. In addition, dealers selling extra-legal manufactured homes must advise the prospective purchaser in writing that not all state highways are approved for the transport of manufactured homes in excess of twelve feet wide.

(b) Speed in transit is governed by WAC 468-38-340.

(c) Open side covering: Units with an open side must be covered with a rigid material such as plywood or hardboard. In lieu of the rigid material, plastic covering can be used, provided a grillwork of lumber or similar material is applied to prevent tears and/or billowing of the plastic material.

(d) Rural travel must maintain adequate spacing between units in transit of at least one-half mile. When following a

truck, truck tractor or trailer units must maintain a space of four hundred to five hundred feet to avoid impairing the visibility of an overtaking vehicle.

(e) Travel in the right lane is required except when passing or avoiding an obstacle. On two-lane highways, units must not pass other vehicles except when required to pass a slow-moving vehicle which is hindering the safe flow of traffic.

(10) Decals:

(a) A decal issued by the county treasurer must be displayed on any manufactured home being transported on public highways in this state (RCW 46.44.170), except:

- (i) When a unit is to enter the state;
- (ii) When a unit is being moved from the manufacturer or distributor to a retail sales outlet;
- (iii) When a unit is being moved from the manufacturer or distributor to a purchaser's designated location; or
- (iv) When a unit is being moved between retail sales outlets.

(b) The county treasurer's transport decal shall be displayed on the rear of the manufactured home while in transport. It shall be issued at the same time as the tax certificate for manufactured home movement. If the tax certification is for a double-wide (or more) manufactured home, there must be a transport decal issued for each unit.

(c) The decal must meet the following requirements:

- (i) Be at least eight and one-half inches square.
- (ii) Be printed on Appleton Radiant Fluorescent Bristol (weight .010) or paper of comparable quality.
- (iii) Be fluorescent orange in color.
- (iv) Show the make, model and serial number of the manufactured home, the date issued, the name of the transporter, the transporter's WUTC permit number if required, the department of transportation special motor vehicle permit number, and the name of the county issuing the decal.

(v) Clearly display the expiration date of the decal, which must not be more than fifteen days after the date issued.

(d) Decals must not be transferred.)) How many vehicles can be combined in the move of a manufactured home? The vehicle combination is limited to two vehicles, a towing unit, sometimes referred to as a "toter," and the semi-trailer designed housing unit.

(2) What are the dimensional limits of the combination? While the overall combination is not limited by dimension, the following limits are established:

(a) Length: The length of the manufactured housing unit may not exceed seventy-five feet, including the length of the tongue.

(b) Width: The width of the manufactured housing unit must not exceed a box (base) width of sixteen feet. The unit may have an eave provided it does not extend beyond either side by:

(i) More than thirty inches for units with a box width less than sixteen feet wide; or

(ii) More than sixteen inches for a unit with a box width of sixteen feet; however, the overall width shall not, under any circumstances, exceed eighteen feet.

(c) Width exemptions: External features, such as door-knobs, window fasteners, eave cap, clearance lights, and load

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securing devices, that extend no more than two inches on each side of the unit, are exempt from the overall width measurement.

(d) **Height:** The height of the unit is limited to the actual overhead clearance of the route.

**(3) What are the criteria for receiving an annual/monthly special permit versus a single trip special permit?**

(a) **Annual/monthly permits** are issued only to dealers or manufacturers described in chapter 46.70 RCW or licensed transporters described in chapter 46.76 RCW. Use of the annual/monthly permit is restricted to the movement of housing units with a box width not exceeding fourteen feet wide, plus an eave not to exceed twelve inches, and a height not to exceed fifteen feet measured from level ground when in transit mode.

(b) **Single trip permits** are required when the permit applicant is not a qualified dealer or transporter as described in (a) of this subsection, or when the width of the housing unit box exceeds fourteen feet wide, the overall width exceeds fifteen feet wide, and/or the height exceeds fifteen feet measured from level ground when in transit mode. **Housing units that exceed sixteen feet wide and/or sixteen feet high must also comply with the requirements of WAC 468-38-405 Superloads**, prior to the issuance of a special permit.

(4) **When is it necessary to include a pilot/escort vehicle(s) in the movement of a manufactured house?** The requirements for a pilot/escort vehicle escorting a manufactured home are the same as those found in WAC 468-38-100, except that the use of a height measuring device (pole) on the front pilot/escort vehicle is not required until the overall height of the housing unit exceeds fifteen feet. The vehicle or load width referenced in WAC 468-38-100 is to be interpreted as overall width when measuring a manufactured home.

**(5) What are the insurance requirements, and what special reporting responsibilities does the transporter have in case of an accident?**

(a) Insurance requirements for the movement of a manufactured home are outlined in RCW 46.44.180.

(b) When an incident occurs while transporting a manufactured house under special permit, the transporter must immediately notify the nearest state patrol office if the damage to the manufactured home is greater than two hundred fifty dollars or if the damage to other vehicles or structures exceeds one hundred dollars. The transport of the home must not resume without permission from the state patrol.

**(6) What requirements must a manufactured home meet for axles, brakes, tires and other suspension components before it can be transported?**

(a) **Axles** on each housing unit in transport must be in sufficient number to support enough tires to comply with (c)(i) and (ii) of this subsection. Any housing unit exceeding fourteen feet wide must have a minimum of four axles.

(b) **Brakes** must be designed and installed to activate if the housing unit accidentally breaks away from the towing vehicle. Brakes must be operational on all wheels, except for housing units manufactured prior to June 15, 1976. Pre-June 15, 1976, housing units must comply with following table:

<u>Width of Unit at Base</u>	<u>Number of Axles Required</u>	<u>Wheels w/ Brakes</u>
<u>&gt; 8' 6" but &lt; 10'</u>	<u>2 or more</u>	<u>All wheels on 2 axles (a towing unit w/minimum 9,000 GVWR all wheels on 1 axle)</u>
<u>10' to 14' (under 60' in length)</u>	<u>2 or more (3 or more if &gt; 60' long)</u>	<u>All wheels on 2 axles (tires w/minimum 8:00 x 14.5, 10 ply)</u>

(c) **Tire loadings** are dependent on when the housing unit was manufactured and must comply as follows:

(i) **Tire loadings** on housing units manufactured **after January 1, 2002**, (labeled pursuant to *Code of Federal Regulation*, 24 CFR 3282.362 (c)(2)(i)) may not exceed the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must comply with the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 CFR 571.119, S5.1 (b)). Housing units with no verifiable date of manufacture must also not exceed the manufacturer's tire load rating.

(ii) **Tire loadings** on housing units manufactured **before January 1, 2002**, (labeled pursuant to 24 CFR 3282.362 (c)(2)(i)) must not exceed more than eighteen percent above the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must not exceed eighteen percent above the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 CFR 571.119, S5.1 (b)). Housing units transported on tires overloaded by nine percent or more must not be moved at speeds exceeding fifty miles per hour (eighty kilometers per hour).

(d) **Tow spare tires**, inflated and ready for use, must be carried during transport.

(e) The manufacturer's rating must not be exceeded for **any wheel, axle, drawbar, hitch, or other suspension device**.

(7) **Does a tow vehicle (toter) have any special requirements?** Yes. The tow vehicle must:

- (a) Be equipped with dual wheels on the drive axle.
- (b) Have a combined minimum gross axle weight rating, assigned by the manufacturer, of thirty-two thousand pounds, if the housing unit being transported exceeds fourteen feet wide.
- (c) Have sufficient engine horsepower to maintain towing speeds of forty-five miles per hour on the interstate and thirty-five miles per hour on other highways.

(8) **What unique travel requirements must be complied with?** Requirements for signs, lights, unit covering, routes, speed, moving multiple units at the same time and lane of travel are as follows:

(a) **Signs** for the towing unit and housing unit must comply with WAC 468-38-155(7). The sign for the housing unit must be mounted on the rear of the unit, on a horizontal plane, between five and seven feet above the road surface.

(b) In addition to any other **lighting** requirements in law or rule, two six-inch flashing amber lights, with a minimum of thirty-five candle power, a flashing cycle of sixty to one hundred twenty times per minute during transit, must be

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mounted on the rear of the housing unit, on a horizontal plane, at least ten feet above the road surface. An additional two lights, of the same specifications, must be mounted above the roofline of the towing vehicle, either on the towing vehicle roof or the front of the housing unit. The two lights at each location, front and rear, must be located as close to the outside extremities of the housing unit as practical.

(c) Coverings of open sides may be with a rigid material such as plywood or hardboard, or a sufficiently strong ply plastic. When plastic is used, a grillwork of lumber or similar material must be applied to prevent tears and/or billowing of the material.

(d) Routes of travel with restrictions must be strictly adhered to. Housing units in transport mode that exceed sixteen feet high or sixteen feet wide must be approved for travel on a case-by-case basis, as per WAC 468-38-405, Superloads. Dealers selling extra-legal manufactured homes must advise the prospective purchaser in writing that not all state highways are approved for the transport of manufactured homes in excess of twelve feet wide.

(e) Speed of the in-transit housing unit is governed by WAC 468-38-175(5).

(f) Multiple housing units moving together must comply with WAC 468-38-175(6), Moves in convoy.

(g) The right-hand lane must be used for travel, except when passing or avoiding an obstruction. On two-lane highways, housing units must not pass other vehicles except when required to pass a slow moving vehicle that is hindering safe traffic flow.

(9) Is a decal from the county treasurer required before a manufactured home can be transported? Yes, except as provided for in RCW 46.44.170 (2)(a) and (b), a decal issued by the county treasurer must be displayed on the rear of the manufactured home during transport on public highways of this state. If the manufactured home is being transported as multiple units (double-wide or more), an individual decal must be displayed on each unit being transported.

(10) How is the county treasurer decal issued? The decal is issued at the same time the county treasurer issues the tax certificate that shows all taxes have been paid to date.

(11) RCW 46.44.170 requires the department to design the decal for uniform implementation. What are the design specifications? The decal must:

(a) Be at least eight and one-half inches square.

(b) Be printed on Appleton Radiant Florescent Bristol (weight .010) or paper of comparable quality.

(c) Be fluorescent orange in color.

(d) Disclose the make, model and serial number of the manufactured home, the date issued, the name of the transporter, the transporter's WUTC permit number ID required, the department of transportation special motor vehicle permit number, and the name of the county issuing the decal.

(e) Clearly display the expiration date of the decal, which must not be more than fifteen days after the date issued.

(12) Can decals be transferred to other housing units? Under no circumstance can the decal be transferred.

## NEW SECTION

**WAC 468-38-155 Safety equipment for special permit moves. In addition to any codified vehicle safety requirements, what other safety equipment may be required on a special permit move?** The following items may be required on a vehicle or vehicle combination making a move under special permit:

### **(1) Brakes.**

(a) Braking equipment must comply with the performance and maintenance requirements of RCW 46.37.360, unless specifically stated on the special permit.

(b) A special permit will not be issued to a vehicle "in tow" of another vehicle without brakes unless a three-axle truck or truck-tractor with a minimum unladen weight of fifteen thousand pounds is employed as the power unit. The power unit must also have sufficient power and brakes to control the towed unit at all times.

### **(2) Drawbar—Towline.**

(a) The drawbar or other connection between vehicles in combination must be of sufficient strength to hold the weight of the towed vehicle on any grade where operated.

(b) No trailing unit shall whip, weave, or oscillate or fail to follow substantially in the course of the towing vehicle.

### **(3) Flags.**

(a) Flags must be displayed on all four corners of all overwidth loads, and at the extreme ends of all protrusions, projections, or overhangs.

(b) Flags must be allowed to wave freely.

(c) All flags used to identify the extremities of a load must be clean, bright red, and at least twelve inches square.

(d) When the distance between the towed vehicle and the towing vehicle exceeds fifteen feet, a white flag or cloth not less than twelve inches square must be fastened at the approximate middle of the span.

(4) **Lights.** Vehicles, whether factory direct or custom built, used in the transport of extra-legal loads must be equipped with brake lights and turn signals as required by RCW 46.37.200.

### **(5) Rear-view mirrors.**

(a) Rear-view mirrors must be mounted in compliance with RCW 46.37.400.

(b) Pilot/escort vehicles may be used in lieu of the two hundred-foot rear sight/distance requirement in RCW 46.37.400.

### **(6) Safety chains and devices.**

(a) A load being moved by special permit must be securely fastened and protected by safety chains or other load securing devices pursuant to *Code of Federal Regulation*, 49 CFR Part 393.100.

(b) Dragging of the load on the highway shall not be permitted.

(c) A vehicle with a boom or other aerial device attached must have the boom or device secured in such a manner that it cannot elevate (ratchet up) or sway during transport.

### **(7) Signs.**

(a) An "OVERSIZE LOAD" sign must be mounted in the front of the towing vehicle at a height of five feet from ground level. If the towing vehicle cannot accommodate the five-foot height, the sign should be placed as high as practicable on the vehicle or load.

(b) An "OVERSIZE LOAD" sign must be mounted on the rear of the vehicle, or towed vehicle if in combination, at a height of five to seven feet from ground level. If the towed vehicle cannot accommodate the five- to seven-foot height for the sign, the sign should be placed as high as practicable on the vehicle or load.

(c) Signs are to be displayed only during transit and must be removed or retracted at all other times.

(d) An "OVERSIZE LOAD" sign must be at least seven feet wide and eighteen inches high with black lettering at least ten inches high in 1.41-inch brush stroke on yellow background.

#### NEW SECTION

**WAC 468-38-175 Highway travel restrictions—Days, times and highway use. What restrictions are imposed on vehicles operating under special permit relative to days, times and use of the highway?** Day, time and highway use are divided into the following categories:

(1) **Days when travel is restricted:** Vehicles operating under special permit for overweight/overdimensional, except as provided for in WAC 468-38-075, may be restricted from the state highways on the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, and commencing at noon of the day preceding said holidays.

(2) **Commuter traffic restrictions:** Vehicles operating under special permit for overweight/overdimensional, except as provided for in WAC 468-38-075, may be restricted from specified sections of state highways having excessive volumes of traffic during morning and afternoon commuting hours. The department shall identify and publish on the internet, and as an addendum to the special permit, specific areas, hours and vehicle widths relating to the restrictions.

(3) **Nighttime travel:** Vehicles or combinations operating under a special permit for overweight/overdimensional may be permitted to move at night on state highways subject to department preferred hours and routes of travel. "Night movement approved" must be stated on the permit, except as provided for in WAC 468-38-075. Overdimensional moves authorized to move at night must have lighting equipment that complies with the *Code of Federal Regulation*, 49 CFR, Part 393.11. No movements shall be made when visibility is reduced to five hundred feet or when hazardous roadway conditions exist (including, but not limited to: Snow, ice, mudslide, wind or water flooding over roadway). It is the responsibility of the vehicle operator to discontinue the move and exit the highway to a safe location when any of the above conditions exist.

(4) **Reversible lane use:** Trucks carrying flammable liquid cargoes, as described in chapter 470-12 WAC, are restricted from using the reversible lanes on SR 5, Seattle freeway, between James Street and 110th Street N.E. The term flammable liquid as applied to this rule shall be as defined in RCW 46.04.187. This rule applies to all vehicles, whether operating under special permit or not.

(5) **Speed limits:** Speed of travel must comply with the following:

(a) Unless otherwise stated, maximum speed for a vehicle(s) under special permit shall be the same speed limit posted for trucks.

(b) When travel on the roadway shoulder is required on a two-lane highway to allow overtaking traffic to pass, the speed must not exceed twenty-five miles per hour.

(c) If a speed limit is stated on the special permit, it becomes one of the conditions under which the permit was issued. This stated speed must not be exceeded; however, if a lower speed is posted, it shall take precedence: Violation of the speed limit stated on the permit shall render the permit null and void.

(6) **Moves in convoy:** Extra-legal vehicles or loads requiring pilot/escort accompaniment must not travel in convoy, except as provided for in WAC 468-38-290 (8)(e).

AMENDATORY SECTION (Amending WSR 95-24-075, filed 12/4/95, effective 1/4/96)

**WAC 468-38-280 ((Special equipment.)) Retractable axles.** ((Special equipment employing axle groupings other than the conventional single or tandem axle must first be approved by the department before permits will be granted authorizing the unit to operate on state highways.

~~A retractable axle carrying weight allowed under RCW 46.44.041 shall have a manufacturers rating of at least 10,000 pounds, and shall be self-steering. Provided, Any variable control, excluding a simple up and down control, used to adjust axle loadings by regulating air pressure or by other means must be out of reach of the driver's compartment. And Provided Further, The requirement that the retractable lift axle shall be self-steering does not apply to a truck/tractor where the retractable axle equipped with four tires is used to create a tandem and the distance between the drive axle and the retractable axle is no greater than 60 inches. The self-steering requirement shall also not apply to a trailing unit where the distance between a fixed axle and the retractable axle is no greater than 60 inches.)) **(1) What criteria must a retractable axle meet in order to carry the weight provided in RCW 46.44.041?** The retractable axle must meet three criteria:~~

(a) The retractable axle must have a manufacturer's rating of at least eight thousand pounds. The weight carried on the axle must not exceed the design load capacity as indicated by an attached data plate or written certification from the vendor/manufacturer; and

(b) The weight carried per tire must not exceed the lesser of manufacturer's rating or five hundred pounds (six hundred when operating under a special permit for overweight) per inch width of tire as described in RCW 46.44.042; and

(c) The axle must be self-steering.

**(2) Are there restrictions on the location of the operating controls for the retractable axle?** Yes. The simple "up/down" control may be in the driver's compartment; however, any variable control used to adjust axle loadings, by regulating air pressure or other means, must not be within reach of the driver's compartment.

**(3) Are there any exceptions to the self-steering requirement?** Yes. The self-steering requirement does not apply when:

(a) The retractable axle, equipped with four tires, is used to create a tandem axle configuration on a truck or truck-tractor. The distance between the drive axle and the retractable axle must not exceed sixty inches.

(b) A retractable axle is used adjacent to a fixed axle on a trailing unit and distance between the two axles does not exceed sixty inches.

AMENDATORY SECTION (Amending WSR 00-17-060, filed 8/9/00, effective 9/9/00)

**WAC 468-38-290 Farm implements.** (1) ((A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator rigs and equipment auxiliary to them. For purposes of this section, it must weigh less than forty five thousand pounds, be less than twenty feet in width, and move on pneumatic tires, or solid rubber tracks having protuberances that will not hurt the highway, when on public highways.

(2) Self-propelled farm implements, including a farm tractor pulling no more than two implements (no vehicle capable of carrying a load may pull more than one trailing implement, i.e., a truck of any kind) up to sixteen feet wide are exempt from acquiring a special motor vehicle permit for movement. Provided, That the movement of the implement(s) complies with the following safety requirements:

(a) Oversize signs: If the farm implement exceeds ten feet wide, it must display an "oversize load" sign(s) visible to both oncoming and overtaking traffic. Signs must comply with the requirements of WAC 468-38-190. If the implement is both preceded and followed by escort vehicles a sign will not be required on the implement itself.

(b) Curfew/commuter hours: Movement of a farm implement in excess of ten feet wide must also comply with any published curfew or commuter hour restrictions.

(c) Red flags: If the farm implement, moving during daylight hours, exceeds ten feet wide, the vehicle configuration must display clean, bright red flags at least twelve inches square, so as to wave freely at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If the transported implement exceeds the end of the trailer by more than four feet, one flag is required at the extreme rear, also, if the width of the protrusion exceeds two feet, there shall be required two flags at the rear of the protrusion to indicate the maximum width.

(d) Warning lights: Lamps, and other lighting must be in compliance with RCW 46.37.160 Hazard warning lights and reflectors on farm equipment—Slow moving vehicle emblem. The slow moving vehicle emblem is for equipment moving at a speed of twenty five miles per hour or less.

(e) Convoys: Farm implement convoys shall maintain at least five hundred feet between vehicles to allow the traveling public room to pass safely. If five or more vehicles become lined up behind an implement, escorted or unescorted, the driver/operator of the transported implement, and escorts, if any, shall pull off the road at the first point wide enough to allow traffic to pass safely. Convoying of

farm implements is permitted with properly equipped escort vehicles.

(f) Escort vehicles: In general, the use of escort vehicles must comply with WAC 468-38-110 Escort vehicle requirements and WAC 468-38-100, which covers when escort vehicles are required. The following specific exemptions are provided:

(i) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-110(5)(a) and (b), (6) relative to passengers, WAC 468-38-110(11)(c), and (17) when moving a farm implement off of the interstate and on the following rural interstate segments:

I-90 between Exit 109 (Ellensburg) and Exit 270 (Tyler);

I-82 between junction with I-90 (Ellensburg) and Exit 31 (Yakima);

I-82 between Exit 37 (Union Gap) and the Washington/Oregon border;

I-182 between junction with I-82 (West Richland) and junction with SR-395;

I-5 between Exit 208 (near Marysville) and Exit 250 (near Bellingham).

(ii) On two lane highways, one escort vehicle must precede the implement(s) and one escort vehicle must follow the implement(s) when the width exceeds twelve and one half feet wide; implements not exceeding twelve and one half feet wide are exempt from using escort vehicles.

(iii) On multiple lane highways, one escort in the rear is required if the vehicle exceeds fourteen feet wide.

(iv) A flagperson(s) may be used in lieu of an escort(s) for moves of less than five hundred yards. This allowance must be stated on any permit that may be required for the move.

(g) Road posting: Posting a route may be used in lieu of escort vehicles if the route to be traveled is less than two miles. Signs reading "oversize vehicle moving ahead" on a square at least three feet on each side (in diamond configuration), with black lettering on orange background, shall be placed at points before the oversize implement enters or leaves the highway and at any entry points along the way. The signs must be removed immediately after the move has been completed.

(3) Farm implements exceeding sixteen feet wide, but not more than twenty feet wide, are required to have a special motor vehicle permit for movement on state highways. A quarterly or annual permit may be purchased by a farmer, or any person engaged in the business of selling and/or maintaining farm implements, to move within a designated area, generally three to four counties. The permit is required to be physically present at the time of movement. In addition to the safety requirements listed in subsection (2) of this section, notification of a move should be made to all Washington department of transportation maintenance areas affected by the move, to determine if the route is passable. Phone listings are provided with each permit.) **For purposes of issuing special permits and certain permit exemptions, what is considered a farm implement?** A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator apparatus (complete with auxiliary equipment). For purposes of this

section, the implement must weigh less than forty-five thousand pounds, be less than twenty feet in width and not exceed fourteen feet high. If the implement is self-propelled, it must not exceed forty feet in length, or seventy feet overall length if being towed. The implement must move on pneumatic tires, or solid rubber tracks having protuberances that will not damage public highways. Implements exceeding any of these criteria must meet all appropriate requirements for special permits as referenced in other sections throughout this chapter.

**(2) What dimensional criteria must be met before a special permit is required to move extra-legal farm implements?** Self-propelled farm implements, including a farm tractor pulling no more than two implements, that exceeds sixteen feet in width, but less than twenty feet wide, are required to get a special permit for movement of farm implements on state highways. Note: A tow vehicle capable of carrying a load (i.e., a truck of any kind) may not tow more than one trailing implement.

**(3) Will the ability to acquire a special permit to move oversize farm implements be affected if the implement(s) is carried on another vehicle?** The ability to use a special permit for farm implements as defined in subsection (1) of this section will not be affected unless one of the following circumstances occurs:

(a) The authorized users of the permit outlined in subsection (4) of this section use a commercial for-hire service to move the implement(s); or

(b) The loaded farm implement creates a combined height that exceeds fourteen feet; or

(c) The loaded farm implement causes the hauling vehicle to exceed legal weight limits. The farm implement may weigh up to forty-five thousand pounds; however, the combined gross weight of implement and hauling unit may extend to the limits established in RCW 46.44.041 Maximum gross weights—Wheelbase and axle factors.

If any of the circumstances occur, the provisions of this subsection will not apply to the movement of the farm implement. The movement will be required to comply with the appropriate requirements for special permits as referenced in chapter 46.44 RCW and in other sections throughout this chapter.

**(4) How does the application process for a special permit for farm implements differ from the process outlined in WAC 468-38-050?** Due to the size of the implement and the potential for use in multiple jurisdictions, the written application must be submitted to the department's Olympia office for approval. Permits can be requested for a three-month period up to one year. Once approved, the special permit may be generated from the Olympia office by facsimile or a letter of authorization will be sent allowing the applicant to acquire a permit at the nearest permit sales location. If the movement of the farm implement(s) is confined to a single department maintenance area, the applicant may make direct written application to that maintenance area office in lieu of the Olympia office.

**(5) Who is authorized to acquire this specific special permit?** The acquisition and use of a special permit to move farm implements is restricted to a farmer, or anyone engaged

in the business of selling, repairing and/or maintaining farm implements.

**(6) Does the permit restrict the movement to a specific area?** The special permit to move farm implements is generally restricted to six contiguous counties or less. With proper justification the area can be expanded.

**(7) Are notifications of movement required?** Movements of vehicles in excess of sixteen feet wide must be communicated to all department maintenance areas affected at least eight hours in advance. The communication is for the purpose of ensuring there will not be any planned activity that would restrict the move. Locations of maintenance area offices and phone listings are provided with each letter authorizing the purchase of the special permit.

**(8) What safety precautions must be taken when moving extra-legal farm implements?** The movement of extra-legal farm implements must comply with the following safety requirements:

(a) **Oversize load signs:** If the farm implement exceeds ten feet wide, it must display an "OVERSIZE LOAD" sign(s) visible to both oncoming traffic and overtaking traffic. Signs must comply with the requirements of WAC 468-38-155(7). If the implement is both preceded and followed by pilot/escort vehicles, a sign is not required on the implement itself.

(b) **Curfew/commuter hours:** Movement of a farm implement in excess of ten feet wide must comply with any published curfew or commuter hour restrictions.

(c) **Red flags:** If the farm implement is moving during daylight hours, and exceeds ten feet wide, the vehicle configuration must display clean, bright red flags. The flags must measure at least twelve inches square and be able to wave freely. The flags are to be positioned at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If a transported implement overhangs the rear of transporting vehicle or vehicle combination by more than four feet, one flag is required at the extreme rear. If the width of the rear overhang/protrusion exceeds two feet, there must be two flags positioned at the rear to indicate the maximum width of the overhang/protrusion.

(d) **Warning lights and slow moving emblem:** Lamps and other lighting must be in compliance with RCW 46.37.-160. In addition to the lighting requirements, RCW 46.37.-160 also requires the use of a "slow moving emblem" for moves traveling at twenty-five miles per hour or less.

(e) **Convoys:** Convoys, the simultaneous movement of two or more individually transported implements, are authorized when the following criteria are met:

(i) A minimum of five hundred feet is maintained between vehicles to allow the traveling public to pass safely;

(ii) If five or more vehicles are lined up behind any one of the implements, the operator must pull off the road at the nearest point wide enough to allow the vehicles to pass safely; and

(iii) The convoy is preceded and followed with properly equipped pilot/escort vehicles.

**(9) Are there any unique requirements or exemptions regarding the use of pilot/escort vehicles with farm implements?** Pilot/escort vehicles must comply with the requirements of WAC 468-38-100, except for the following specific

exemptions related only to special permits for moving farm implements:

(a) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-100(4) regarding operator certification, WAC 468-38-100 (8)(a) and (b) regarding escort vehicle physical description, WAC 468-38-100 (10)(f) regarding use of height measuring device, and WAC 468-38-100(11) regarding passengers, when moving a farm implement off the interstate and on the following interstate segments:

(i) I-90 between Exit 109 (Ellensburg) and Exit 270 (Four Lakes);

(ii) I-82 between Junction with I-90 (Ellensburg) and Exit 31 (Yakima);

(iii) I-82 between Exit 37 (Union Gap) and Washington/Oregon border;

(iv) I-182 between Junction with I-82 (West Richland) and Junction with SR-395; and

(v) I-5 between Exit 208 (Arlington) and Exit 250 (south of Bellingham).

(b) On two lane highways, one pilot/escort vehicle must precede and one must follow the implement(s) when the width exceeds twelve feet six inches. Implements up to twelve feet six inches wide are exempt from using pilot/escort vehicles.

(c) A flag person(s) may be used in lieu of a pilot/escort(s) for moves under five hundred yards. This allowance must be stated on any permit that may be required for the move.

(d) Posting a route may also be used in lieu of a pilot/escort vehicle(s) when the route is less than two miles. Signs must state, "OVERSIZE VEHICLE MOVING AHEAD" on a square at least three feet on each side (in diamond configuration), with black lettering on orange background. The signs must be placed at points before the oversize implement enters or leaves the highway, and at access points along the way. Signs must be removed immediately after the move has been completed.

**AMENDATORY SECTION** (Amending Order 136, filed 1/29/93, effective 3/1/93)

**WAC 468-38-360 Building/house moves.** ((The following requirements control the movement of buildings or houses that do not meet the requirements for manufactured housing or mobile homes (discussed in WAC 468-38-120).

(1) Vehicles/loads not exceeding eighty thousand pounds and sixteen feet wide may be moved on two lane highways with permit, and vehicles/loads not exceeding twenty feet wide may be moved on multiple lane highways with a median barrier or median strip, with permit. Exceptions to these limitations may be proposed to the district administrator, or designee, for review and final determination, assuming compliance with the remaining conditions contained herein.

(2) The maximum distance a structure, exceeding the above dimensions, may move is five miles. Additional contiguous five mile permits shall not be issued to exceed the five mile limitation. An exemption may be granted by the district administrator, or designee, if the permittee can justify

the move as in the public interest or as the avoidance of extreme hardship. Justification will generally require independent documented evidence supporting the basis for the move, to include, but not be limited to: Cost, equity, and sales data; historic significance; public benefit; or national defense.

(3) An application for move must be completed and submitted to the district administrator, or designee, at least ten working days before the scheduled move. The application (form number DOT 720-028) must show, at a minimum: The owner, the mover, proposed route complete with traffic control plan, a physical description of the structure, arrangements for moving overhead obstacles, the number and configuration of hauling vehicles (towing unit, dollies, etc.), and any additional requirements outlined in this section.

(4) When deemed necessary a department of transportation employee shall make a visual inspection of the structure, hauling vehicles, and proposed route. This inspection shall, at a minimum, verify dimensions (to include eaves, porches, and other appurtenances that could not be removed without affecting structural integrity), check for appropriate strapping for brick/masonry, verify that all overhead obstacles have been identified, insure that dollies are not equipped with hard rubber or solid cushion rubber tires, verify the tow vehicles (a back up vehicle may be required on site for the move) have a valid certificate of inspection from the Washington state patrol, and determine if state forces will be required for the move (state force work will be estimated and paid by the permittee in advance, with actual costs being determined and a billing/refund occurring of any adjustment at the end of the move). Necessary equipment to make the inspection, such as a ladder, will be provided on site by the owner or mover.

(5) The maximum speed shall not exceed twenty five miles per hour. Time allotted for traffic delays shall be at district discretion, but shall not exceed five minutes. Reasonable accessibility for emergency vehicles to navigate around the load shall be maintained.

(6) Special escort car requirements may be imposed to assure the movement will be made under the safest possible conditions. Documentation must be provided that shows the escort vehicle operators and accompanying flagpersons have been certified by the department of labor and industries. Hard hats and vests will be required for all flagpersons directing/controlling traffic during the movement.

(7) The applicant shall notify the Washington state patrol forty eight hours in advance of the scheduled move, providing the Washington state patrol with time and route. The district may require the applicant to have the Washington state patrol assist with traffic control, the cost to be borne by the permittee.

(8) Routes involving the movement of overhead traffic signals, wires, and/or mast arms must be approved by the district traffic engineer.

(9) If railroad tracks are to be crossed, the appropriate railroad company shall be notified by the applicant and a copy of the railroad's schedule for those crossings will be submitted with the traffic control plan and application.

(10) Generally loads of two hundred thousand pounds must be approved by the bridge conditions branch in Olympia if structures are to be crossed. Per RCW 46.44.091(6), the

written request must be submitted thirty days in advance of the planned move.

(11) ~~Per WAC 468-38-050, the permittee must provide proof of insurance in the following amounts: Commercial operators shall have at least seven hundred fifty thousand dollars liability and noncommercial operators shall have at least three hundred thousand dollars liability.-)~~ **(1) Are there special requirements for the movement of a house/building that is not defined as a manufactured house or modular building?** The department's regional administrator, or designee, must approve an application for movement of buildings or houses exceeding sixteen feet wide on two lane roads, or twenty feet on multilane roads with a median barrier.

**(2) Is there a limit to the distance a building/house can move?** A building/house that exceeds the dimensions in subsection (1) of this section is limited to a distance of five miles. Additional consecutive five-mile permits will not be issued to exceed the five-mile limitation. The regional administrator, or designee, may grant an exemption if the special permit applicant can justify the move as in the public interest or as the avoidance of extreme hardship. Justification will generally require independent documented evidence, to include, but not be limited to:

- (a) Cost, equity and sales data;
- (b) Historic significance;
- (c) Public benefit; or
- (d) National defense.

**(3) How much lead-time is necessary to have an application for special permit reviewed?** The application (DOT Form 720-028) must be completed and submitted to the regional office at least ten working days before the proposed move.

**(4) If the weight of the building meets the criteria for a superload (WAC 468-38-405), does the superload lead-time requirement apply?** Yes. Generally loads of two hundred thousand pounds or more require review and analysis by the department's bridge condition office and the pavements office, both located in the Olympia area. Per RCW 46.44-.091, a written application must be submitted at least thirty calendar days in advance of the proposed move to accommodate the review and analysis process.

**(5) What information must be included on the application?** The application must show at a minimum:

- (a) Name, address and contact phone number of the owner;
  - (b) Name, address and contact phone number of the mover, if different than the owner;
  - (c) Proposed route - complete with traffic control plan;
  - (d) Physical description of the structure, including estimated weight and dimensions;
  - (e) Arrangements for moving overhead obstacles;
  - (f) Number and configuration of hauling vehicles (tow unit, dollies, etc.); and
  - (g) Any additional requirements outlined in this section.
- (6) Will inspections be performed prior to the move?**

When deemed necessary, a department employee will make a visual inspection of the structure, hauling vehicles, and proposed route. The owner will provide equipment necessary

for the inspection, such as a ladder, on-site. The inspection must, at a minimum:

(a) Verify dimensions of the structure, including all appurtenances, i.e., porches, eaves, etc., that could not be removed without affecting the structural integrity;

(b) Check for appropriate strapping for brick or other masonry;

(c) Verify all overhead obstacles, including traffic signals, wires, and/or mast arms have been identified and approved for movement by the region traffic engineer;

(d) Insure all dollies are **not** equipped with hard rubber or solid cushion rubber tires;

(e) Verify tow vehicles (a back-up vehicle may be required) have a valid certificate of inspection from the state patrol; and

(f) Determine if state forces will be required to participate in the move (state force work will be estimated and paid in advance with a billing/refund adjustment made after the move is completed).

**(7) What is the maximum speed of travel for a building/house move governed by this section?** The maximum speed must not exceed twenty-five miles per hour.

**(8) Is there a limit to the amount of time traffic can be delayed?** Time allotted for traffic delays will be at department discretion, but must not exceed five minutes.

**(9) Is there consideration for emergency vehicles?** Reasonable accessibility for emergency vehicles navigating around the move must be maintained.

**(10) Must the applicant notify the state patrol of the move?** The applicant must notify the state patrol forty-eight hours in advance of the scheduled move. The notification must provide the state patrol with the time of the move and the route. The region may also require the applicant to contract, at applicant expense, with the state patrol to assist with traffic control.

**(11) What precautions must be taken regarding railroad crossings?** If railroad tracks are to be crossed, the applicant must notify the appropriate railroad company of the move. Contact information must be obtained in order to communicate with the railroad immediately prior to accessing the crossing to ensure safe passage. This information must be part of the traffic control plan submitted with the application.

Additionally, each crossing must have a pretrip analysis to assure vehicle(s) will clear the grade crossing.

**(12) Is there an insurance requirement for the mover of the structure?** The permit applicant must provide proof of insurance in the following amounts:

(a) Commercial operators must have at least seven hundred fifty thousand dollars of liability insurance; and

(b) Noncommercial operators must have at least three hundred thousand dollars of liability insurance.

**AMENDATORY SECTION** (Amending WSR 95-24-076, filed 12/4/95, effective 1/4/96)

**WAC 468-38-405 Superloads ((movement criteria)).**

(1) ((Superloads are defined as loads exceeding two hundred thousand pounds gross weight, and/or loads whose dimen-

sions exceed either sixteen feet in height or sixteen feet in width.

(2) Pursuant to RCW 46.44.091(6), loads exceeding the two hundred thousand pounds gross weight must submit a written application for special permit at least thirty days in advance of the proposed move.

(3) Application for special permit to move a load in excess of sixteen feet high or sixteen feet wide must be submitted in writing at least seven calendar days before the proposed move.

(4) As part of the superload application the applicant must submit the following information:

(a) Documentation that the move is in the public interest and that alternative methods of transport are not feasible.

(b) A schematic or photograph of the item with an explanation of why it cannot be transported in smaller pieces must be provided.

(c) A schematic of the transporting laden vehicle(s), including axle loadings, axle spacings (measured from hub centers), tire sizes, number of tires per axle, and combination vehicle/load height, length and width.

(d) A traffic control plan depicting the route and specific procedures that will be followed to control traffic flow along the route, including estimated traffic delays, lane restriction, use of escort vehicles and flag persons, movement of overhead obstacles, railroad schedules for crossings, and provisions for emergency vehicles to navigate around the load.

(5) If the department determines that the move is necessary, an analysis of structures and pavements will be performed. If, due to the size of the load, the analysis will require a significant expenditure of time by department staff, the applicant may be required to share in those costs.

(6) If structures or pavements are found to be inadequate, and an alternative route cannot be found, the application for special permit will be denied. The load will have to be reconfigured in such a manner as to resolve the inadequacies of the original application.)) **What are the criteria that defines a superload in Washington state?** A superload is any nondivisible load that exceeds two hundred thousand pounds and/or exceeds outside dimensions of sixteen feet in height, or sixteen feet in width or have a trailing unit(s) plus load in excess of one hundred twenty-five feet in length.

**(2) Will a special permit applicant need to provide additional lead-time for processing the superload application?** Pursuant to RCW 46.44.091(5), applicants attempting to move loads in excess of two hundred thousand pounds must submit their application at least thirty calendar days in advance of the proposed move. Applicants that are attempting to move a load that does not meet the weight criteria for a superload but does meet the dimensional criteria must submit their application at least seven calendar days before the proposed move. All applications must be submitted in written form. Electronic submissions are considered as written format. These lead-times are necessary to allow the department sufficient time to perform an analysis of pavements and structures that would be affected by the proposed move.

**(3) Are there requirements for additional information to accompany the standard application form?** All, or selections from, the following information may be required as part of the standard application:

(a) Documentation that the move is in the public interest and that an alternative method of transport is not feasible.

(b) A schematic or photograph of the item to be moved, including an explanation of why it cannot be moved in smaller pieces.

(c) A schematic of the loaded vehicle(s), including axle loadings, axle spacings (measured from the center of each axle), tire sizes, number of tires per axle, and the proposed height, length and width of the configuration.

(d) A traffic control plan depicting the route and specific procedures to be followed to provide safe movement along the route, including:

(i) Identified locations where anticipated traffic delays will occur and where the delays can be allowed to clear;

(ii) Description of any lane restrictions;

(iii) How pilot/escort vehicles and flag persons will be used;

(iv) Arrangements for the movement of overhead obstacles;

(v) Identification of railroad crossings and contact information, including a pretrip analysis of each crossing to assure vehicle(s) will clear the grade;

(vi) Provisions for emergency vehicles to navigate around the configuration; and

(vii) Contact information for on-call services in case of mechanical failure (i.e., need to replace tow vehicle during movement).

**(4) Will the applicant bear any of the cost of analysis performed by the department?** If, due to the size of the configuration, the analysis will require a significant expenditure of department resources, the applicant may be required to share in those costs. Estimates would be provided to the applicant prior to beginning the analysis, allowing the applicant to make the decision on whether or not to proceed.

**(5) If either pavements or structures are found to be inadequate, what options does the applicant have?** When either the pavement or a structure on the proposed route is found to be inadequate, the permit application will be denied. The applicant must find an alternative acceptable route, or reconfigure the transported item on a vehicle(s) that can conform to the limitations of the proposed route.

**(6) Will a superload require the use of pilot/escort vehicles beyond the requirements established in WAC 468-38-100(1)?** Additional pilot/escort vehicles, and/or law enforcement vehicles, may be required as a result of the dimension of the load relative to the route and the time of day the move will be made. As indicated in WAC 468-38-100(1)(j), assignments of this nature must be authorized through the department's administrator for commercial vehicle services. The motor carrier when planning a superload move must take into consideration the potential for additional vehicles.

**AMENDATORY SECTION** (Amending Order 31, Resolution No. 156, filed 8/20/82)

**WAC 468-38-420 Bridge restrictions.** ((The department shall from time to time evaluate the capacity of all bridges on the state highway system to carry loads. Bridges that cannot safely carry vehicles moving without a permit

shall be posted. Vehicles exceeding the posted load limit shall not cross the bridge.

Vehicles carrying overloads authorized by special motor vehicle permit may not cross restricted bridges noted on the permit.)) (1) **What is the difference between posted bridges and restricted bridges, and how do they apply to legal and extra-legal vehicles?**

(a) **Posted bridges:** The department performs periodic inspections and evaluates the capacity to carry loads on all bridges on state highways. Bridges that are identified as unable to safely carry vehicles with legal weight, per RCW 46.44.041, must be posted (signed) with the maximum weight limits. Applications for extra-legal weight moves that exceed a posted bridge limit on the requested route will be returned to the applicant by the department. The applicant may change the vehicle configuration to comply with the posted limit or change the proposed route. Vehicles that exceed the posted load limit must not cross the bridge.

(b) **Restricted bridges:** Most bridges on state highways can safely carry legal vehicle weights, per RCW 46.44.041; however, some bridges may not be capable of carrying extra-legal weights, provided for in RCW 46.44.091. The department, based on periodic inspections and evaluations, may determine that a vehicle cannot safely cross a bridge at extra-legal weights. As a result, the department must restrict axle weights on the identified bridges. These restrictions are not posted on the bridge, but are disclosed to the special permit applicant during the permitting process. Applications that exceed a bridge restriction on the requested route are returned to the applicant by the department. The applicant may change the vehicle configuration to comply with the restriction or change the proposed route. Vehicles with extra-legal weight authorized by special permit must comply with any bridge restriction noted on the permit. A violation of any restriction will cause the special permit to become null and void.

(2) **Is there a published list of posted and restricted bridges?** Yes. The department publishes and maintains both lists on the department's website. A hard copy is also available upon request, but has limited value due to the frequency of changes.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 468-38-010 Three-vehicle combinations.
- WAC 468-38-020 Temporary additional tonnage permits.
- WAC 468-38-040 Special log tolerance transportation permits.
- WAC 468-38-060 Liability of permittee.
- WAC 468-38-110 Escort vehicle requirements.
- WAC 468-38-130 Lights—Stop and turn signals.

- WAC 468-38-135 Transportation of radioactive or hazardous materials.
- WAC 468-38-140 Flags.
- WAC 468-38-160 Rear-view mirrors for over-width loads.
- WAC 468-38-180 Brakes.
- WAC 468-38-190 Signs.
- WAC 468-38-200 Safety chains and devices.
- WAC 468-38-220 Moves in convoy.
- WAC 468-38-230 Days on which permit movements are prohibited.
- WAC 468-38-235 Commuter traffic restrictions.
- WAC 468-38-240 Cargo prohibition on reversible lane roadways.
- WAC 468-38-250 Days on which permits are issued.
- WAC 468-38-260 Night-time movements.
- WAC 468-38-300 Drawbar—Towlines.
- WAC 468-38-310 Adverse weather.
- WAC 468-38-320 Enforcement officer may restrict movements.
- WAC 468-38-330 Consideration of traveling public.
- WAC 468-38-340 Speed limits.
- WAC 468-38-350 Lane of travel.
- WAC 468-38-390 Winter road restrictions.

**WSR 05-04-054**

**PERMANENT RULES**

**STATE BOARD OF EDUCATION**

[Filed January 28, 2005, 2:42 p.m., effective February 28, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To make an editorial change by including the residency certificate with the initial certificate.

Citation of Existing Rules Affected by this Order: Amending WAC 180-79A-257.

Statutory Authority for Adoption: RCW 28A.410.010.

Adopted under notice filed as WSR 04-24-071 on November 30, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

PERMANENT

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 14, 2005.

January 26, 2005

Larry Davis

Executive Director

**AMENDATORY SECTION** (Amending WSR 04-21-005, filed 10/7/04, effective 11/7/04)

**WAC 180-79A-257 Out-of-state candidates.** Candidates for certification from other states who meet the general certificate requirements described in WAC 180-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Initial and residency certificates. The initial certificate (residency certificate for teachers after August 31, 2000,) shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who passes the WEST-B and meets one of the following:

(a) Qualifies under provisions of the interstate compact.

(b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter and has completed a state approved preparation program at a regionally accredited college or university in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 180-79A-150(4).

(c) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) or (b) of this subsection, an initial/residency certificate shall be issued to a candidate who holds an appropriate degree from a regionally accredited college or university and also holds or has held a certificate in the role, comparable to an initial/residency certificate, issued by another state and has practiced at the P-12 level in that respective role outside the state of Washington for three years: Provided further, That the teacher preparation program through which the teacher earned their teaching certificate included a supervised classroom-based internship.

(d) Provided further, That if a candidate for a teacher's certificate would qualify under (b) of this subsection, but for the fact that he or she has completed an approved teacher preparation program in a subject area that is not listed in chapter 180-82 WAC as a Washington endorsement, the candidate shall be issued a certificate that bears the out-of-state area of program preparation. It shall be noted on the certificate so issued that the subject area listed is not a Washington state endorsement.

(e) Holds an appropriate degree from a regionally accredited college or university and has practiced three years

as an educational staff associate in that role in a state where such certificate was not required.

(f) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

(2) Continuing certificate. The continuing certificate shall be issued to administrators and educational staff associates on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

(3) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 180-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the state board of education as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

## WSR 05-04-055

### PERMANENT RULES

#### STATE BOARD OF EDUCATION

[Filed January 28, 2005, 2:44 p.m., effective February 28, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendment to this rule clarifies that the thirty quarter hours in an academic area for degrees in elementary education, special education, and early childhood education must be in an approved endorsement area.

Citation of Existing Rules Affected by this Order: Amending WAC 180-79A-030.

Statutory Authority for Adoption: RCW 28A.410.010.

Adopted under notice filed as WSR 04-24-073 on November 30, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 14, 2005.

January 26, 2005

Larry Davis  
Executive Director

**AMENDATORY SECTION** (Amending WSR 04-04-011, filed 1/23/04, effective 2/23/04)

**WAC 180-79A-030 Definitions.** The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," "interstate compact," "college or university," and "regionally accredited institution of higher education," as defined in WAC 180-78-010 and 180-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended or regained.

(4) "Classroom teaching" means instructing pupils in an instructional setting.

(5) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from a regionally accredited college or university in any of the subject areas of the endorsement listed in chapter 180-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 180-79A-299, the candidate may hold a baccalaureate degree in any of the subject areas of the endorsements listed in WAC 180-79A-302. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 180-82 WAC: Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 180-82A-202.

(6) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues

of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention.

(7) "Approved master's degree" for the purpose of this chapter, means a master's or doctorate degree from a regionally accredited college or university.

(8) "Credit hour(s)" means credit (normally 100 level or above) awarded by a regionally accredited institution of higher education.

(9) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

(10) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 180-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

#### WSR 05-04-056

#### PERMANENT RULES

#### STATE BOARD OF EDUCATION

[Filed January 28, 2005, 2:46 p.m., effective February 28, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To allow NCATE accredited colleges/universities to follow the NCATE schedule for their state site visits and to require non-NCATE accredited colleges/universities to have a state site visit very five years.

Citation of Existing Rules Affected by this Order: Amending WAC 180-78A-100.

Statutory Authority for Adoption: RCW 28A.410.010.

Adopted under notice filed as WSR 04-24-072 on November 30, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 14, 2005.

January 26, 2005

Larry Davis  
Executive Director

PERMANENT

**AMENDATORY SECTION** (Amending WSR 04-21-038, filed 10/15/04, effective 11/15/04)

**WAC 180-78A-100 Existing approved programs.**

Chapter 180-78A WAC rules shall govern all policies related to programs upon adoption by the state board of education, which shall provide assistance to colleges and universities in the revision of their existing programs.

(1) All professional education programs shall be reviewed for approval under the 1997 program approval standards of chapter 180-78A WAC by August 31, 2000. Colleges and universities may permit individuals accepted into preparation programs on or before August 31, 2000, to obtain certification by meeting requirements of programs approved under approval standards described in chapter 180-78 WAC if the individuals complete the program on or before August 31, 2003, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2003: Provided, That the state board of education or its designee may waive this deadline on a case-by-case basis.

(2) All principal/program administrator programs shall be reviewed for approval under the 2002 program approval standards of chapter 180-78A WAC by August 31, 2004. Colleges and universities may permit individuals accepted into principal/program administrator programs on or before August 31, 2004, to obtain certification by meeting requirements of programs approved under 1997 approval standards described in chapter 180-78A WAC if the individuals complete the program on or before August 31, 2006, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2006. Provided, That the state board of education or its designee may waive this deadline on a case-by-case basis.

(3) All school counselor, school psychologist, or school social worker programs shall be approved under the 2004 program approval standards of chapter 180-78A WAC by August 31, 2005. Colleges and universities may permit individuals accepted into the school counselor, school psychologist, or school social worker programs on or before August 31, 2005, to obtain certification by meeting requirements of programs approved under the 1997 approval standards described in chapter 180-78A WAC if the individuals complete the program on or before August 31, 2007, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2007. Provided that the state board of education or its designee may waive this deadline on a case-by-case basis.

(4) Institutions shall be given at least one year notification prior to a state board of education review for compliance with these standards: Provided, That if an institution requests a visit with less than a year's notice, the state board of education shall consider that request.

(5) The state board of education shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under the 1997 program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and the National Council for the Accreditation of Teacher Education (NCATE) as such

agreement relates to the NCATE accreditation cycle and allow NCATE accredited colleges/universities to follow the NCATE schedule for their state site visit. Non-NCATE accredited colleges/universities shall have a state approval site visit every five years. The state board of education may require more frequent site visits at their discretion pursuant to WAC 180-78A-110(2).

(6) Each institution shall submit its program for review when requested by the state board of education to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards to the state board of education for the year prior to the site visit.

(7) Institutions seeking National Council for the Accreditation of Teacher Education, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the state board of education approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

(8) In submitting a request for approval under these standards, the approved program shall provide a description of the criteria that the program will use to assess, in multiple ways, over time, its certification candidates' knowledge and skills, including, where appropriate, evidence related to positive impact on student learning. Based on the documentation submitted and/or an on-site visit, the state board of education shall grant approval or request specific revisions that need to be made in order to obtain state board of education approval.

**WSR 05-04-059**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed January 28, 2005, 4:30 p.m., effective March 1, 2005]

Effective Date of Rule: March 1, 2005.

Purpose: To incorporate into rule the enteral nutrition program, new chapter 388-554 WAC.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.530.

Other Authority: Chapter 74.09 RCW.

Adopted under notice filed as WSR 04-23-067 on November 15, 2004.

Changes Other than Editing from Proposed to Adopted Version: The following changes have been made to the rules as proposed (additions indicated by underlined text, and deletions indicated by ~~strikethrough text~~):

**WAC 388-554-300 Enteral nutrition program—Client eligibility.**

(2) All clients younger than age twenty-one must be evaluated by a ~~registered~~ certified dietitian with a current provider number within thirty days of initiation of enteral nutrition products, and periodically (at the discretion of the ~~regis-~~

tered certified dietitian) while receiving enteral nutrition products.

(4)(e)(i)(A) A weight-for-length ~~at or~~ less than or equal to the fifth percentile if the client is younger than age three; or

(4)(e)(i)(B)(I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or

(4)(e)(ii)(A) A weight-for-length ~~at or~~ less than or equal to the fifth percentile if the client is younger than age three; or

(4)(e)(ii)(B)(I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or

(4)(e)(viii)(A) A weight-for-length ~~at or~~ less than or equal to the fifth percentile if the client younger than age three;

(4)(e)(viii)(B) A BMI of less than or equal to the fifth percentile if the client is at least age three but younger than age eighteen; and

(4)(e)(iv)(B) Be evaluated by a ~~speech therapist:~~ (I) A speech therapist; or (II) An occupational therapist who specializes in dysphagia.

#### **WAC 388-554-400 Enteral nutrition program—Provider requirements.**

(2)(h) For a client younger than age twenty-one, retain a copy of each required ~~registered certified~~ dietitian evaluation, as described in WAC 388-554-300(2).

#### **WAC 388-554-700 Enteral nutrition products and supplies—Prior authorization requirements.**

(3)(b)(i) The client has one of the medical conditions listed in WAC ~~388-554-300(3)~~ 388-554-300 (4)(e).

A final cost-benefit analysis is available by contacting Olin Cantrell, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1676, fax (360) 586-1471, e-mail cantrow@dshs.wa.gov. No changes were made - the preliminary analysis will be final.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 0.

Date Adopted: January 25, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

## Chapter 388-554 WAC

### ENTERAL NUTRITION PROGRAM

#### NEW SECTION

**WAC 388-554-100 Enteral nutrition program—General.** The medical assistance administration's (MAA's) enteral nutrition program covers the products, equipment, and supplies to provide medically necessary enteral nutrition to eligible medical assistance clients.

#### NEW SECTION

**WAC 388-554-200 Enteral nutrition program—Definitions.** The following terms and definitions and those found in WAC 388-500-0005 apply to the enteral nutrition program:

"BMI" see "body mass index."

"Body mass index (BMI)" is a number that shows body weight adjusted by height, and is calculated using inches and pounds or meters and kilograms.

"Enteral nutrition" means the use of medically necessary nutritional products alone, or in combination with traditional food, when a client is unable to consume enough traditional food to meet nutritional requirements. Enteral nutritional solutions can be given orally or via feeding tubes.

"Enteral nutrition equipment" means durable medical feeding pumps and intravenous (IV) poles used in conjunction with nutrition supplies to dispense formula to a client.

"Enteral nutrition product" means enteral nutrition formulas and/or products.

"Enteral nutrition supplies" means the supplies, such as nasogastric, gastrostomy and jejunostomy tubes, necessary to allow nutritional support via the alimentary canal or any route connected to the gastrointestinal system.

"Growth chart" is a series of percentile curves that illustrate the distribution of select body measurements (i.e., height, weight, and age) in children published by the Centers for Disease Control and Prevention, National Center for Health Statistics. CDC growth charts: United States. <http://www.cdc.gov/growthcharts/>

"Nonfunctioning digestive tract" is caused by a condition that affects the body's alimentary organs and their ability to break down and digest nutrients.

"Orally administered enteral nutrition products" means enteral nutrition solutions and products that a client consumes orally for nutritional support.

"Tube-delivery" means the provision of nutritional requirements through a tube into the stomach or small intestine.

"WIC program" (Women, Infants and Children (WIC) program) is a special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five, and low-income pregnant and breastfeeding women who are at nutritional risk by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.

"Women, Infants and Children (WIC) program." See "WIC program."

PERMANENT

**NEW SECTION**

**WAC 388-554-300 Enteral nutrition program—Client eligibility.** (1) Clients in the following medical assistance programs are eligible to receive oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies, subject to the limitations in this chapter and other applicable WAC:

- (a) Categorically needy program (CNP);
- (b) Children's health insurance program (CHIP) (same scope of coverage as CNP);
- (c) General assistance - Unemployable (GA-U);
- (d) Limited casualty program - Medically needy program (LCP-MNP);
- (e) Alien emergency medical program - CNP; and
- (f) Alien emergency medical program - LCP-MNP.

(2) All clients younger than age twenty-one must be evaluated by a certified dietitian with a current provider number within thirty days of initiation of enteral nutrition products, and periodically (at the discretion of the certified dietitian) while receiving enteral nutrition products. See WAC 388-554-400 (2)(h) for provider requirements.

(3) Clients enrolled in an MAA managed care plan are eligible for oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies through that plan. If a client becomes enrolled in a managed care plan before MAA completes the purchase (or rental, if applicable) of prescribed enteral products, necessary equipment and supplies:

- (a) MAA rescinds the purchase until the managed care primary care provider (PCP) evaluates the client; and
- (b) The managed care plan's applicable reimbursement policies apply to the purchase of the products, equipment, or supplies, or rental of the equipment, as applicable.

(4) To receive orally administered enteral nutrition products, a client must:

(a) Have a valid written physician order from a physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C) for all enteral nutrition products;

(b) When required, have the provider obtain prior authorization as described in WAC 388-554-700;

(c) Meet the conditions in this section and other applicable WAC;

(d) Be able to manage their feedings in one of the following ways:

- (i) Independently; or
- (ii) With a caregiver who can manage the feedings; and
- (e) Have at least one of the following medical conditions, subject to the criteria listed:

(i) Malnutrition/malabsorption as a result of a stated primary diagnosed disease. The client must have:

(A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three; or

(B) A body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or

(II) Less than or equal to 18.5 if the client is age eighteen or older.

(ii) Acquired immune deficiency syndrome (AIDS). The client must be in a wasting state and have:

(A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three; or

(B) A BMI of:

(I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or

(II) Less than or equal to 18.5 if the client is age eighteen or older.

(iii) Amino acid, fatty acid, and carbohydrate metabolic disorders;

(iv) Dysphagia. The client must:

(A) Need to transition from tube feedings to oral feedings or require thickeners to aid swallowing; and

(B) Be evaluated by:

(I) A speech therapist; or

(II) An occupational therapist who specializes in dysphagia.

(v) Chronic renal failure. The client:

(A) Must be receiving dialysis; and

(B) Have a fluid restrictive diet in order to use nutrition bars.

(vi) Malignant cancer(s). The client must be receiving chemotherapy.

(vii) Decubitus pressure ulcers. The client must have:

(A) Stage three or greater decubitus pressure ulcers; and

(B) An albumin level of 3.2 or below.

(viii) Failure to thrive. The client must have a disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment. In addition, the client must have:

(A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three;

(B) A BMI of less than or equal to the fifth percentile if the client is at least age three but younger than age eighteen; and

(C) A BMI of less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen or older.

(5) A client is eligible to receive delivery of orally administered enteral nutrition products in quantities sufficient to meet the client's medically authorized needs, not to exceed a one-month supply. To receive the next month's delivery of authorized products, the client's record must show documentation of the need to refill the products. See WAC 388-554-400 for provider requirements.

(6) To receive tube-delivered enteral nutrition products, necessary equipment and supplies, a client must:

(a) Have a valid written physician order from a physician, ARNP, or PA-C;

(b) Meet the conditions in this section and other applicable WAC; and

(c) Be able to manage their tube feedings in one of the following ways:

- (i) Independently; or
- (ii) With a caregiver who can manage the feedings; and
- (d) Have at least one of the following medical conditions, subject to the criteria listed:

(i) A nonfunction or disease of the structures that normally permit food to reach the small bowel; or

(ii) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to maintain weight and strength that is properly proportioned to the client's overall health status.

#### NEW SECTION

**WAC 388-554-400 Enteral nutrition program—Provider requirements.** (1) A provider of all oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies must:

(a) Have a current core provider agreement with the medical assistance administration (MAA); and

(b) Be one of the following provider types:

(i) Pharmacy provider; or

(ii) Durable medical equipment (DME) provider.

(2) To be paid for oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies, an eligible provider must:

(a) Meet the requirements in WAC 388-502-0020 and other applicable WAC;

(b) Obtain prior authorization (PA), if required, before delivery to the client and before billing MAA. See WAC 388-554-700 for PA requirements;

(c) Deliver orally administered enteral nutrition products in quantities sufficient to meet a client's medically authorized needs, not to exceed a one-month supply;

(d) Bill MAA for the authorized products and submit a claim for payment to MAA with a date of service being the same as the shipping date;

(e) Confirm with the client and document in the client's record that the next month's delivery of authorized orally administered enteral nutrition products is necessary (see WAC 388-554-300(5)). MAA will not reimburse automatic periodic delivery of products;

(f) Notify and inform the client's physician if the client has indicated the product is not being used as prescribed;

(g) Keep legible, accurate, and complete charts in the client's record to justify the medical necessity of the items provided and include:

(i) For each item billed, a copy of the prescription. The prescription must:

(A) Be signed and dated by the prescribing physician;

(B) List the client's medical condition and exact daily caloric amount of needed enteral product; and

(C) State the reason why the client is unable to consume enough traditional food to meet nutritional requirements.

(ii) The medical reason the specific enteral product, equipment, and/or supply is prescribed; and

(iii) For a client who meets the Women, Infants and Children (WIC) program's target population as defined in WAC 388-554-200, verification from the WIC program that the client:

(A) Is not eligible for WIC program services;

(B) Is eligible for WIC program services, but nutritional needs exceed the WIC program's maximum per calendar month allotment; or

(C) The WIC program cannot provide the prescribed product.

(h) For a client younger than age twenty-one, retain a copy of each required certified dietitian evaluation, as described in WAC 388-554-300(2).

(3) MAA may recoup any payment made to a provider for authorized enteral nutrition products if the requirements in subsection (2) of this section and other applicable WAC are not met.

#### NEW SECTION

**WAC 388-554-500 Orally administered enteral nutrition products—Coverage, limitations, and reimbursement.** (1) The enteral nutrition program covers and reimburses medically necessary orally administered enteral nutrition products, subject to:

(a) Prior authorization requirements under WAC 388-554-700;

(b) Duration periods determined by the medical assistance administration (MAA);

(c) Delivery requirements under WAC 388-554-400(2); and

(d) The provisions in other applicable WAC.

(2) Except as provided in subsection (3) of this section, MAA does not pay separately for orally administered enteral nutrition products:

(a) When a client resides in a state-owned facility (i.e., state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital).

(b) When a client has elected and is eligible to receive MAA's hospice benefit, unless both of the following apply:

(i) The client has a pre-existing medical condition that requires enteral nutritional support; and

(ii) The pre-existing medical condition is not related to the diagnosis that qualifies the client for hospice.

(3) MAA pays separately for a client's orally administered enteral nutrition products when the client:

(a) Resides in the nursing facility;

(b) Meets the criteria in WAC 388-554-300; and

(c) Needs enteral nutrition products to meet one hundred percent of the client's nutritional needs.

(4) MAA does not cover or reimburse for orally administered enteral nutrition products when the client's nutritional need can be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blended and used to meet the client's caloric and nutritional needs.

(5) MAA:

(a) Determines reimbursement for oral enteral nutrition products according to a set fee schedule;

(b) Considers Medicare's current fee schedule when determining maximum allowable fees;

(c) Considers vendor rate increases or decreases as directed by the Legislature; and

(d) Evaluates and updates the maximum allowable fees for oral enteral nutrition products at least once per year.

(6) MAA evaluates a request for orally administered enteral nutrition products that are not covered or are in excess of the enteral nutrition program's limitations or restrictions, according to WAC 388-501-0165.

PERMANENT

NEW SECTION

**WAC 388-554-600 Tube-delivered enteral nutrition products and related equipment and supplies—Coverage, limitations, and reimbursement.** (1) The enteral nutrition program covers and reimburses the following, subject to the limitations listed in this section and the provisions in other applicable WAC:

- (a) Tube-delivered enteral nutrition products;
- (b) Tube-delivery supplies;
- (c) Enteral nutrition pump rental and purchase;
- (d) Nondisposable intravenous (IV) poles required for enteral nutrition product delivery; and
- (e) Repairs to equipment.

(2) The medical assistance administration (MAA) covers up to twelve months of rental payments for enteral nutrition equipment. After twelve months of rental, MAA considers the equipment to be purchased and it becomes the client's property.

(3) MAA requires a provider to furnish clients new or used equipment that includes full manufacturer and dealer warranties for one year.

(4) MAA covers only one:

- (a) Purchased pump per client in a five year period; and
- (b) Purchased nondisposable IV pole per a client's lifetime.

(5) MAA's reimbursement for covered enteral nutrition equipment and necessary supplies includes all of the following:

(a) Any adjustments or modifications to the equipment that are required within three months of the date of delivery. This does not apply to adjustments required because of changes in the client's medical condition;

(b) Fitting and set-up; and

(c) Instruction to the client or the client's caregiver in the appropriate use of the equipment and necessary supplies.

(6) A provider is responsible for any costs incurred to have another provider repair equipment if all of the following apply:

(a) Any equipment that MAA considers purchased requires repair during the applicable warranty period;

(b) The provider is unable to fulfill the warranty; and

(c) The client still needs the equipment.

(7) If the rental equipment must be replaced during the warranty period, MAA recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment delivered to the client. All of the following must apply:

(a) The provider is unable to fulfill the warranty; and

(b) The client still needs the equipment.

(8) MAA rescinds any authorization for prescribed equipment if the equipment was not delivered to the client before the client:

(a) Loses medical eligibility;

(b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);

(c) Becomes eligible for an MAA managed care plan; or

(d) Dies.

(9) Except as provided in subsection (10) of this section, MAA does not pay separately for tube-delivered enteral

nutrition products or necessary equipment or supplies when a client:

(a) Resides in a state-owned facility (i.e., state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital).

(b) Has elected and is eligible to receive MAA's hospice benefit, unless both of the following apply:

(i) The client has a pre-existing medical condition that requires enteral nutritional support; and

(ii) The pre-existing medical condition is not related to the diagnosis that qualifies the client for hospice.

(10) MAA pays separately for a client's tube-delivered enteral nutrition products and necessary equipment and supplies when:

(a) The client resides in the nursing facility;

(b) The client meets the eligibility criteria in WAC 388-554-300; and

(c) Use of enteral nutrition products meets one hundred percent of the client's nutritional needs.

(11) MAA determines reimbursement for tube-delivered enteral nutrition products and necessary equipment and supplies using the same criteria described in WAC 388-554-500(5).

(12) MAA evaluates a request for tube-delivered enteral nutrition products and necessary equipment and supplies that are not covered or are in excess of the enteral nutrition program's limitations or restrictions, according to WAC 388-501-0165.

NEW SECTION

**WAC 388-554-700 Enteral nutrition products and supplies—Prior authorization requirements.** (1) All requests for oral enteral nutrition products, repairs to equipment, and replacement of necessary supplies for tube-delivery of enteral nutrition products require prior authorization as described in this section. See also WAC 388-501-0165.

(2) When MAA receives an initial request for prior authorization, the prescription(s) for those items cannot be older than three months from the date MAA receives the request.

(3) MAA may authorize orally administered enteral nutrition products that are listed in MAA's published issuances, including billing instructions and numbered memoranda, only if medical necessity is established and the provider furnishes all of the following information to MAA:

(a) A copy of the signed and dated physician order completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), which includes client's medical condition and exact daily caloric amount of prescribed enteral nutrition product;

(b) Documentation from the client's physician, ARNP, or PA-C that verifies all of the following:

(i) The client has one of the medical conditions listed in WAC 388-554-300 (4)(e);

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client age eighteen or older, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than age eighteen, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is younger than age three; or

(B) An evaluation of the BMI if the client is older than age three and younger than age eighteen.

(v) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate (see WAC 388-554-500(4));

(vi) The client's likely expected outcome if enteral nutritional support is not provided; and

(vii) Number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required.

(4) A provider may resubmit a request for prior authorization for oral enteral nutrition products or replacement of necessary supplies for tube-delivery of enteral nutrition products that MAA has denied. MAA requires the provider to include new documentation that is relevant to the request.

**NEW SECTION**

**WAC 388-554-800 Enteral nutrition program requirements for WIC program-eligible clients.** Clients who qualify for supplemental nutrition from the Women, Infants, and Children (WIC) program must receive supplemental nutrition through that program. The medical assistance administration (MAA) may cover the enteral nutrition products and supplies for WIC program-eligible clients only when all of the following are met:

(1) The provider requests prior authorization for the enteral nutrition product or supply;

(2) Documentation from the WIC program is attached to the request form that verifies:

(a) The client's enteral nutrition need is in excess of WIC program allocations; or

(b) The WIC program cannot supply the prescribed product; and

(3) The client meets the enteral nutrition program requirements in this chapter.

**WSR 05-04-072  
PERMANENT RULES  
OFFICE OF  
FINANCIAL MANAGEMENT**

[Filed February 1, 2005, 10:44 a.m., effective March 4, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The current rules need to be updated to reflect new legislation (RCW 48.62.036) and ensure application to and standards for nonprofit corporations included in local government or creating new self-insurance programs is provided. In addition, the outcome of this rule-making process will be (1) to move the rules from chapter 236-22 WAC and create a new chapter under OFM Title 82 WAC, where all the

rules related to self-insurance programs will be found; and (2) amend the rules to update them to current law and standards; and (3) amend current rules and add a new rule (WAC 82-60-039) implementing SB 5869, enacted in 2004.

Citation of Existing Rules Affected by this Order: Amending WAC 236-22-010, 236-22-020, 236-22-030, 236-22-031, 236-22-034, 236-22-036, 236-22-037, 236-22-038, 236-22-050, 236-22-060, 236-22-070, 236-22-080, 236-22-100, 236-22-200, and 236-22-210.

Statutory Authority for Adoption: RCW 48.62.061.

Adopted under notice filed as WSR 04-20-084 on October 5, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 15, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 15, Repealed 0.

Date Adopted: February 1, 2005.

Roselyn Marcus  
Director of Legal Affairs  
Rule-making Coordinator

**AMENDATORY SECTION** (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-010 Preamble and authority.** These rules (~~((and regulations governing))~~ ~~(for))~~ governing local government and nonprofit self-insurance transactions are adopted by the state risk manager to (~~((implement chapter 48.62 RCW relating to))~~ ~~(regulate the management and operations of both))~~ implement chapter 48.62 RCW relating to the management and operations of both individual and joint local government ((self-insurance) self-insured health and welfare benefit and property and liability risk) programs. The rules set forth in this chapter do not supersede the rules which govern the operation of self-insured employee benefit plans by school districts and educational service districts under chapter 392-130 WAC)) health and welfare benefit and property and liability self-insurance programs and nonprofit property and liability self-insurance programs.

**AMENDATORY SECTION** (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-020 Definitions.** (1) "Actuary" means any person who is qualified under WAC 284-05-060 to provide actuarial services.

(2) "Assessment" means the (~~((monies))~~) moneys paid by the members to a joint self-insurance program.

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(3) "Beneficiary" means any individual entitled ~~(under a local government self-insurance program for health and welfare benefits,)~~ to payment of all or part of a covered claim under a local government health and welfare self-insurance program.

(4) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

(5) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event such as:

(a) For health and welfare benefits, a covered service or services being delivered; or

(b) For property and liability, the destruction or damage of property or related deaths or injuries.

Unless specifically referenced, the term "claim" is used for both health and welfare and property and liability programs.

(6) "Competitive process" means a documented formal process providing ~~((an equal))~~ a fair and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the party's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(7) "Contribution" means the amount paid or payable by the employee into a health and welfare self-insurance program.

(8) "Incurred but not reported, or IBNR" ~~((shall mean))~~ means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include (a) known loss events that are expected to be presented later ~~((presented to be))~~ as claims, (b) unknown loss events that are expected to become claims, and (c) expected future development on claims already reported.

(9) "Individual self-insurance program" means a program established and maintained by a local government entity to self-insure health and welfare benefits or property and liability risks on its own behalf.

(10) "Joint self-insurance program" means any two or more local government entities, two or more nonprofit corporations or a combination of local government entities and nonprofit corporations which have entered into a cooperative risk sharing agreement pursuant to the provisions of the Interlocal Cooperation Act (chapter 39.34 RCW) and/or subject to regulation under chapter 48.62 RCW.

(11) "Liability for unpaid claims" means the amount needed to provide for the estimated ultimate cost of settling claims which have occurred on or before a particular date. The estimated liability includes the amount of money that will be needed for future payments on both claims which have been reported and IBNR claims.

(12) "Liability for unpaid claim adjustment expenses" means the amount needed to provide for the estimated ultimate costs required to investigate and settle claims for covered events that have occurred on or before a particular date, whether or not reported to the government entity or nonprofit corporation at that date.

(13) "Member" means a local government entity ~~((which))~~ or nonprofit corporation that is a past or present ~~((legal))~~ participant in a ~~((local government))~~ joint self-insurance program subject to regulation under chapter 48.62 RCW.

(14) "Nonprofit corporation." as defined in RCW 24.03-.005(3), means a corporation no part of the income of which is distributable to its members, directors or officers.

(15) "Self-insurance program" means any individual or joint local government entity or nonprofit corporation self-insurance program ~~((subject to regulation under))~~ required by chapter 48.62 RCW to comply with this chapter.

~~((15))~~ (16) "Stop-loss insurance" means insurance against the risk of economic loss assumed under a self-insurance program.

~~((16))~~ (17) "Third-party administrator" means:

(a) An independent association, agency, entity or enterprise which, through a contractual agreement is responsible for the overall operational and financial management of the self-insurance program; or

(b) An independent association, agency, entity or enterprise which, through a contractual agreement, provides a professional service for the analysis, design, implementation, or termination of a self-insurance program; or

(c) An independent association, agency, entity or enterprise which, through a contractual agreement, administers the claim payment process on behalf of a self-insurance program. Such claim administration process includes, but is not limited to, receiving requests for claim payments, investigation, verification and adjustment of the claim. Claim payment disbursement is also considered an administrative process.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-030 Adoption of program.** (1) All self-insurance programs shall provide that the governing body of the local government entity or nonprofit corporation establishing or maintaining a program adopt the self-insurance program by resolution or ordinance. The resolution or ordinance shall include, but not be limited to, funding and expenditure mechanisms. ~~((Self insurance programs in operation on January 1, 1992 shall meet the requirements of this subsection no later than December 31, 1994.))~~

(2) The interlocal agreement of a joint self-insurance program shall be adopted by resolution or ordinance by each participating member's governing body.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-031 Program financing.** (1) All self-insurance programs shall provide for program financing to pay claims, claims adjustment expenses and the liability for unpaid claims and claims adjustment expenses as they become payable.

(2) All self-insurance programs shall provide a method by which the program financing will be adjusted when it has been determined to be actuarially insufficient, or when the program is unable to meet debts as they become payable. Any

increases shall be large enough to make the program actuarially sufficient.

(3) ~~((All individual and joint health and welfare self-insurance programs and all joint property and liability self-insurance programs claim financing levels shall be determined annually by an actuary's recommendation, unless these self-insurance programs purchase annual aggregate stop loss insurance and fund the self-insured portion to the stop loss insurance attachment point.))~~ The claim financing levels and liabilities for unpaid claims and claims adjustment expenses for all individual and joint health and welfare medical self-insurance programs and all joint property and liability self-insurance programs shall be determined annually by an actuary. Such programs that purchase annual aggregate stop loss insurance and fund the self-insured portion to the stop loss insurance attachment point are exempt from the actuarial report requirement. The state risk manager may require a joint self-insurance program to perform an actuarial study when determined necessary to analyze the program's soundness and financial safety.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-034 Disclosures.** (1) All health and welfare self-insurance programs shall furnish each employee or retiree covered by the program a written description of the benefits allowable under the program, together with:

- (a) Applicable restrictions, limitations, and exclusions;;
- (b) The procedure for filing a claim for benefits;;
- (c) The procedure for requesting an adjudication of disputes or appeals arising from beneficiaries regarding the payment or denial of any claim for benefits;; and
- (d) A schedule of any direct monetary contributions toward the program financing required by the employee.

Such benefits or procedures shall not be amended without written notice to the covered employees and retirees at least thirty days in advance of the effective date of the change unless exigent circumstances can be demonstrated.

(2) All joint self-insurance programs shall furnish to each member of the program written statements which describe:

- (a) All coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;
- (b) The method by which members pay assessments;
- (c) The procedure for filing a claim; and
- (d) The procedure for a member to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, membership, and other issues.

Such statements shall not be amended without written notice to the members at least thirty days in advance of the effective date of the change.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-036 Termination provisions.** (1) All individual and joint health and welfare self-insurance programs and all joint property and liability self-insurance pro-

grams shall maintain a written plan (~~((which))~~) that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.

(2) All joint self-insurance programs shall provide for the termination of membership of a member.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-037 Financial plans.** (1) All self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

- (a) A procedure for accounting for (~~((monies))~~) moneys received, payments made and liabilities of the program;
- (b) An investment policy; and
- (c) The preparation of accurate annual financial statements of the program.

(2) No financial plan of a self-insurance program shall permit interfund loans from assets held against liabilities for unpaid claims and claim adjustment expenses except for those amounts which are clearly inactive or in excess of liabilities for unpaid claims and claim adjustment expenses.

(3) No financial plan of a joint self-insurance program shall permit loans from assets held against liabilities for unpaid claims and claim adjustment expenses to any member.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-038 Third-party administrator contracts.** (1) Before contracting for third-party administrator professional services, all self-insurance programs shall establish and maintain written standards and procedures for contracting with third-party administrators. Entering a contract for services shall not relieve the entity of its ultimate managerial and financial responsibilities. The procedures shall, as a minimum:

- (a) Provide a method of third-party administrator selection using a competitive process;
- (b) Require a written description of the services to be provided, remuneration levels, and contract period;
- (c) Provide for the confidentiality and ownership of the information, data and other intellectual property developed or shared during the course of the contract;
- (d) Provide for the expressed authorization of the self-insurance program to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program; and
- (e) Require the compliance with all applicable local, state and federal laws.

(2) None of the above shall otherwise relieve the entity from other contracting requirements imposed on those entities.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-050 Claims administration.** (1)(a) All self-insurance programs shall have a written claims administration program (~~(which)~~ that contains, as a minimum, claim filing procedures, internal financial control mechanisms, and claim and claim adjustment expense reports.

(b) All individual and joint health and welfare self-insurance programs and all joint property and liability self-insurance programs shall have a written claim appeal procedure (~~(which)~~ that contains, as a minimum, a time limit for filing an appeal, a time limit for response, and a provision for a second level of review.

(2)(a) All self-insurance programs may contract for claims administration services with a qualified third-party administrator, provided all the requirements under subsection (1) (~~(above)~~) of this section are included in the contract.

(b) Individual and joint property and liability self-insurance programs may perform claims administration services on their own behalf. Individual and joint health and welfare self-insurance programs may perform claims administration services on their own behalf, provided the state risk manager is supplied with documentation and a detailed written explanation in support of the self-insurance program's proposed claims administration activities. The documentation and proposal shall include, as a minimum, the following:

~~(1-)~~ (i) The nature, type and anticipated volume of claims to be administered.

~~(2-)~~ (ii) The number of employment positions established or to be established which are required to perform the self-insurance program's claim administration functions, including an organizational chart showing reporting responsibilities.

~~(3-)~~ (iii) Qualifications of personnel having claim reserving and settlement authority.

~~(4-)~~ (iv) A projection of expected claim administration expenses.

(3) All self-insurance programs shall have conducted by an independent qualified professional not currently performing claims administration services to the program, a review of claim reserving, adjusting and payment procedures no less than every three years. Such review shall be in writing and retained for a period not less than three years.

(4) Joint self-insurance programs shall maintain a dedicated claim account from which only claim and claim adjustment expenses can be paid.

(5) Joint self-insurance programs shall maintain written claim and claim adjustment expense reports for all claims made against the self-insurance program and, separate written reports for each individual member.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-060 Financial reports.** (1) Every individual and joint health and welfare self-insurance program and every joint property and liability self-insurance program authorized to transact business in the state of Washington shall record and annually report its revenue, claim and claim expense experience, and other data as required by the state

risk manager. Multistate programs shall report both its Washington state revenues, claim and claim expense experience and other data required by the state risk manager and its overall income, claim and claim expense experience. Such reports shall be submitted to the state risk manager no later than one hundred (~~(twenty)~~) fifty days following the completion of the joint program's fiscal year.

(2) All joint self-insurance programs authorized to transact business in the state of Washington shall submit quarterly financial reports to the state risk manager. Such reports shall be submitted to the state risk manager no later than sixty days following the completion of each of the program's four quarters within its fiscal year.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-070 State risk manager may waive requirements.** The state risk manager may waive any of the requirements of WAC (~~(236-22-030)~~) 82-60-030 through (~~(section 236-22-050 and 236-22-060(2))~~) 82-60-050 and 82-60-060 if, in the state risk manager's opinion:

(1) Circumstances warrant a waiver(~~(s)~~); and

(2) Waiver will not jeopardize the financial condition of the self-insurance program.

AMENDATORY SECTION (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-080 Conflict of interest.** All self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

(1) No member of the board of directors; trustee; administrator, including a third-party administrator; or any other person having responsibility for the management or administration of a program or the investment or other handling of the program's money shall:

(a) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(b) Receive compensation as a consultant to the program while also acting as a member of the board of directors, trustee, administrator, or as an employee.

(c) Have any direct or indirect pecuniary interest in any loan or investment of the program.

(2) No consultant, third-party administrator or legal counsel to the self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the self-insurance program and any insurer, health care service contractor, or health care supply provider. This provision shall not preclude licensed insurance brokers or agents from receiving compensation for insurance transactions performed within the scope of their licenses, provided such compensation is disclosed to the self-insurance program's governing body.

(3) No third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

**AMENDATORY SECTION** (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-100 Expense and operating cost fees.**

(1) ~~The state risk manager, with concurrence from the ((two) [property and liability] advisory board[s.] [and the health and welfare advisory board], shall fix [assessments to cover initial expenses and operating costs of the boards and the state risk manager's office in administering chapter 48.62 RCW. Such assessments shall be levied against each joint property and liability self-insurance program and each individual and joint health and welfare benefit self-insurance program regulated by chapter 48.62 RCW. Such assessments shall be based upon each self-insurance program's share of the initial expenses and operating costs of the property and liability advisory board, the health and welfare advisory board,] [fees based upon actual time and expenses incurred for the review and investigation of every joint property and liability risk and every individual and joint health and welfare benefit self-insurance programs by the advisory boards] and the state risk manager's office)) property and liability advisory board and the health and welfare advisory board, shall fix assessments to cover expenses and operating costs of the state risk manager's office in administering chapter 48.62 RCW. Such assessments shall be levied against each joint property and liability self-insurance program and each individual and joint health and welfare benefit self-insurance program regulated by chapter 48.62 RCW. Examination fees shall be based upon actual time and expenses incurred for the review and investigation of every joint property and liability self-insurance program and every individual and joint health and welfare benefit self-insurance program by the state risk manager or designee.~~

(2) ~~The state risk manager, with concurrence from the two advisory boards, shall determine the ((assessment rate on a fiscal year basis prescribing the self-insurance program's share pursuant to the provisions of subsection (1) of this section until the regulatory program for local government self-insurance programs is fully implemented.~~

(3) ~~These assessments shall be payable by the assessed program to the state of Washington, division of risk management, on July 1 and January 1 of each year until the regulatory program for local government self-insurance programs is fully implemented. Any program failing to remit its assessment when due is subject to denial of permission to operate or to a cease and desist order until the assessment] [review and investigation fees on a fiscal year basis.~~

(3) ~~The review and investigation fees shall be paid by the self-insurance program to the state of Washington, department of general administration within thirty days of invoice. Any self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee)) assessment rate on a fiscal year basis and the review and investigation fees on a fiscal year basis.~~

(3) The review and investigation fees shall be paid by the self-insurance program to the state of Washington, office of

financial management within thirty days of the date of invoice. Any self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(4) ~~A self-insurance program ((referenced in subsection (1) of this section,) which)) that has voluntarily or involuntarily terminated(([,]) shall ((continue to) pay [an administrative cost assessment. This assessment shall continue until such time as all liabilities and all] [review and investigation fees until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative]] continue to pay an administrative cost assessment and review and investigation fees until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the self-insurance program have been satisfied.~~

(5) ~~The state risk manager ((shall assess each prospective joint self-insurance program, and each prospective individual health and welfare benefit self-insurance program, an initial investigation fee at a rate determined annually by the state risk manager, with the concurrence of the advisory boards. Such fee shall be sufficient[, with concurrence from the property and liability advisory board and the health and welfare advisory board shall charge an initial investigation fee in an amount necessary]) shall assess each prospective joint self-insurance program, and each prospective individual health and welfare benefit self-insurance program, an initial investigation fee at a rate determined annually by the state risk manager, with the concurrence of the advisory boards. Such fee shall be sufficient to cover the costs for the initial review and approval of (([that] [a]) that self-insurance program. ((The fee must accompany the initial submission of the plan of operation and management.))~~

**AMENDATORY SECTION** (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-200 Appeals of fees.** (1) ~~((a))~~ A self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

~~((b))~~ (2) The state risk manager shall review any fee ~~((challenged))~~ appealed by a self-insurance program, together with the reasons for the ~~((challenge))~~ appeal. Within fourteen days of receipt of notification from the self-insurance program, the state risk manager shall respond in writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

**AMENDATORY SECTION** (Amending WSR 93-16-079, filed 8/3/93, effective 9/3/93)

**WAC 236-22-210 Appeals of cease and desist orders.** ~~((1))~~ Within ten days after a joint self-insurance program covering property or liability risks, or an individual or joint self-insurance program covering health and welfare benefits has been served with a cease and desist order under RCW 48.62.091(3), the entity may request an administrative hear-

ing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapter 34.05 RCW and chapter 10-08 WAC.

**NEW SECTION**

The following sections of the Washington Administrative Code are amended and recodified as follows:

Old WAC Number	New WAC Number
WAC 236-22-010	WAC 82-60-010
WAC 236-22-020	WAC 82-60-020
WAC 236-22-030	WAC 82-60-030
WAC 236-22-031	WAC 82-60-031
WAC 236-22-034	WAC 82-60-034
WAC 236-22-036	WAC 82-60-036
WAC 236-22-037	WAC 82-60-037
WAC 236-22-038	WAC 82-60-038
WAC 236-22-050	WAC 82-60-050
WAC 236-22-060	WAC 82-60-060
WAC 236-22-070	WAC 82-60-070
WAC 236-22-080	WAC 82-60-080
WAC 236-22-100	WAC 82-60-100
WAC 236-22-200	WAC 82-60-200
WAC 236-22-210	WAC 82-60-210

**NEW SECTION**

The following sections of the Washington Administrative Code are recodified as follows:

Old WAC Number	New WAC Number
WAC 236-22-032	WAC 82-60-032
WAC 236-22-033	WAC 82-60-033
WAC 236-22-035	WAC 82-60-035
WAC 236-22-040	WAC 82-60-040

**NEW SECTION**

**WAC 82-60-039 Preparation for incorporation of nonprofit corporation members.** Joint property and liability self-insurance programs whose members are local government entities that are preparing to include nonprofit corporations as members of the program shall, as a minimum, address the following in their plan of operation:

- (1) Amount of capitalization each nonprofit corporation will pay to become a member of the self-insurance program;
- (2) Self-insured retention level for nonprofit corporation members;
- (3) Flexibility in premium assessment rates with emphasis on rates for nonprofit corporations that recognize the potential and actual loss experience of the nonprofit corporation;

(4) Procedures for reviewing the financial soundness of each nonprofit corporation being considered for membership in the self-insurance program; and

(5) Representation of nonprofit corporations on the governing board of directors but local government entities must retain control as required by RCW 48.62.121 (2)(a).

**WSR 05-04-093  
PERMANENT RULES  
APPRENTICESHIP AND  
TRAINING COUNCIL**

[Filed February 2, 2005, 9:05 a.m., effective April 1, 2005]

Effective Date of Rule: April 1, 2005.

Purpose: This rule adoption creates a two-year pilot program in Spokane County (July 2004 - July 2006) to allow apprenticeship program sponsors to send registered apprentices to limited training agents. The rule outlines the requirements of the agreement between the program sponsor and the limited training agent. The proposal also requires the department to conduct a study on the effect of the rule and report the findings to the Washington State Apprenticeship and Training Council.

Citation of Existing Rules Affected by this Order: Amending WAC 296-05-303 Apprenticeship committee—Duties and responsibilities.

Statutory Authority for Adoption: RCW 49.04.010.

Adopted under notice filed as WSR 04-22-109 on November 3, 2004.

Changes Other than Editing from Proposed to Adopted Version: Based on public comment received at the hearings held in Tukwila and Spokane, Washington, the two-year pilot program will only be conducted in Spokane County.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 2, 2005.

Pete Crow  
Chair

**AMENDATORY SECTION** (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-303 Apprenticeship committees—Duties and responsibilities.** (1) Apprenticeship committees

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are appointed according to the provisions of RCW 49.04.040 and are composed of at least four members but no more than twelve. However, the WSATC may grant exceptions to this provision.

(2) Chapter 49.04 RCW, these rules, and the approved standards under which a committee operates define the duties of an apprenticeship committee. Committees shall function, administer or relinquish authority only with the consent of the WSATC.

(3) A committee is responsible for:

- The day-to-day operations of the apprenticeship and training program;
- Operating the program according to WSATC approved standards;
- Accepting or rejecting applicants for apprenticeship or training;
- Registering approved applicants with the supervisor;
- Removing apprentices from the program as provided by the approved program standards;
- Informing the supervisor of any matters that affect the standing of individuals as apprentices; and
- Entering into agreements with other apprenticeship committees for the use of apprentices by training agents that are working outside their approved geographic area served.

The WSATC will only recognize apprentices registered with the supervisor.

(4) Committees approved by the WSATC must offer training opportunities on an equal basis to all employers and apprentices including all rights, appeals, and services available in the existing apprenticeship program. All existing committees that represent multiple employer or employer associations, except for committees that represent plant programs, are expected to provide access to apprenticeship and training opportunities to employers not currently participating in the program. Those opportunities must:

- Provide training at a cost equivalent to that incurred by currently participating employers and apprentices;
- Grant equal treatment and opportunity for all apprentices;
- Offer reasonable working and training conditions and apply those conditions to all apprentices uniformly and equally;
- Not require an employer to sign a collective bargaining agreement as a condition of participation in an apprenticeship program;
- Require all employers requesting "approved training agent" status to comply with an WSATC approved agreement and all federal and state apprenticeship rules and the appropriate apprenticeship standards. (The training agent shall employ only registered apprentices when training for that occupation or trade);
- Require sponsors, who approve "approved training agent" agreements, to furnish the department with a copy of the agreement and/or the list of approved training agents within thirty days of committee approval; and
- Require sponsors who rescind "approved training agent" agreements and/or the list of approved training agents to notify the department that they have done so within thirty days of said action.

(5) Apprenticeship program sponsors may send registered apprentices to limited training agents.

This shall be called a "limited training agent agreement," which is when an employer that is not currently a registered training agent to a set of apprenticeship standards, enters into a single public works project agreement with the program sponsor for the purposes of apprenticeship utilization. The limited training agent agreement must specify that:

- The program sponsor must ensure that all program requirements are being followed.
- Apprenticeship utilization requirements must be in the public works contract.
- The agreement is for a specific trade(s) or occupation(s).

The limited training agent must sign the training agent form.

This limited training agent agreement does not obligate the employer to use registered apprentices in any other type of work or trade or occupation other than the one for which the limited training agreement is entered into.

This is a pilot program lasting for two years (July 2004 - July 2006) in Spokane County only.

The department must conduct a study and provide a report back to the Washington state apprenticeship and training council on the effect of the rule. This report should contain vital information including the numbers of apprenticeship hours generated, any adverse impacts on apprenticeship programs and apprentices, any compliance problems, any health and safety problems, or other considerations requested by the council at a later date. This report is due to the WSATC by March 15, 2006.

(6) If an existing committee fails to or refuses to offer apprenticeship and training opportunities to all employers, the WSATC may take action to remove the restrictions to access in order to comply with the intent of chapter 49.04 RCW and these rules. Action may include, but is not limited to, the decertification of the existing committee and recognition of a new committee.

## WSR 05-04-112

### PERMANENT RULES

### DEPARTMENT OF HEALTH

[Filed February 2, 2005, 11:52 a.m., effective March 5, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This is a new rule that implements 2004 legislative requirements. The rule defines blood-borne pathogens. DSHS must use this definition when placing a child in out-of-home care. If DSHS is aware that a child is infected with a blood-borne pathogen, it must notify the out-of-home provider of the specific blood-borne pathogen.

Statutory Authority for Adoption: Chapter 40, Laws of 2004 (RCW 74.13.289).

Adopted under notice filed as WSR 04-24-084 on December 1, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 3, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 0, Repealed 0.

Date Adopted: February 1, 2005.

Mary C. Selecky  
Secretary

### Chapter 246-140 WAC

## BLOOD-BORNE PATHOGENS IN CHILDREN PLACED IN OUT-OF-HOME CARE

### NEW SECTION

**WAC 246-140-001 Purpose.** These regulations define the term "blood-borne pathogens" solely for use by the department of social and health services when placing a child in out-of-home care pursuant to RCW 74.13.289.

### NEW SECTION

**WAC 246-140-010 Definition.** The term "blood-borne pathogen" means pathogenic microorganisms that are present in human blood and can cause disease in humans including: Arboviral infections; babesiosis; brucellosis; Creutzfeldt-Jakob disease; hepatitis B virus (HBV); hepatitis C virus (HCV); human immunodeficiency virus (HIV); human T-lymphotrophic virus Type I; leptospirosis; malaria; relapsing fever; syphilis; viral hemorrhagic fever.

### NEW SECTION

**WAC 246-140-020 Disclosure of information.** Disclosure of information related to HIV and other sexually transmitted diseases must be in accordance with RCW 70.24.105.

**WSR 05-03-016**  
**EMERGENCY RULES**  
**DEPARTMENT OF REVENUE**

[Filed January 7, 2005, 9:35 a.m., effective January 7, 2005]

Effective Date of Rule: Immediately.

Purpose: In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the Department of Revenue detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The purpose of WAC 458-20-267 Annual reports for certain tax adjustments, is to explain the reporting requirements for tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, and electrolytic processing industries. This rule explains who is required to file annual reports, how to file reports and what information must be included in the reports.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The first annual report is due on March 31, 2005. The rule is necessary to provide guidance to taxpayers on who is required to file the annual reports, how the file them, and what information to be included in them. The department is unable to adopt a permanent rule within a reasonable time before March 31, 2005, making an emergency rule necessary.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Janis P. Bianchi, Manager  
 Interpretations and  
 Technical Advice Unit

**NEW SECTION**

**WAC 458-20-267 Annual reports for certain tax adjustments.** (1) **Introduction.** In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the department of revenue (the "department") detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. This rule explains the reporting requirements

for tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, and electrolytic processing industries. This rule explains who is required to file annual reports, how to file reports, and what information must be included in the reports.

This rule contains a number of examples. These examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Who is required to file the report?** A recipient of the benefit of the following tax adjustments must complete and file an annual report with the department:

(a) **Tax adjustments for the aerospace industry:**

(i) The B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts;

(ii) The B&O tax credit provided by RCW 82.04.4461 for preproduction development expenditures for manufacturers and processors for hire of commercial airplanes and component parts;

(iii) The retail sales and use tax exemption provided by RCW 82.08.980 and 82.12.980 for constructing new buildings used for manufacturing superefficient airplanes;

(iv) The leasehold excise tax exemption provided by RCW 82.29A.137 for facilities used for manufacturing superefficient airplanes;

(v) The property tax exemption provided by RCW 84.36.655 for property used for manufacturing superefficient airplanes; and

(vi) The B&O tax credit for property taxes provided by RCW 82.04.4463 for manufacturers and processors for hire of commercial airplanes and component parts.

(b) **Tax adjustments for the aluminum smelter industry:**

(i) The B&O tax rate provided by RCW 82.04.2909 for aluminum smelters;

(ii) The B&O tax credit for property taxes provided by RCW 82.04.4481 for aluminum smelter property;

(iii) The retail sales and use tax exemption provided by RCW 82.08.805 and 82.12.805 for property used at aluminum smelters; and

(iv) The use tax exemption provided by RCW 82.12.022 (5) for the use of natural gas;

(c) **Tax adjustments for the electrolytic processing industry.** The public utility tax exemption provided by RCW 82.16.0421 for sales of electricity to electrolytic processing businesses.

(3) **How to file annual reports.**

(a) **Forms and formats.** A person must use forms developed by the department to complete the annual report unless a person obtains prior approval from the department to file the annual report in an alternative format. The department has developed a form that taxpayers may use to complete the survey. Report forms may be obtained by downloading from the department's website ([www.dor.wa.gov](http://www.dor.wa.gov)). A report form may also be obtained at department district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue  
 Special Programs Division  
 Post Office Box 47477  
 Olympia, WA 98504-7477  
 Fax: 360-586-2163

(b) **First report.** The first report filed under this subsection must also include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax adjustment. In order to meet this requirement, a person must complete a report for the calendar year immediately preceding the first use of a tax adjustment.

(c) **Due date.** The report must be filed by March 31st following any calendar year in which any tax adjustment is taken against taxes due.

(d) **Examples.**

(i) An aerospace firm begins taking the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts on October 1, 2005. By March 31, 2006, the aerospace firm must provide two annual reports, one covering calendar year 2004 and another covering calendar year 2005. If the aerospace firm continues to take B&O tax rate provided by RCW 82.04.260(13) during calendar year 2006, a single annual report is due on March 31, 2007, covering calendar year 2006.

(ii) An aluminum smelter begins taking the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 1, 2004. By March 31, 2005, the aluminum smelter must provide two annual reports, one covering calendar year 2003 and another covering calendar year 2004. If the aluminum smelter continues to take the B&O tax rate provided by RCW 82.04.2909 during calendar year 2005, a single annual report is due on March 31, 2006, covering calendar year 2005.

(4) **What manufacturing site(s) are included in the annual report?**

(a) There must be a separate annual report filed for each manufacturing site at which activities are conducted that qualifies for a tax adjustment.

(b) **What is a "manufacturing site"?** For purposes of the annual report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax adjustment. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports nonqualifying activities such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities.

(i) **Which manufacturing site is included in the annual report for the aerospace industry tax adjustments?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration ("FAA") for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(ii) **Which manufacturing site is included in the annual report for the aluminum industry tax adjustments?** The location(s) where a person who is an aluminum smelter engaging in the business of manufacturing aluminum within this state is the manufacturing site(s) included in the annual report. An "aluminum smelter" means the manufacturing facility of any direct service industrial customer that processes alumina into aluminum. A "direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than 50% owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(iii) **Which manufacturing site is included in the annual report for the electrolytic processing businesses tax adjustments.** The location(s) where a person is engaged in a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process within this state is the manufacturing site(s) included in the annual report. A "chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "chlor-alkali electrolytic processing business" and "sodium chlorate electrolytic processing business" do not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville Power Administration as of June 10, 2004.

(c) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the department's special programs division at:

Department of Revenue  
 Special Programs Division  
 Post Office Box 47477  
 Olympia, WA 98504-7477  
 Fax: 360-586-2163

(d) **Examples.**

(i) ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial air-

planes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(ii) Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. Acme Engines must file an annual report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iii) Tacoma Rivets, located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iv) Dynamic Aerospace Composites is a company that only manufactures FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites. Dynamic Aerospace Composites can make a request to the department to consolidate its employment positions into a single annual report if the jobs located at the three manufacturing sites have equivalent employment, wages, and employer-provided health and retirement benefits.

(v) Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(13) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Because Worldwide

Aerospace has no manufacturing sites in Washington state, it is not required to complete the annual report.

**(5) What jobs are included in the annual report?**

(a) The annual report covers all full-time, part-time, and temporary jobs at the manufacturing site as of December 31st of the calendar year for which an applicable tax adjustment is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax adjustment are included in the report if the job is located at the manufacturing site.

**(b) Examples.**

(i) XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. Its management and human resources divisions are located in an administrative office across the street from its Tacoma, WA aluminum smelter. XYZ Aluminum's annual report for its Tacoma, WA location will include the employment positions in its administrative offices because those jobs are located at the Tacoma, WA manufacturing site.

(ii) AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

**(6) How is employment detailed in the annual report?**

The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

- (a) Major group;
- (b) Minor group;
- (c) Broad occupation; and
- (d) Detailed occupation.

All occupations are clustered into one of twenty-three major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by contacting the department's special programs division or by consulting the United States Department of Labor, Bureau of Labor Statistics online at [www.bls.gov/soc](http://www.bls.gov/soc). The annual report does not require names of employees.

**(7) What is total employment at the manufacturing site?** The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax adjustment is taken. Total employment includes persons who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those persons are receiving

wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(8) **What are full-time, part-time and temporary employment positions?** An employer must provide information on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time or temporary employment positions on December 31st of the calendar year for which an applicable tax adjustment is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(a) **Full-time and part-time employment positions.** In order for a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include persons obtained through temporary staffing agencies.

(c) **Examples.** Assume these facts for the following examples. National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) Through a college work-study program, National Airplane Inc. employs six interns from September through June

in its engineering department. The interns work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 am to 5:00 pm Monday thru Friday. The second shift works six hours from 6:00 pm to midnight Monday thru Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

(iv) On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

(9) **What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(10) **How are wages detailed for the annual report?**

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

- Up to \$10.00 an hour;
- \$10.01 an hour to \$15.00 an hour;
- \$15.01 an hour to \$20.00 an hour;
- \$20.01 an hour to \$30.00 an hour; and
- \$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(b) **Examples.** Assume these facts for the following examples. Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs five hundred people at the manufacturing site. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) One hundred employees classified as SOC Production Occupations are paid \$12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid \$17.00 an hour. One hundred employees classified as SOC Production Occupations are paid \$25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid \$10.01 an hour to \$15.00 an hour; 50% are paid \$15.01 an hour to \$20.00 an hour; and 25% are paid \$20.01 an hour to \$30.00 an hour.

(ii) Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of \$42,000; another ten employees are paid \$50,000 annually; and the remaining employees are all paid over \$70,000 annually. In order to report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid \$20.01 an hour to \$30.00 an hour and 60% are paid \$30.00 an hour or more.

(iii) All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive \$10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a \$10,000 bonus for exceeding company's sales goals. In order to report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid \$15.01 an hour to \$20.00 an hour.

(iv) Ten of the employees classified as SOC Office and Administrative Support Occupations earn \$9.50 an hour. The remaining ten employees classified as SOC Office and Administrative Support Occupations earn wages between \$10.01 an hour to \$15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least \$10.50 an hour, but no more than \$15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour.

(11) **What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, health, dental, and/or vision care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.-010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "Health care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(b) "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) "Vision care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of the human eye and human vision system.

(12) **How are employer-provided health benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided health plan. An employee is "eligible" if the employee can currently participate in a health plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's health plan. If an employer provides multiple health plans, an employee is "eligible" if the employee can currently participate in one of the health plans. For each SOC major group, report the number of enrolled employees, as a percentage of total employees eligible to participate in an employer-provided health plan. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(b) **Examples.**

(i) Acme Engines has one hundred employees classified as SOC Production Occupations. It offers these employees two health plans. Health Plan A is available to all employees at the time of hire. Health Plan B is available to employees after working ninety days. On December 31st, fifty employees are covered by Health Plan A and thirty employees are covered by Health Plan B. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided health benefits because all of its employees are eligible for at least one health plan offered by Acme Engines. Eighty percent of employment positions eligible for health benefits in SOC Production Occupations are enrolled, which represents the total number of eligible employees covered by both health plans.

(ii) Apex Aluminum has fifty employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one health plan to its employees. Employees must work for Apex Aluminum for six months before qualifying for health benefits. On October 1st, Apex Aluminum hires ten new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided health benefits. If forty of the fifty eligible employees are covered by the health plan Apex Aluminum offers, 80% of employment positions eligible for health benefits in SOC Transportation and Material Moving Occupations are enrolled.

(c) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one

type of health plan or more than one of the same type of health plan, it must report each health plan separately. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. In those instances where the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses and unmarried dependant children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

(d) **Health care services plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each health plan. If differences exist within a health plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrolled employees in the form of co-payments, co-insurance, or deductibles. Co-payments and co-insurance mean an amount specified in a health plan which is an obligation of enrolled employees for a specific health care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the health plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient health care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means nonemergency health care services provided in an office setting by the employee's primary care provider.

(e) **Dental care services plans.** In addition to the health plan information required for each dental care services plan, the annual maximum benefit for each dental care services plan must be stated in the report. Most dental care service plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care services plan will pay toward the cost of dental care service within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

(f) **Vision care services plans.** If a separate health plan is provided for vision care services, report the information required in (c)(iv) and (v) of this subsection for a health plan for each vision care services plan.

(g) **Are there alternative methods for reporting separately for each health plan?** The department may agree to allow a person who offers more than one of the same type of health plan to consolidate the detail required in (c) through (f) of this subsection by using ranges to describe the information. A person may request written approval to consolidate detailed health plan reporting by contacting the department's special programs division at:

Department of Revenue  
Special Programs Division  
Post Office Box 47477  
Olympia, WA 98504-7477  
Fax: 360-586-2163

(h) **Examples.**

(i) Assume the following facts for the following examples. Mosaic Aerospace employs one hundred employees and offers two health plans as health benefits to employees at the time of hire. Health Plan A is a managed care health plan. Health Plan B is a fee for service health plan.

(A) Forty Mosaic Aerospace employees are enrolled in Health Plan A. It costs Mosaic Aerospace \$750 a month for each employee covered by Health Plan A. Enrolled employees must pay \$150 each month to participate in Health Plan A. If an enrolled employee uses its network of physicians, Health Plan A will cover 100% of the cost of primary care provider services with employees paying a \$10.00 co-payment per visit. If an enrolled employee uses its network of hospitals, Health Plan A will cover 100% of the cost of hos-

pital services with employees paying a \$200 deductible. If an enrolled employee does not use a network provider, Health Plan A will cover only 50% of the cost of any service with a \$500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Health Plan A will cover the cost of prescription drugs with enrolled employees paying a \$10.00 co-payment. If an enrolled employee uses the mail-order pharmacy option offered by Health Plan A, co-payment for prescription drug benefits is not required.

Mosaic Aerospace will report Health Plan A separately as a managed care health plan. One hundred percent of its employees are eligible to participate in Health Plan A. The percentage of eligible employees enrolled in Health Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a \$10.00 co-payment for primary care provider services and a \$200 deductible for hospital services because this is the lowest cost option within Health Plan A. Mosaic Aerospace will report that employees have a \$10.00 co-payment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit co-payment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

(B) Fifty Mosaic Aerospace employees are enrolled in Health Plan B. It costs Mosaic Aerospace \$1,000 a month for each employee covered by Health Plan B. Enrolled employees must pay \$300 a month to participate in Health Plan B. Health Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a \$200 annual deductible for each covered service. Health Plan B covers 80% of the cost of hospital services with employees paying a \$250 annual deductible.

Mosaic Aerospace will report Health Plan B separately as a fee for service health plan. One hundred percent of its employees are eligible to participate in Health Plan B. The percentage of eligible employees enrolled in Health Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a \$200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a \$250 annual deductible and 20% co-insurance obligation.

(C) On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had fifty employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed health care plan for their health benefits. The former General Aircraft Inc. employees will retain their current health benefits until the following June when employees would be offered Mosaic Aerospace health benefits. On December 31st, Mosaic Aerospace is offering employees two managed health care plans and may request to consolidate the detail required in (c) through (f) of this subsection for this type of health plan by using ranges to report the information.

(ii) Aero Turbines employs one hundred employees. It offers employees health savings accounts as a health benefit

to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible health plan to be used in conjunction with the account. Aero Turbines deposits \$500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible health plan for hospital services. The high deductible health plan has an annual deductible of \$2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the health plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in Health Plan B is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of \$500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible health plan covers the costs of hospital services, Aero Turbines will report that the health plan has an annual deductible of \$2,000 and employees have 25% co-insurance obligation.

**(13) What are employer-provided retirement benefits?** For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. Retirement plans include pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

**(14) How are employer-provided retirement benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed. Inactive or terminated retirement plans may be excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

**(a) Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. For each SOC major group, report the number of employees enrolled, as a percentage of total employees eligible to participate in an employer-provided retirement. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

**(b) Examples.**

(i) Lincoln Airplane has one hundred employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. Twenty-five employees are fully vested in the pension. All employees are eligible to participate in a 401(k) Plan. Ten eligible employees are participating in the 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane. Sixty of employment positions eligible for retirement benefits in SOC Production Occupations are enrolled, which represents the total number of eligible employees enrolled in both retirement plans, regardless of whether the employee has a vested benefit.

(ii) Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. Of these employees, fifteen are enrolled in the SIMPLE IRA. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits with 33.3% enrolled.

**(c) Detail by retirement plan.** The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it must report each retirement plan separately according to its maximum benefit the employer will contribute into the retirement plan. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at

the manufacturing site. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

**(d) Are there alternative methods for reporting separately for each retirement plan?** The department may agree to allow a person who offers more than one of the same type of retirement plan to consolidate the detail required in (c) of this subsection by using ranges to describe the information. A person may request written approval to consolidate detailed retirement plan reporting by contacting the department's special programs division at:

Department of Revenue  
Special Programs Division  
Post Office Box 47477  
Olympia, WA 98504-7477  
Fax: 360-586-2163

**(e) Examples.**

(i) General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs one hundred employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of \$10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

(A) General Airspace will report that it offers three retirement plans - A Flat-Benefit pension, a Cash-Balance pension, and a 401(k) Plan. General Airspace is not required to report the inactive cash balance pension it maintains for former United Skyways employees.

(B) For the Flat-Benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(C) For the Cash-Balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to partici-

pate, 100% are enrolled. General Airspace will report a maximum contribution of \$10,000 or 7% of an employee's annual compensation.

(D) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled.

(ii) Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs two hundred employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, seventy-five have worked five years or more. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

(A) Washington Alloys will report that it offers two retirement plans - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation.

(B) For the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(C) For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 66.6% are enrolled.

(D) Washington Alloys could request to consolidate the detail required in (c) of this subsection by using ranges to describe the information. If the department approved such a request, Washington Alloys could report this information as 87.5% of its total employment positions are eligible to participate in 401(k) Plans with a maximum employer contribution of 3%-5% of annual compensation. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

**(15) Additional reporting for aluminum smelters and electrolytic processing businesses.** Annual reports must include data for actual levels of employment for each quarter of the calendar year covered by the report. In addition, the report must identify the number of jobs affected by any employment reductions that have been publicly announced within sixty days of the date the report is submitted to the department. For an aluminum smelter, the annual report must indicate the quantity of aluminum smelted at the plant during the time period covered by the report. For an electrolytic processing business, the annual report must indicate the quantity of product produced at the plant during the time period covered by the report.

(16) **Are annual reports confidential?** Annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(17) **What are the consequences for failing to file a complete annual report?** If a person fails to submit a complete annual report by March 31st, the department shall declare the amount of taxes against which the tax adjustment was taken during the previous calendar year to be immediately due and payable. Interest, but not penalties, will be assessed retroactively to the date the tax adjustment was taken and accrues until taxes for which the tax adjustment was taken are repaid. Interest will be assessed at the rate provided for delinquent excise taxes as provided under chapter 82.32 RCW.

**WSR 05-04-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-09—Filed January 19, 2005, 3:42 p.m., effective January 20, 2005, 12:01 a.m.]

Effective Date of Rule: January 20, 2005, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Fishing would jeopardize the research and monitoring components of an ongoing wild winter steelhead recovery program in the Hamma Hamma River. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 18, 2005.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Hamma Hamma River (Mason County)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. January 20, 2005 until further notice, it is unlawful to fish in those waters of the Hamma Hamma River.

**WSR 05-04-010**

**EMERGENCY RULES**

**WASHINGTON STATE LOTTERY**

[Filed January 21, 2005, 3:58 p.m., effective January 21, 2005]

Effective Date of Rule: Immediately.

Purpose: To make the public more aware of the Lotto game and to increase revenue for the state.

Citation of Existing Rules Affected by this Order:  
Amending chapter 315-34 WAC, Lotto 6 of 49.

Statutory Authority for Adoption: Chapter 67.70 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: For increased sales and contributions.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 20, 2005.

Ceil Buddeke  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-15-054, filed 7/15/96, effective 8/15/96)

**WAC 315-34-010 Definitions for Lotto.** (1) Number: Any play integer from 1 through 49 inclusive.

(2) Game grids: A field of ((the)) 49 numbers found on the play slip.

(3) Play: One selection of six numbers.

(4) ((Pair)) Set: Two plays.

(5) Play slip: A ((mark-sense)) mark-sensitive game card used by players of Lotto to select plays.

(6) Lotto ticket: A computer-generated receipt evidencing payment for two or more plays in the Lotto game. Tickets shall be issued by ~~((an on-line terminal))~~ a licensed lottery retailer and shall list the set of six-number plays that belong to the ticket holder.

**AMENDATORY SECTION** (Amending WSR 96-15-054, filed 7/15/96, effective 8/15/96)

**WAC 315-34-020 Price of Lotto play.** The price of each Lotto play shall be \$.50 and shall be sold only in ~~((pairs))~~ sets for \$1.00.

**AMENDATORY SECTION** (Amending WSR 90-19-048, filed 9/14/90, effective 10/15/90)

**WAC 315-34-030 Play for Lotto.** (1) Type of play: A Lotto player must select six numbers in each play. A winning play is achieved only when 3, 4, 5, or 6 of the numbers selected by the player match, in any order, the six winning numbers drawn by the lottery.

(2) Method of play: The player will use play slips to make number selections. The ~~((on-line))~~ lottery terminal will read the play slip and issue ticket(s) with corresponding plays. If a play slip is not available, the ~~((on-line))~~ lottery retailer may enter the selected numbers via the keyboard. A player may choose to have the number selections made by the lottery terminal, a random number generator operated by the computer, commonly referred to as "quick ~~((play))~~ pick."

**AMENDATORY SECTION** (Amending WSR 03-23-097, filed 11/17/03, effective 11/17/03)

**WAC 315-34-040 ~~((Prize[d]s))~~ Prizes for Lotto.** (1) The prize amounts to be paid to each Lotto player who selects a winning combination of numbers in the first, second, third~~((,))~~, and ~~((fourth))~~ fourth prize categories are as follows:

WINNING COMBINATIONS	PRIZE CATEGORIES	PRIZE AMOUNTS	ODDS OF WINNING (ONE PLAY)
All six <del>((winner twin-ning))</del> winning numbers in one play	First Prize	Jackpot	<del>((1:6,991,908))</del> 1:13,983,816
Any five but not six winning numbers in one play	Second Prize	\$1,000	<del>((1:27,100))</del> 1:54,201
Any four but not five or six winning numbers in one play	Third Prize	<del>((30))</del> \$30	<del>((1:516))</del> 1:1,033
Any three but not four, five or six winning numbers in one play	Fourth Prize	\$3	<del>((1:28))</del> 1:57

(2) Prize amounts.

(a) First prize (jackpot). ~~((The))~~ All first prizes will be the amount announced by the director as the Lotto jackpot. The jackpot will be divided equally among all players who selected all six winning numbers in one play (in any sequence).

(b) Second prize. The second prize will be \$1,000, which will be paid to each player who selected five of the six winning numbers in one play (in any sequence).

(c) Third prize. The third prize will be \$30, which will be paid to each player who selected four of the six winning numbers in one play (in any sequence).

(d) Fourth prize. A \$3.00 prize is to be paid to each player who selected three of the six winning numbers in one play (in any sequence).

(e) The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(f) In the event any player who has selected three, four, five, or six of the six winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for further use as prizes, pursuant to RCW 67.70.190.

**AMENDATORY SECTION** (Amending WSR 01-17-022, filed 8/6/01, effective 9/6/01)

**WAC 315-34-050 Ticket purchases.** (1) Lotto tickets may be purchased ~~((or redeemed during no less than seven-teen hours each day))~~ daily in accordance with a schedule to be determined by the director~~((, provided that on-line))~~. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours. Lotto tickets may be purchased only from a licensed lottery retailer.

(2) ~~((Lotto tickets may be purchased only from a lottery retailer authorized by the director to sell on-line tickets.))~~

(3) Lotto tickets shall, on the front of the ticket, contain the player's selection of numbers, amount, game grids played, drawing date ~~((and validation))~~, ticket serial number and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information and signature area, governing statutes and rules, and the ticket ~~((serial))~~ stock number.

**AMENDATORY SECTION** (Amending WSR 01-17-022, filed 8/6/01, effective 9/6/01)

**WAC 315-34-057 Lotto prize claim and payment methods.** The following sets forth requirements for claims and payment of Lotto prizes:

(1) Claims for prize payment shall be made in accordance with chapter 315-30 WAC ~~((315-30-030(6)))~~.

(2) Prize payments shall be made as follows:

(a) **Cash option:** After a player has claimed a jackpot prize or a share of a jackpot prize, and after the claim has been validated (including a debt check pursuant to WAC 315-06-125), the player may elect to be paid a one-time single cash payment of fifty percent of his or her share of the announced jackpot, provided:

(i) The player must elect this cash option within sixty days of the validation of his or her prize, by following the procedure required by the lottery;

(ii) If the federal tax code is interpreted by federal authorities to require that this cash option be exercised within sixty days of the drawing for the prize, then (a)(i) of this sub-

EMERGENCY

section will not apply and instead, the player must elect this cash option within sixty days of the date of the drawing for the prize;

(iii) The player's choice of payment method as designated by signing the appropriate lottery form is final and may not be changed by the player at a later date.

(b) **Annuity:** A player who chooses not to elect the cash option or who does not elect the cash option within the sixty-day limit will be paid his or her prize in twenty-five annual installment payments.

**AMENDATORY SECTION** (Amending WSR 90-19-048, filed 9/14/90, effective 10/15/90)

**WAC 315-34-060 Drawings.** (1) The Lotto drawing shall be held ~~((each week on Wednesday and Saturday evenings beginning October 24, 1990, except that the director may change the drawing schedule if Wednesday or Saturday is a holiday))~~ up to once every twenty-four hours, at the discretion of the director.

(2) The drawing will be conducted by lottery officials.

(3) Each drawing shall ~~((determine, at random, six winning numbers with the aid of mechanical drawing equipment which))~~ randomly select six winning numbers between 1 and 49. The drawing method shall be tested before and after ((that)) each drawing. Any drawn numbers are not declared winning numbers until the drawing is certified by the lottery. The winning numbers shall be used in determining all Lotto winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(4) The drawing shall not be invalidated based on the liability of the lottery.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 315-34-070 Double Lotto.
- WAC 315-34-080 Price of Double Lotto play.
- WAC 315-34-090 Prizes for Double Lotto.
- WAC 315-34-100 Double Lotto ticket purchases.

**WSR 05-04-014**

**EMERGENCY RULES**

**STATE BOARD OF EDUCATION**

[Filed January 24, 2005, 1:55 p.m., effective January 24, 2005]

Effective Date of Rule: Immediately.

Purpose: The amendments to WAC 180-20-101 bring the rule into compliance with the Washington State Department of Licensing (DOL) terminology for commercial driver licenses after a positive drug/alcohol test; the changes also bring the rule into compliance with the federal statute regarding refusal to take a drug/alcohol test.

Citation of Existing Rules Affected by this Order: Amending WAC 180-20-101.

Statutory Authority for Adoption: RCW 28A.160.210.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The emergency adoption was necessary to keep drivers of school buses from continuing to drive if they refuse to take a drug/alcohol test.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 13, 2005.

January 21, 2005  
Larry Davis  
Executive Director

**AMENDATORY SECTION** (Amending WSR 04-08-055, filed 4/2/04, effective 5/3/04)

**WAC 180-20-101 Minimum qualifications of school bus drivers.** (1) Every school bus driver must meet and continue to meet the following minimum requirements:

- (a) Be at least twenty-one years of age.
- (b) Have a valid driver's license or commercial driver's license, as required by law, issued by the state department of licensing.
- (c) Have at least one year of experience as a driver of a truck or commercial vehicle requiring a special endorsement or, in the alternative, at least three years of experience as a driver of a passenger vehicle.
- (d) Hold a current and valid first-aid card or equivalent which certifies that the applicant has completed a course in the basic principles of first aid.
- (e) Submit to the school district a disclosure of all crimes against children or other persons and all civil adjudications in a dependency action or in a domestic relation action and all disciplinary board final decisions of sexual abuse or exploitation or physical abuse as required by RCW 43.43.834(2) and disclosure of all convictions which may be grounds for denial of authorization under (h), (i), and (j) of this subsection.

(f) Submit to a criminal record check according to chapter 28A.400 RCW which shows that no offenses have been

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committed which would be grounds for denial of an authorization.

(g) Shall not have misrepresented or concealed a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

(h) Shall not have had a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding three years or have had their commercial driver's license disqualified, suspended or revoked within the preceding three years; a certified copy of the disqualification, suspension or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension or revocation.

(i) Shall not have incurred three or more speeding tickets of ten miles per hour or more over the speed limit within the last thirty-six months.

(j) Shall not have been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a plea of guilty or nolo contendere is the basis for the conviction) nor under a deferred prosecution under chapter 10.05 RCW where the conduct or alleged conduct is related to the occupation of a school bus driver, including but not limited to the following:

(i) Any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, sexual exploitation of a child under chapter 9.68A RCW; sexual offenses under chapter 9A.44 RCW where a minor is the victim; promoting prostitution of a minor under chapter 9A.88 RCW; the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction;

(ii) Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription within the last seven years: Provided, That in the case of felony convictions, the applicable time limit shall be ten years;

(iii) Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last three years;

(iv) Any crime against children or other persons as defined in RCW 43.43.830(5) when the date of the conviction or prison release, which ever is more recent, is within ten years of the date of the job application for felonies and within seven years for other crimes.

(k) Shall not have been found in any dependency action under RCW 13.34.030 to have sexually assaulted or exploited any minor or to have physically abused any minor, within the last seven years.

(l) Shall not have been found by a court in a domestic relation proceeding under Title 26 RCW, to have sexually abused or exploited any minor or to have physically abused any minor, within the last seven years.

(m) Shall not have been found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person, within the last seven years.

(n) Shall not have intentionally and knowingly transported public school students within the state of Washington within the previous five years with an expired, lapsed, surrendered, or revoked school bus driver's authorization in a position for which authorization is required under this chapter. Shall not have intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended driver's license.

(o) Shall not have a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, bus drivers, or other colleagues. This subsection shall not be applied so as to deny, revoke, or suspend authorizations to any individual for the orderly exercise during off-duty hours of any rights guaranteed under the law to citizens generally, except where such conduct indicates a safety risk for the transportation of students.

(p) Shall not have refused to take a drug or alcohol test as required by the provisions of 49 C.F.R. 382 within the preceding three years. Provided, this requirement shall not apply to any refusal to take a drug or alcohol test prior to January 31, 2005.

(2) Every school bus driver must also meet and continue to meet the following requirements:

(a) Verification by a local school district that the person seeking a school bus driver authorization:

(i) Is physically able to maneuver and control a school bus under all driving conditions; and

(ii) Is physically able to use all hand/or foot operated controls and equipment found on state minimum specified school buses; and

(iii) Is physically able to perform daily routine school bus vehicle safety inspections and necessary emergency roadside services; and

(iv) Has sufficient strength and agility to move about in a school bus as required to provide assistance to students in evacuating the bus. The driver must be able to move from a seated position in a sixty-five passenger school bus, or the largest school bus the driver will be operating, to the emergency door, open the emergency door, and exit the bus through the emergency door, all within twenty-five seconds.

(b) Provide verification of passing a medical examination every twenty-four months in accordance with the standards established in 49 C.F.R. 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations. School bus drivers must continue to meet these medical examination requirements during the time between examinations. This requirement does not prevent a school district from requesting a more frequent examination.

(c) Satisfactorily complete a school bus driver training course and each year thereafter, satisfactorily complete a school bus driver in-service training course.

**WSR 05-04-019**

**EMERGENCY RULES**

**WASHINGTON STATE LOTTERY**

[Filed January 24, 2005, 2:27 p.m., effective January 24, 2005]

Effective Date of Rule: Immediately.

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Purpose: To make the public more aware of the Quinto game and to increase revenue for the state.

Citation of Existing Rules Affected by this Order: Amending chapter 315-33A WAC, Quinto rules.

Statutory Authority for Adoption: Chapter 67.70 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: For increased sales and contributions.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 20, 2005.

Ceil Buddeke  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 92-11-033, filed 5/15/92, effective 6/15/92)

**WAC 315-33A-010 Definitions for Quinto.** (1) Card suit: Heart, diamond, club, or spade symbol.

(2) Number: Any integer from 2 through 10 inclusive and jack, queen, king, or ace.

~~(3) ((Set: One number and one card suit.~~

~~(4))) Play: One selection of five ((sets)) numbers.~~

~~(4) Play slip: A mark-sensitive game card used by players of Quinto to select plays.~~

~~(5) Quinto ticket: A computer-generated receipt evidencing payment for one or more plays in the Quinto game. Tickets shall be issued by a licensed lottery retailer and shall list the five number play(s) that belong to the ticket holder.~~

**AMENDATORY SECTION** (Amending WSR 92-11-033, filed 5/15/92, effective 6/15/92)

**WAC 315-33A-020 Price of Quinto play.** The price of each Quinto play shall be \$1.00. Each Quinto ticket shall contain at least one(~~, but not more than five~~) Quinto play((s)).

**AMENDATORY SECTION** (Amending WSR 93-19-052, filed 9/10/93, effective 10/11/93)

**WAC 315-33A-030 Play for Quinto.** (1) Type of play: Each play is a selection of five ((sets)) numbers. A winning

play is achieved only when 2, 3, 4, or 5 of the ((sets)) selected numbers match, in any order, the five winning ((sets)) numbers drawn by the lottery.

(2) Method of play: A player may use a play slip to make ((set)) number selections. The ((on-line)) lottery terminal will read the play slip and issue ticket(s) with corresponding ((sets)) numbers. A player may ((also)) choose to have the ((on-line computer system make all set selections with the use of)) number selections made by the lottery terminal, a random number generator operated by the computer, ((a method)) commonly referred to as "quick ((play)) pick."

**AMENDATORY SECTION** (Amending WSR 91-20-062, filed 9/25/91, effective 10/26/91)

**WAC 315-33A-040 Prizes for Quinto.** (1) The prize amount to be paid to each Quinto player who holds a winning combination of ((sets)) numbers in the first prize category shall vary due to the parimutuel calculation of prizes. The prize amount to be paid to each Quinto player who holds a winning combination of ((sets)) numbers in the second prize category shall be \$1,000.00. The prize amount to be paid to each Quinto player who holds a winning combination of ((sets)) numbers in the third prize category shall be \$20.00. The prize amount to be paid to each Quinto player who holds a winning combination of ((sets)) numbers in the fourth prize category shall be \$1.00.

WINNING COMBINATIONS	PRIZE CATEGORIES	ODDS OF WINNING (ONE PLAY)
All five winning ((sets)) numbers in one play	First Prize	1:2,598,960
Any four but not five winning ((sets)) numbers in one play	Second Prize: \$1,000	1:11,059
Any three but not four or five winning ((sets)) numbers in one play	Third Prize: \$20	1:240
Any two, but not three, four or five winning ((sets)) numbers in one play	Fourth Prize: \$1	1:16

(2) Prize amounts.

(a) First prize (cashpot). All first prizes will be the amount announced by the director as the Quinto cashpot. The cashpot will be divided equally among all players who selected all five winning numbers in one play (in any sequence).

~~((i) A \$100,000.00 prize is to be divided equally among all players who hold all five winning sets in one play in any sequence, provided, that the first prize shall be increased pursuant to subsection (3) of this section.~~

~~((ii) The director may utilize revenue accumulated in the Quinto prize reserve, under WAC 315-33-040 (2)(d) to increase the first prize jackpot to an amount greater than \$100,000.~~

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~~(iii) The first prize may be set at an amount greater than \$100,000 at the discretion of the director.)~~

(b) Second prize. A \$1,000.00 prize is to be paid to each player who holds four of the five winning ~~((sets))~~ numbers in one play in any sequence.

(c) Third prize. A \$20.00 prize is to be paid to each player who holds three of the five winning ~~((sets))~~ numbers in one play in any sequence.

(d) Fourth prize. A \$1.00 prize is to be paid to each player who holds two of the five winning ~~((sets))~~ numbers in one play in any sequence.

(e) The holder of a winning ticket may win only one prize per play in connection with the winning ~~((sets))~~ numbers drawn and shall be entitled only to the highest prize amount won by those ~~((sets))~~ numbers.

(f) In the event any player who holds two, three, four or five of the five winning ~~((sets))~~ numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for use, pursuant to RCW 67.70.190.

~~(3) ((Roll-over feature. If no player holds all five winning sets for any given drawing, the jackpot allocated for first prize for that drawing will be added to the first prize for the next drawing. This process is repeated until the first prize is won.~~

~~(4))~~ Prize payments will be made in accordance with WAC 315-30-030(6). Each prize shall be paid in a single payment. Federal income tax shall be withheld from prize payments as required by law.

**AMENDATORY SECTION** (Amending WSR 93-19-052, filed 9/10/93, effective 10/11/93)

**WAC 315-33A-050 Ticket purchases.** (1) Quinto tickets may be purchased ~~((or redeemed no less than seventeen hours each day))~~ daily in accordance with a schedule to be determined by the director ~~((, provided that on-line))~~. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours. Quinto tickets may be purchased only from a licensed lottery retailer.

~~(2) ((Quinto tickets may be purchased only from a lottery retailer authorized by the director to sell on-line tickets.~~

~~(3))~~ Quinto tickets shall, on the front of the ticket, contain the selection of ~~((sets))~~ numbers, amount, drawing date, ~~((and validation))~~ ticket serial number and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information, ~~((and))~~ signature area, governing statutes and rules and the ticket ~~((serial))~~ stock number. ~~((The overall odds of winning shall appear on the ticket.))~~

**AMENDATORY SECTION** (Amending WSR 99-16-008, filed 7/22/99, effective 8/22/99)

**WAC 315-33A-060 Drawings.** (1) The Quinto drawing ~~((pursuant to this chapter))~~ shall be held up to once every twenty-four hours, at the discretion of the director.

(2) The drawing will be conducted by lottery officials.

(3) Each drawing shall ~~((determine, at random,))~~ randomly select five winning ~~((sets with the aid of mechanical~~

~~drawing equipment which))~~ numbers. The drawing method shall be tested before and after ~~((that))~~ each drawing. Any drawn ~~((sets))~~ numbers are not declared winners until the drawing is certified by the lottery. The winning ~~((sets))~~ numbers shall be used in determining all Quinto winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(4) The drawing shall not be invalidated based on the liability of the lottery.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 315-33A-070      Suspension/termination of Quinto.

#### **WSR 05-04-020**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed January 24, 2005, 4:27 p.m., effective January 24, 2005]

Effective Date of Rule: Immediately.

Purpose: The Division of Developmental Disabilities has received approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four home and community based service (HCBS) waivers, which replace the current community alternatives program (CAP) waiver.

These rules will clarify eligibility, service array, utilization, provider qualifications, client appeal rights and access to services. This filing includes a new chapter 388-845 WAC.

These rules extend the emergency rules filed as WSR 04-20-018 while the division gathers input necessary to file the proposed rules for adoption on a permanent basis.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The approval of the HCBS waivers by CMS required the department to implement new rules by April 1, 2004, to protect the health and welfare of eligible clients by ensuring no interruption in services to current participants in the CAP waiver occurs, and to ensure a continuation of federal matching funds under 42 C.F.R. 441, Subpart G—Home and Community Based Services—Waiver Requirements. Emergency rules were originally filed as WSR 04-08-020, and were extended as WSR 04-16-019 and 04-20-018. The department has filed a notice of intent to

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adopt permanent rules as WSR 03-20-103. Ongoing negotiations with CMS and the need to obtain extensive feedback from stakeholders have delayed the filing of proposed rules for adoption on a permanent basis until the negotiations are completed and the feedback is obtained.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 125, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 125, Amended 0, Repealed 0.

Date Adopted: January 19, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-06 issue of the Register.

emergency adoption. There have been no changes to the rule being adopted with this filing. Adoption of the rule will continue to provide tax information to taxpayers, department staff, and local officials to use in determining the application of this property tax exemption.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 27, 2005.

Janis P. Bianchi, Manager  
Interpretations and  
Technical Advice Unit

**WSR 05-04-047**  
**EMERGENCY RULES**  
**DEPARTMENT OF REVENUE**

[Filed January 27, 2005, 3:58 p.m., effective January 27, 2005]

Effective Date of Rule: Immediately.

Purpose: New section WAC 458-16-1000, this rule describes the property tax exemption that may be claimed by a federally recognized Indian tribe for property exclusively used for essential government services in accordance with the 2004 changes to RCW 84.36.010. The rule explains the parameters of the exemption, how the exemption may be obtained, how a tribe may appeal a denial of the exemption, how essential government services is defined, and provides applicable examples.

Statutory Authority for Adoption: RCW 84.36.010 and 84.36.865.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The amendments to RCW 84.36.010 are effective for assessment year 2004. This rule was previously adopted on an emergency basis effective October 1, 2004 (WSR 04-20-062). A CR-101 public meeting was conducted on September 2, 2004, for the purpose of adopting a permanent WAC 458-16-1000. A second emergency adoption of this rule is necessary because a permanent rule cannot be adopted before the expiration date of the first

**NEW SECTION**

**WAC 458-16-1000 Property belonging to federally recognized Indian tribes—Definitions—Exemption—Declaration process—Appeal rights. (1) Introduction.** This section implements Substitute House Bill 1322 (SHB 1322) as passed by the 2004 legislature and published in the 2004 regular session laws as Chapter 236. SHB 1322 amends RCW 84.36.010 to exempt "all property belonging exclusively to any federally recognized Indian tribe located in the state, if that property is used exclusively for essential government services." This section explains the exemption, how the exemption may be obtained, how essential government services is defined, and how a tribe or an assessor may appeal an exemption determination.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Assessor" means a county assessor or any person authorized to act on behalf of the assessor.

(b) "Board" or "BTA" means the state board of tax appeals described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC.

(c) "Declaration" means the exemption declaration filed by an Indian tribe with the Department to claim the property tax exemption authorized in RCW 84.36.010.

(d) "Department" means the department of revenue, property tax division.

(e) "Essential government services" means services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services. See Subsections (4) and (5) below that outline more complete and detailed examples of "essential government services" for the purposes of this section.

(f) "Federally recognized Indian tribe," "Indian tribe," or "tribe" means any Indian nation, tribe, band, community, or other entity that is recognized as an "Indian tribe" by the United States Department of the Interior. The phrase "federally recognized Indian tribe" and the term "tribe" have the same meaning as "Indian tribe." See WAC 458-20-192 for more explicit information regarding these defined terms.

(g) "State" means the state of Washington.

(3) **Exemption.** To qualify for the exemption set forth in SHB 1322, real and personal property located in the state must: (1) belong exclusively to a federally recognized Indian tribe; and (2) be used exclusively for essential government services. Property owned by the United States government and held in trust for a federally recognized Indian tribe is exempt from property tax.

(a) **When do the amendments to RCW 84.36.010 take effect?** The effective date of the amendments is June 10, 2004. After that date an Indian tribe may file an exemption declaration for the property granted exemption under RCW 84.36.010 as amended by Chapter 236. Such a declaration must be filed with the department. This exemption is first applicable to taxes due in 2005.

(b) **How a tribe may claim this exemption - exemption declaration required.**

(i) **Declaration form - how it may be obtained.** An Indian tribe claiming the property tax exemption described in this section must submit an exemption declaration and supporting documentation regarding the ownership and use of the property to the department. The declaration must be on a form prescribed by the department and signed by an authorized agent of the tribe. This information will be used to determine whether the property qualifies for exemption. An exemption declaration may be obtained from the department or downloaded from the state's internet site under the agency index for Revenue at <http://dor.wa.gov/>.

(ii) **Exemption declaration.** Declarations must be filed with the department to exempt property for taxes due the following year. A tribe may submit one exemption declaration for all real and personal property that it owns exclusively if the property is used exclusively for an essential government service. If real property is owned in part and/or used in part by another individual or entity, a separate exemption declaration must be submitted for each parcel.

(iii) **Other documentation a Tribe may be required to submit with exemption declaration to determine eligibility.** In addition to the exemption declaration, a tribe may be asked to submit the following information regarding the real or personal property for which exemption is sought to determine the amount of and eligibility for the exemption:

(A) An accurate description of the real and personal property including the county tax parcel number(s), and a copy of the current deed(s);

(B) An accurate map identifying by dimension the use of all real property that shows buildings, building sites, parking areas, landscaping, vacant areas, and floor plans of the buildings. This map or floor plan will be used to determine whether the property is entitled to a total or partial exemption based upon the use of the area;

(C) If the property is rented or loaned to another party, a copy of the rental agreement or other document explaining

the terms of the lease or loan. This documentation must describe:

(I) What property is rented or loaned;

(II) The name of the party to whom the property is rented or loaned; and

(III) How the property is being used.

(iv) **Department's review of exemption declaration and notice of exemption determination.** Upon receipt of the exemption declaration the department will review the declaration and all supporting documentation. The department may physically inspect the property in order to verify exempt use. Additional information may be requested about the ownership and use of the property, if the department needs this information to determine whether the property qualifies for exemption. An exemption declaration is not considered complete until the department receives all required information. The department shall then determine the taxable status of the property. The burden is upon the tribe to demonstrate exempt use and ownership. The department may deny the exemption declaration, in whole or in part, if it believes the property does not qualify for exemption. If the exemption declaration is denied for any portion of the property, the department must clearly state the reason(s) for denial in the written determination. A denial may be appealed, as explained in subsection (12) of this section.

(v) **When will the property be exempt from payment of taxes?** If an exemption declaration is approved, the property is exempt from property taxes due the year immediately following the year in which the declaration is submitted and for all subsequent years unless the property is sold or transferred or the tribe ceases to use the property exclusively for essential government services (see subsection 10).

(4) **Essential government services as defined in RCW 84.36.010.** For the purposes of this section, "essential government services" mean services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services. Property used for essential government services includes property:

(a) Providing access to water or land where treaty rights are exercised by a tribe or tribal members;

(b) Used for the protection and stewardship of forest land, shoreline, watershed, or other environmentally sensitive areas;

(c) Used for the preservation of historically or culturally significant sites; and

(d) Used by a utility company providing services to residents of Indian country, as defined in WAC 458-20-192. The property of a utility company that provides services to an area extending outside of Indian country does not qualify for exemption.

(5) **Examples regarding essential government services.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide and are not to be used to determine eligibility for exemption. All examples assume exclusive ownership of property located in the state by a federally recognized tribe.

(a) A tribe uses property for a courthouse, police station, fire station, hospital, library, and public schoolhouse. Each of these uses is a use for essential government services.

(b) A tribe acquires off-reservation land along the headwaters of a stream flowing into the reservation. The land is maintained as a conservation zone, limiting pollution and protecting water quality. The property is used for essential government services.

(c) A tribe operates a fish hatchery as part of its fisheries program. The property is used for essential government services.

(d) A tribe operates a fish cannery and processing center. The property is used for a commercial activity and is not used for essential government services.

(e) A tribe maintains and operates a parking lot or garage that is adjacent to its tribal administration building and courthouse. The parking lot or garage is integrally related to the essential government services provided in close proximity to its location. The property is used for essential government services. However, if the parking lot or garage is also used for ineligible purposes, it is taxable.

(f) A tribe operates a sawmill and log yard used to process and store timber or logs removed from its forest lands. Both the sawmill and log yard are commercial activities. The property is not used for essential government services.

**(6) Property jointly owned by an Indian tribe and another individual or entity used exclusively for essential government services - Eligibility for exemption.** The percentage of the property owned exclusively by a tribe and used exclusively for essential government services is eligible for exemption.

**(7) Property used for qualifying and non-qualifying purposes - Mixed use of property - Eligibility for exemption.** If property belongs exclusively to an Indian tribe and is used for qualifying and non-qualifying purposes and if the two uses are physically separate on the real property, the department shall administratively segregate the portion of the property that is used exclusively for essential government services and exempt that portion of the property from property tax. The portion of the property that is used for non-qualifying uses is subject to taxation.

(a) An administrative segregation occurs when the department separates the exempt value from the taxable value. The assessor may create a new tax parcel number that exists solely for property tax purposes.

(b) Example: a tribal administrative office may be located in the same building as a convenience store run as a commercial enterprise. The portion of the building used for tribal administration offices is exempt and the portion of the building used as a convenience store is taxable.

(c) If the property is used at times for exempt or qualifying services and at other times for nonexempt purposes, the "exclusively used" standard is not met and the property is taxable.

**(8) Property owned by an Indian tribe that is leased - Eligibility for exemption.** If property belonging exclusively to an Indian tribe is leased to an individual, a for-profit or nonprofit entity, a tribal member, or another governmental entity, the tenant's or lessee's activities will determine whether the property qualifies for exemption.

**(9) Property used for commercial or enterprise activities - Ineligible for exemption.** Property used for commercial or enterprise activities does not qualify for exemption. For purposes of this section, a "commercial or enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The burden is upon the tribe to prove that the property is not used for commercial or enterprise activities. The collection of a fee, such as a fee for the use of the picnic area in a park, does not make an activity a commercial or enterprise activity. Property used for a commercial or enterprise activity will not qualify for the exemption when funds received from the activity are used to provide essential government services. For example, if a tribe owns exclusively property on which it operates a gas station and the profits from the gas station are used to pay for essential government services, the property does not qualify for the exemption.

**(10) Sale, transfer, or cessation of use of exempt property.** If a tribe sells or transfers property or ceases to use real property for an essential government service as required under RCW 84.36.010, the exemption will be cancelled as of the date the property was sold or transferred or the exempt use of the property ceased. Real property that no longer retains its exempt status will be assessed a pro rata portion of the taxes allocable to the property for the remaining portion of the tax year after the date the property lost its exempt status. If only a portion of the property has lost its exempt status, only that portion of the property is subject to tax. See RCW 84.40.350 through 84.40.390 for a more complete explanation of what occurs when the status of real property changes from exempt to taxable.

**(a) Duty to notify department.** A tribe must notify the department of any change in the ownership or use of the property that might affect its exempt status within a reasonable amount of time. If any portion of the exempt property is loaned or rented, the tribe is required to report this change to the department because the loan or rental may affect the taxable status of the property. Any other person who knows or has information regarding a change in ownership or use of exempt property may notify the department of any such change. Upon receipt of change notice, the department will determine whether the property retains its exempt status.

**(b) Notice to tribe.** The department must notify the tribal owner of the exempt property if the exemption is being removed, in whole or in part. The tribe may appeal the removal of the exemption to the BTA. At the same time, the tribe may provide additional information to the department for reconsideration of the determination.

**(11) Can the exemption be claimed for prior years - Refunds?** A tribe may submit an exemption declaration for previous years, up to a maximum of three years from the date taxes were paid on the property, if the taxpayer provides the department with acceptable proof that the property qualified for exemption during the pertinent assessment years. If the exemption is granted, the tribe must submit a refund claim to the county treasurer. RCW 84.69.020(2) and 84.69.030. However, no exemption can be claimed for any time period prior to 2004, the first assessment year affected by RCW 84.36.010 as amended by Chapter 236.

(12) **Administrative appeal rights - Board of Tax Appeals.** The tribe or assessor may appeal an exemption determination made by the department to the BTA under RCW 82.03.130 (1)(c). A notice of appeal can be obtained from the department or the BTA, or downloaded from the BTA internet site, <http://bta.state.wa.us/>.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 05-04-051  
EMERGENCY RULES  
COUNTY ROAD  
ADMINISTRATION BOARD**

[Filed January 28, 2005, 12:32 p.m., effective January 28, 2005]

Effective Date of Rule: Immediately.

**Purpose:** To allow an additional extension of time during which a RATA funded project must meet a construction deadline.

**Citation of Existing Rules Affected by this Order:** Amending WAC 136-167-040 Lapsing RATA allocation for approved projects.

**Statutory Authority for Adoption:** Chapter 36.79 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

**Reasons for this Finding:** The intervention of a court of competent jurisdiction necessitates an immediate time extension.

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted at Request of a Nongovernmental Entity:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted on the Agency's Own Initiative:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted Using Negotiated Rule Making:** New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

**Date Adopted:** January 24, 2005.

Jay P. Weber  
Executive Director

**AMENDATORY SECTION** (Amending WSR 01-09-077, filed 4/17/01, effective 5/18/01)

**WAC 136-167-040 Lapsing of RATA allocation for approved projects.** To encourage timely development and construction of approved projects, all projects for which

RATA funds have been allocated must meet certain project development milestones. Failure to meet the milestones will result in action by the county road administration board to withdraw RATA funds from the project. This provision will only apply to those projects for which RATA funds have been allocated after July 1, 1995.

(1) For the purposes of this section, a project will be subject to lapsing and withdrawal of its RATA allocation if:

(a) The project has not begun the preliminary engineering phase within four years of project approval by the county road administration board; or

(b) The project has not begun construction within six years of the date of project approval by the county road administration board.

(2) A project shall be considered in preliminary engineering if authorization to expend funds for preliminary engineering has been granted by the county legislative authority as provided for in RCW 36.75.050. A project shall be considered in construction if:

(a) The construction contract for the work has been advertised for bids as provided for in RCW 36.77.020;

(b) A contract has been awarded under the provisions of the small works roster contract award process; or

(c) If done by day labor, the work has commenced.

(3) If an approved project does not meet a required project development milestone, the county road administration board will, at its next regular meeting, withdraw RATA funds from the project.

(4) At any time up to ten days before such meeting, the county may, in writing, request an extension of the lapse date. The county road administration board executive director may grant such an extension if the director finds that the delay in project development was for reasons that were both unanticipated and beyond the control of the county, and subject to the following:

(a) A project extension will be granted one time only and will be no more than two years in length. However, the CRA-Board may in its discretion find that to provide for the public safety, health or general welfare, an additional extension is necessary in some cases, and for such cases the CRABoard may allow an additional extension and will determine the duration thereof; and

(b) The request for an extension is based on unforeseeable circumstances that the county could not have anticipated at the time the project was submitted for RATA funding; and

(c) An approved time extension will not be grounds for the county to request an increase in the RATA funding of the project; and

(d) The executive director will determine a new lapse date, and all of the requirements listed above under subsections (1) and (2) of this section will apply except that further extensions will not be granted.

(5) The CRABoard may at any time place a moratorium on lapsing of projects that are delayed due to CRAB initiated rescheduling and establish a new lapsing date to fit the CRA-Board's programming needs. For those projects given a lapsing moratorium, section four shall be held in abeyance until the new lapsing date.

**WSR 05-04-064  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-12—Filed January 31, 2005, 1:56 p.m., effective February 5, 2005, 12:01 p.m.]

Effective Date of Rule: February 5, 2005, 12:01 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000F; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, and those portions of Razor Clam Area 3 opened for harvest. Washington Department of Health has certified clams from these beaches to be safe for human consumption. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 28, 2005.

J. P. Koenings  
Director

**NEW SECTION**

**WAC 220-56-36000F Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. February 5 through 11:59 p.m. February 7, 2005, razor clam digging is allowed in Razor Clam Area 1, Razor Clam Area 2 and that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty (Grays Harbor County) and the southern boundary of the Quinault Indian Reservation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day.

2. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 8, 2005:

WAC 220-56-36000F      Razor clams—Areas and seasons.

**WSR 05-04-065  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-11—Filed January 31, 2005, 1:57 p.m., effective February 1, 2005, 8:01 a.m.]

Effective Date of Rule: February 1, 2005, 8:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000I and 220-52-04600T; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The state may not authorize commercial shellfish harvest absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes, which have been entered as required by the court order. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 28, 2005.

J. P. Koenings  
Director  
by Larry Peck

EMERGENCY

**NEW SECTION**

**WAC 220-52-04000I Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040, effective 8:01 a.m. March 1, 2005 through 12:00 p.m. March 31, 2005, in the area described below:

Quinault SMA:

- Southwest point (Copolis River): 47°08.00'N 124°19.25'W
- Central point: 47°16.8'N 124°24.6'W
- Northwest point: (1 mile north of Split Rock): 47°25.50'N 124°30.00'W

(1) It is unlawful for any vessel to use, maintain, operate, or control more than 100 pots per license.

(2) No pots shall be deployed unless notice has been given 48 hours in advance. The notice must include the following information: name of person controlling the gear; the vessel name; the amount of gear being deployed; and the buoy brand identification data. Notice must be given by one of the following methods:

1. Fax transmission to Heather Reed at 360-644-0689;
2. E-mail to [reedhjr@dfw.wa.gov](mailto:reedhjr@dfw.wa.gov); or
3. Telephone call to: Heather Reed at 360-249-4628, Extension 202.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**NEW SECTION**

**WAC 220-52-04600Y Coastal crab fishery—Special management area.** Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful for non-Indian commercial fishers to fish for or take crab for commercial purposes, or place gear, in the following areas during the periods indicated:

**Quileute**

(1) The following area is closed through April 30, 2005

(a) Coastal waters between 47°40.50'N and 47°58.00'N, and east of a line described by the following points:

- Southern point (Destruction Island): 47°40.50'N 124°40.00'W
- Northern point (Cape Johnson): 47°58.00'N 124°49.00'W

**Quinault**

(1) The following area is closed through 12:00 p.m. February 28, 2005:

(b) Coastal waters between 47°08.00'N and 47°25.50'N, and east of a line described by the following points:

- Southwest point (Copolis River): 47°08.00'N 124°19.25'W
- Central point: 47°16.8'N 124°24.6'W
- Northwest point: (1 mile north of Split Rock): 47°25.50'N 124°30.00'W

**Makah**

(2) The following area is closed through March 9, 2005:

(a) Coastal waters between 48°07.50'N and 48°23.00'N, and east of a line described by the following points:

- Southwest point: 48°07.50'N 124°50.00'W
- Northwest point: 48°20.00'N 124°50.00'W
- Cape Flattery: 48°23.00'N 124°44.00'W

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 1, 2005:

WAC 220-52-04000I Commercial crab fishery—Lawful and unlawful gear methods, and other unlawful acts. (05-11)

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. February 1, 2005:

WAC 220-52-04600T Coastal crab fishery—Special management areas. (04-308)

**WSR 05-04-068**

**EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-13—Filed January 31, 2005, 3:13 p.m., effective January 31, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100G, 220-32-05100H and 220-32-05100I; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The tribes requested changes to the opening and closing times of the winter season. The fishery was original set at the December 16, 2004, compact. All other regulations remain unchanged. Fisheries are consistent with the interim management agreement and the biological opinion. Rule is consistent with action of the Columbia River compact on January 28, 2005. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

EMERGENCY

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 31, 2005.

J. P. Koenings  
Director  
by Larry Peck

### NEW SECTION

**WAC 220-32-05100I Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, shad, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, or sturgeon under the following provisions:

Open Periods: 6:00 a.m. February 1, 2005 through 6:00 p.m. March 21, 2005.

Open Areas: SMCRA 1F, 1G, 1H

Gear: No mesh restriction on gillnets. Hoop nets, dip bag nets, and rod and reel with hook and line.

Allowable sale: salmon, steelhead, walleye, shad, carp, and sturgeon. Sturgeon between 4 feet and 5 feet in length in The Dalles and John Day pools and between 45-60 inches in the Bonneville pool may be sold.

Miscellaneous: Sale of platform or hook and line caught fish is allowed during open commercial season.

Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from

the eastern shoreline to one mile downstream from the western shoreline.

d) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

f) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

8) Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-32-05100G Columbia River salmon seasons above Bonneville Dam. (04-293)

WAC 220-32-05100H Columbia River salmon seasons above Bonneville Dam. (05-05)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2005:

WAC 220-32-05100I Columbia River salmon seasons above Bonneville Dam.

EMERGENCY



**WSR 05-04-001**  
**AGENDA**  
**OFFICE OF MINORITY AND**  
**WOMEN'S BUSINESS ENTERPRISES**  
 [Filed January 19, 2005, 1:32 p.m.]

Following is the Office of Minority and Women's Business Enterprises' (OMWBE) rules development agenda for January 2005 through June 2005.

If you have any questions regarding the agenda, you may contact Cathy V. Canorro, OMWBE's Rules Coordinator, at (360) 704-1187 or ccanorro@omwbe.wa.gov.

**Rules Development Agenda for January Through June 30, 2005**

WAC	RCW	AUTHORITY	SUBJECT	CONTACT - Rules Coordinator	WSR/ DATE
<b>Pre-CR-101<sup>1</sup></b>					
326-30-030	39.19.030	RCW 39.19.030	Establish annual state agency goals.	Cathy V. Canorro 1-866-208-1064 (toll free) ccanorro@omwbe.wa.gov	None
326-02, 326-07 and 326-20	39.19.030	RCW 43.19.525	Establish ownership and control review process and standards for vendors in good standing.	Cathy V. Canorro 1-866-208-1064 (toll free) ccanorro@omwbe.wa.gov	None
326-08	39.19.030	RCW 39.19.030	Revise hearings procedure.	Cathy V. Canorro 1-866-208-1064 (toll free) ccanorro@omwbe.wa.gov	None
<b>CR-101 Filed</b>					
			None		
<b>CR-102 Filed</b>					
			None		
<b>Pending Adoption</b>					
			None		

<sup>1</sup> OMWBE is considering rule making but has not field a statement of inquiry with the Code Reviser's Office.

Carolyn Crowson  
Director

**MISC.**

**WSR 05-04-004**  
**NOTICE OF PUBLIC MEETINGS**  
**UNIVERSITY OF WASHINGTON**  
 [Memorandum—January 18, 2005]

Seattle  
 CONSTRUCTION MANAGEMENT FACULTY

Meeting Date	Location (Building and Room #)	Time
March 8, 2005	Room 116 Architecture Hall Seattle	10:00 - 11:30 a.m.
April 12, 2005	Room 116 Architecture Hall Seattle	10:00 - 11:30 a.m.
May 10, 2005	Room 116 Architecture Hall Seattle	10:00 - 11:30 a.m.

Meeting Date	Location (Building and Room #)	Time
June 7, 2005	Room 116 Architecture Hall Seattle	10:00 - 11:30 a.m.
October 11, 2005	Room 116 Architecture Hall Seattle	10:00 - 11:30 a.m.
November 15, 2005	Room 116 Architecture Hall Seattle	10:00 - 11:30 a.m.
December 6, 2005	Room 116 Architecture Hall Seattle	10:00 - 11:30 a.m.

Schedule of 2005 Oral Medicine Faculty Meetings

As always, the schedule is subject to change per the direction of the chair.

OM	Tuesday	1/25	12:00-1:00	B317D
OMCS	Monday	1/31	12:30-1:30	B228
OMCS	Monday	2/14	12:30-1:30	B228
OM	Wednesday	2/16	12:30-1:30	B317D
OMCS	Wednesday	3/16	12:30-1:30	B317D
OM	Wednesday	3/23	12:30-1:30	B317D
OMCS	Monday	4/11	12:30-1:30	B317D
OM	Monday	4/18	12:30-1:30	B317D
OMCS	Monday	5/9	12:30-1:30	B317D
OM	Monday	5/16	12:30-1:30	B317D
OMCS	Wednesday	6/15	12:30-1:30	B317D
OM	Wednesday	6/22	12:30-1:30	B317D
OMCS	Wednesday	7/6	12:30-1:30	B317D
OM	Wednesday	7/13	12:30-1:30	B317D
OMCS	Wednesday	8/3	12:30-1:30	B317D
OM	Wednesday	8/17	12:30-1:30	B317
OMCS	Wednesday	9/7	12:30-1:30	B317D
OM	Wednesday	9/22	12:30-1:30	B317D
OMCS	Wednesday	10/5	12:30-1:30	B317D
OM	Wednesday	10/19	12:30-1:30	B317D
OMCS	Wednesday	11/2	12:30-1:30	B317D
OM	Wednesday	11/16	12:30-1:30	B317D
OMCS	Wednesday	12/7	12:30-1:30	B317D
OM	Monday	12/12	12:30-1:30	B317D

forest products industry. The following rule proposals are under development or are anticipated during this time period.

1. **Cultural Resources.** The board initiated rule making on the TFW Cultural Resources Committee's rule proposal related to a cultural resources watershed analysis module. The board will consider permanent rule adoption on February 16, 2005.

2. **Road Maintenance and Abandonment Plans.** Permanent rule language is being developed to implement changes to the small forest landowner road maintenance and abandonment planning requirements contained in 2SHB 1095 passed by the 2003 legislature.

3. **Editorial and Minor Rule Changes.** The board will consider rule making on February 16, 2005. The rules would reflect minor editorial and clarification changes. The board will consider permanent rule adoption at the May 2005 meeting.

4. **Other Legislative Mandated Changes.** The board will consider rule making on February 16, 2005, on legislation passed during the 1997, 2001, 2002, 2003, and 2004 sessions. These changes pertain to Christmas trees, forest land definition, Environment and Land Use Hearings Board, small forest landowner tax identification and forest practices within urban growth areas. The board will consider permanent rule adoption at the May 2005 meeting.

5. **Upland Wildlife.** The board, with the Department of Fish and Wildlife, is conducting a comprehensive review of the forest practices rules and science for upland wildlife protection and development of cooperative management planning processes. The results of this review and planning process, along with new species listing and designation of critical habitat may result in a rule proposal.

6. **Aquatic Resources.** Forests and Fish Policy will review results from scientific research for possible rule modifications.

**Contact Person.** Patricia Anderson, Forest Practices Board, Rules Coordinator, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1413, fax (360) 902-1428, e-mail patricia.anderson@wadnr.gov.

WSR 05-04-005

AGENDA

FOREST PRACTICES BOARD

[Filed January 20, 2005, 9:30 a.m.]

Rule Development Agenda  
January - June 2005

The Forest Practices Board's mandate is to adopt rules to protect the state's public resources while maintaining a viable

WSR 05-04-006

AGENDA

EMPLOYMENT SECURITY DEPARTMENT

[Filed January 20, 2005, 9:30 a.m.]

The Employment Security Department semi-annual rule-making agenda is submitted for publication in the Washington State Register in accordance with RCW 34.05.314.

Semi-Annual Rule-Making Agenda  
(January 31, 2005 - July 31, 2005)

WAC CHAPTER	SUBJECT	AGENCY CONTACT	TIMING	SCOPE OF RULE CHANGES
Chapters 192-110, 192-170, and 192-180 WAC	Part-time workers (2ESB 6097)	Juanita Myers (360) 902-9665	CR-101 - 10/04 Emergency rules filed 1/05	Adopt new rules necessary to implement RCW 50.20.119, which authorizes the payment of benefits to certain workers seeking only part-time work.

MISC.

WAC CHAPTER	SUBJECT	AGENCY CONTACT	TIMING	SCOPE OF RULE CHANGES
Chapters 192-300, 192-310, and 192-320 WAC	Tax rules (2ESB 6097)	Juanita Myers (360) 902-9665	CR-101 - 10/04 Emergency rules filed 1/05	Amend existing rules and adopt new rules concerning predecessor/successor employers, employer penalties, and defining terms.
Chapter 192-210 WAC	Referral unions	Juanita Myers (360) 902-9665	CR-101 - 2/02 CR-102 - 6/05 Hearing - To be determined	Adopt rules to clarify job search and availability requirements for individual members of full referral unions. Clarify requirements of unions participating in the referral union program.
Chapters 192-150, 192-170, and 192-180 WAC	Domestic violence	Karen Malo (360) 902-0918	CR-101 - 8/02 CR-102 - 3/05 Hearing - To be determined	Adopt rules to clarify job search and availability requirements for individuals who leave work to protect themselves or a member of their immediate family from domestic violence or stalking.
Chapter 192-250 WAC	Shared work	Juanita Myers (360) 902-9665	CR-101 - 5/03 CR-102 - 6/05	Amend and adopt rules to modify eligibility requirements for employers and participants applying for the shared work program, clarify expectations of participating employers, address the number of consecutive plans an employer may have, and define terms.
Chapter 192-180 WAC	Mandatory reporting for job search assistance	Juanita Myers (360) 902-9665	CR-101 - 4/05	Amend regulations governing mandatory reporting requirements for claimants profiled as likely to exhaust benefits, and modify reasons that constitute good cause for missing an interview.
Title 192 WAC	Employer representatives	Juanita Myers (360) 902-9665	CR-101 - 4/05	Adopt rules clarifying the responsibilities of third party employer representatives, including when powers of attorney are needed.

Larry Oline  
Rules Coordinator

**WSR 05-04-009**  
**RULES COORDINATOR**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**  
[Filed January 21, 2005, 3:50 p.m.]

Pursuant to RCW 34.05.312, Jenifer Gitchell is designated as the rules coordinator for the Department of Natural Resources. Jenifer's contact information is as follows: Jenifer Gitchell, Department of Natural Resources, Asset Management and Protection Division, 1111 Washington Street S.E., P.O. Box 47015, Olympia, WA 98504-7015, phone (360) 902-1634, fax (360) 902-1789, e-mail jenifer.gitchell@wadnr.gov.

If you need any additional information regarding this designation, please feel free to contact Stephen Saunders, Assistant Division Manager, at (360) 902-1488.

Bonnie Bunning  
Executive Director of  
Policy and Administration

**WSR 05-04-013**  
**INTERPRETIVE STATEMENT**  
**DEPARTMENT OF LICENSING**  
[Filed January 24, 2005, 12:58 p.m.]

NOTICE OF ADOPTION OF AN INTERPRETIVE STATEMENT

Title: Regulation of Natural Hair Braiding.

Subject: Does the law relating to cosmetologists, barbers, manicurists, and estheticians, chapter 18.16 RCW regulate natural hair braiders?

Effective Date: January 24, 2005.

Contact Person: Trudie Touchette, Administrator, Department of Licensing, Business and Professions Division, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507-9026, (360) 664-6650.

Date Adopted: January 24, 2005.

Trudie Touchette  
Administrator

**WSR 05-04-021**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF**  
**SERVICES FOR THE BLIND**  
[Memorandum—January 25, 2005]

NOTICE OF PUBLIC MEETINGS

**Community Meeting/Public Hearing**  
**Friday, March 4, 2005**  
**4:30 - 6:30 p.m.**

MISC.

**Location:**  
**Department of Services for the Blind**  
 3411 South Alaska Street  
 Seattle, WA 98118  
 1-800-552-7103

**We Want to Hear From You!**

The upcoming community meeting will be combined with a public hearing to discuss proposed changes to the Department of Services for the Blind (DSB), chapter 67-25 WAC, Vocational rehabilitation services for blind persons. The proposed changes are necessary to comply with changes in federal law describing the scope and manner of vocational rehabilitation service delivery. You may read the draft rule, beginning February 2, on the Office of the Code Reviser's website at <http://www1.leg.wa.gov/CodeReviser>. If you are interested in receiving a hard copy of the draft rule, please e-mail your request to [maroughton@dsb.wa.gov](mailto:maroughton@dsb.wa.gov). Copies are provided in alternative format upon request.

This combined meeting will also give DSB a chance to inform you about the latest changes at the DSB and to discuss issues and challenges. We want to know about your experience with our services. What is working well in your community? What could we do better? What needs are not being met? We will use your comments to develop our state and strategic plans for the coming year.

Whether you are a past, present, or potential consumer of the Department of Services for the Blind, a family member, a community service provider, a friend to someone who is blind, a member of a blind consumer organization, or an interested citizen we want to hear from you. Please join us to talk to us in person at our upcoming Seattle community meeting/public hearing.

**SPECIAL NOTICE FOR THOSE LIVING IN KING, PIERCE AND SNOHOMISH COUNTIES:**

Sound Transit is interested in how some of Sound Transit accommodation enhancements would serve the blind and low vision communities and is requesting that residents of King, Pierce and Snohomish counties complete a survey to assist Sound Transit in determining the usability of these proposed additions to the system. To complete the survey online go to <http://www.soundtransit.org/working/cc/caac/form.asp>. Or, you can call the following numbers to complete the survey over the phone: **SOUND TRANSIT, 1-800-201-4900 OR TTY 1-888-713-6030. King County residents may call directly Ella Camel - (206) 398-5039 or Phil Sutrea - (206) 398-5254.**

Be sure to let them know you want to complete the survey designed for access issues for blind or low vision users/potential users of Sound Transit. Your participation in this survey will assist in making sure the Sound Transit system is accessible for all. Any access concerns with the online survey, please contact Sound Transit at the numbers listed above.

**Washington State Department of Services for the Blind  
 Rehabilitation Council Meeting  
 Saturday, March 5, 2005  
 9 a.m. - 4 p.m.**

**Location:**  
**Department of Services for the Blind**  
 3411 South Alaska Street  
 Seattle, WA 98118  
 1-800-552-7103

Agendas and information relating to specific agenda items, taped agendas, agendas in Braille, or interpreters are provided upon request. Requests for information must be made no later than February 21, 2005.

**PLEASE NOTE:** Public comments are scheduled from 11:30 a.m. to 12 noon.

The meeting site is barrier free, including the restrooms.

To request materials or for more information regarding the aforementioned meetings, please contact Marla Oughton at (206) 721-6430 or toll-free 1-800-552-7103 or by e-mail [maroughton@dsb.wa.gov](mailto:maroughton@dsb.wa.gov).

**WSR 05-04-022**

**NOTICE OF PUBLIC MEETINGS  
 OFFICE OF THE GOVERNOR  
 (Clemency and Pardons Board)**

[Memorandum—January 24, 2005]

The Washington State Clemency and Pardons Board hereby files with the code reviser the following change in meeting notice: The scheduled March 11, 2005, meeting of the Clemency and Pardons Board has been rescheduled and will be held on March 10 and March 11, 2005. The meetings will be held in the John A. Cherberg Building, Hearing Room 3 and 4, respectively, Olympia, Washington, starting at 12:00 p.m. and 10:00 a.m. respectively.

**WSR 05-04-023**

**NOTICE OF PUBLIC MEETINGS  
 HIGHLINE COMMUNITY COLLEGE**

[Memorandum—January 21, 2005]

Following is a revised meeting schedule for 2005 for the board of trustees of Community College District 9 sent to you December 15, approved by the board at their December 8, 2004, meeting. At their meeting on January 20, 2005, the board approved changing the July meeting from July 14 to July 21. All meetings are held in Building 25 and begin with a study session following by the regular meeting.

DATE	STUDY SESSION	MEETING
January 20, 2005	8:00 a.m.	10:00 a.m.
February 10, 2005	8:00 a.m.	10:00 a.m.
March 10, 2005	8:00 a.m.	10:00 a.m.
April 14, 2005	8:00 a.m.	10:00 a.m.

MISC.

DATE	STUDY SESSION	MEETING	DATE	TIME	LOCATION
May 12, 2005	8:00 a.m.	10:00 a.m.	Wednesday May 11, 2005	9 a.m.- 11 a.m.	Criminal Justice Training Center Cascade Building Auditorium Burien
June 9, 2005	8:00 a.m.	10:00 a.m.	Wednesday August 10, 2005	9 a.m.- 11 a.m.	Spokane Community College Lair Building Sasquatch/Bigfoot Room
<b>Revised July 21, 2005</b>	<b>8:00 a.m.</b>	<b>10:00 a.m.</b>	Wednesday November 9, 2005	9 a.m.- 11 a.m.	Criminal Justice Training Center Cascade Building Room C-151 Burien
August 2005 - NO MEETING					
September 15, 2005	8:00 a.m.	10:00 a.m.			
October 13, 2005	8:00 a.m.	10:00 a.m.			
November 10, 2005	8:00 a.m.	10:00 a.m.			
December 8, 2005	8:00 a.m.	10:00 a.m.			

**WSR 05-04-025**  
AGENDA  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
[Filed January 25, 2005, 12:45 p.m.]

**Semi-Annual Agenda for Rules Under Development**  
**January 1, 2005 - June 30, 2005**

**DIVISION OF CONSUMER SERVICES**

- Chapter 208-630 WAC, Check cashers and sellers, expect to file CR-103 adopting amendments to the rules to implement changes to the statute in 2003.
- Chapter 208-620 WAC, Consumer Loan Act, possibly file CR-102 proposing rules to implement the last statutory amendment in 2003.

**DIVISION OF CREDIT UNIONS**

- Propose new rule regarding corporate governance for credit unions.
- Amendments to chapter 208-424 WAC, regulatory relief for small credit unions.

**DIVISION OF SECURITIES**

- Amending WAC 460-24A-105 to conform to a 2004 model rule of the North American Securities Administrators Association (NASAA) concerning requirements imposed on investment advisors who take "custody" of client funds or securities.

**WSR 05-04-026**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Mortgage Broker Commission)  
[Memorandum—January 24, 2005]

**Mortgage Broker Commission Meetings**

The second Wednesday of the second month of the quarter for 2005 (normally):

Tuesday February 22, 2005	9 a.m.- 11 a.m.	Criminal Justice Training Center Cascade Building Auditorium Burien
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**WSR 05-04-027**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF AGRICULTURE**  
(Wheat Commission)  
[Memorandum—January 24, 2005]

The Washington Wheat Commission hereby complies with regulations as stated in RCW 42.30.075 and provides pertinent scheduled meeting changes, per the board of directors, for publication in the state register. This meeting date, location, and time change is submitted at least twenty days prior to the rescheduled meeting date.

MARCH MEETING WAS PREVIOUSLY LISTED AS: Regular - March 16 (10:00 a.m.) and 17 (8:30 a.m.), 907 West Riverside Avenue, Spokane, WA.

PLEASE CHANGE TO: Regular - March 16 (2:00 p.m.) and 17 (8:30 a.m.), 907 West Riverside Avenue, Spokane, WA.

**WSR 05-04-029**  
**POLICY STATEMENT**  
**DEPARTMENT OF ECOLOGY**  
[Filed January 26, 2005, 2:50 p.m.]

**POLICY STATEMENT**

**Purpose:** To specify the circumstances under which the Department of Ecology (ecology) will or will not perform maximum benefits analyses in conjunction with watershed planning, instream flow setting, water right permitting, and other program activities.

**Document Title:** POL-2025 Water Resources Program Policy/Interpretive Statement On When To Perform A Maximum Net Benefits Analysis.

**Subject:** This document specifies the circumstances under which ecology will perform a maximum net benefits analysis, as required by RCW 90.54-.020(2).

**Document Description:** This policy identifies the circumstances under which ecology will implement the maximum net benefits provision. Ecology will do so solely in the context of rule making associated with allocations of water and decisions to approve watershed plans that include reservations that allocate water. Ecology will not perform a maximum net benefits analysis when reviewing an application for a new water right or change to an existing water right. This policy will be implemented in conjunction with Procedure 2025: Basic Steps for Evaluating Maximum Net Benefits.

MISC.

Effective Date: January 21, 2004.

A copy of the policy and associated procedure may be downloaded at the Department of Ecology's website <http://www.ecy.wa.gov/programs/wr/rules/images/pdf/pol2025.pdf> or [http://www.ecy.wa.gov/programs/wr/rules/pol\\_pro.html](http://www.ecy.wa.gov/programs/wr/rules/pol_pro.html).

You may also contact Jeff Marti, Water Resources, Department of Ecology, P.O. Box 47600, 98504-7600, phone (360) 407-6636, fax (360) 407-6574, e-mail [jema461@ecy.wa.gov](mailto:jema461@ecy.wa.gov), TDD - If you have special accommodation needs or require this document in an alternate format, please contact Water Resources reception at (360) 407-6600 (voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Responsible Official: Joe Stohr, Program Manager, Water Resources Program.

January 27, 2005

Joe Stohr, Program Manager  
Water Resources Program

**PUBLIC HEARING NOTICE:** April 28, 2005  
 County Road Administration Board  
 2404 Chandler Court S.W.  
 Suite 240  
 Olympia, WA 98504  
 2:00 p.m.

**MEETING NOTICE:** April 29, 2005  
 County Road Administration Board  
 2404 Chandler Court S.W.  
 Suite 240  
 Olympia, WA 98504  
 8:00 a.m. - noon

Individuals requiring reasonable accommodation may request written materials in alternative formats, sign language interpreters, physical accessibility accommodations, or other reasonable accommodation, by contacting Karen Pendleton at (360) 753-5989, hearing and speech impaired persons can call 1-800-833-6384.

**WSR 05-04-030**

**NOTICE OF PUBLIC MEETINGS  
 GUARANTEED EDUCATION  
 TUITION PROGRAM**

[Memorandum—January 24, 2005]

In accordance with RCW 28B.95.020, and WAC 14-276-030, the Advanced College Tuition Program, known as Guaranteed Education Tuition Program has made a revision to the following committee meeting schedule:

**February 22, 2005 - Meeting begins at 1:00 p.m. (change from a 2:00 p.m. start time).**

The meeting will be held at the Washington State Investment Board Conference Room.

If anyone wishes to request disability accommodations, notice should be given to the Guaranteed Education Tuition Program at least ten days in advance of the meeting in question. Notice may be given by any of the following methods: (360) 753-7860 (voice); (360) 753-7809 (TDD); or (360) 704-6260 (fax).

**WSR 05-04-031**

**NOTICE OF PUBLIC MEETINGS  
 COUNTY ROAD  
 ADMINISTRATION BOARD**

[Memorandum—January 25, 2005]

**MEETING NOTICE:** April 28, 2005  
 County Road Administration Board  
 2404 Chandler Court S.W.  
 Suite 240  
 Olympia, WA 98504  
 1:00 p.m. to 5:00 p.m.

**WSR 05-04-032**

**NOTICE OF PUBLIC MEETINGS  
 DEPARTMENT OF LICENSING**

[Memorandum—January 26, 2005]

**2005 Geologist Regular Meetings**

February 8, 2005	405 Black Lake Boulevard Room 209 Olympia, WA
May 10, 2005	405 Black Lake Boulevard Room 209 Olympia, WA
August 9, 2005	405 Black Lake Boulevard Room 209 Olympia, WA
November 8, 2005	405 Black Lake Boulevard Room 209 Olympia, WA

If you have any questions, please feel free to contact Joan Robinson, (360) 664-1387.

**WSR 05-04-033**

**NOTICE OF PUBLIC MEETINGS  
 OFFICE OF THE GOVERNOR**

(Clemency and Pardons Board)

[Memorandum—January 21, 2005]

The Washington State Clemency and Pardons Board hereby files with the code reviser the following schedule of its regular meetings for 2005: The March 11, June 10, September 9, and December 9, 2005, meetings of the Clemency and Pardons Board will be held in the John A. Cherberg

MISC.

Building, Senate Hearing Room 4, Olympia, Washington, starting at 10:00 a.m.

**WSR 05-04-034**

**NOTICE OF PUBLIC MEETINGS  
EDMONDS COMMUNITY COLLEGE**

[Memorandum—January 24, 2005]

**REVISION TO MEETING SCHEDULE**

In compliance with RCW 42.30.075, the following board of trustees 2005 meeting schedule has been approved for Edmonds Community College. The regularly scheduled meetings will take place on the third Monday of the month beginning at 4:30 p.m. in the Cascade Conference Room 304, Snohomish Hall, at Edmonds Community College, 20226 68th Avenue West, Lynnwood, WA 98036.

January		No meeting
Tuesday, February 22	4:30 p.m.	Special study session
<b>Wednesday, March 16</b>	<b>4:30 p.m.</b>	<b>Meeting rescheduled from March 21</b>
<b>Monday, March 21</b>	<b>4:30 p.m.</b>	<b>CANCELLED</b>
Monday, April 18	4:30 p.m.	
Monday, May 16	4:30 p.m.	
Friday, June 17	4:30 p.m.	Special meeting
July		No meeting
August 25 and 26	8:00 a.m. to 5:00 p.m.	Special study session
Monday, September 19	4:30 p.m.	
Monday, October 17	4:30 p.m.	
Monday, November 21	4:30 p.m.	
December		No meeting

If you have any questions, please feel free to contact Patty Michajla at (425) 640-1516.

**WSR 05-04-035  
RULES COORDINATOR  
WALLA WALLA  
COMMUNITY COLLEGE**

[Filed January 27, 2005, 12:44 p.m.]

Jerri Ramsey has been designated as rules coordinator for Walla Walla Community College. Her location and address are: Jerri Ramsey, Office of the President, Walla Walla Community College, 500 Tausick Way, Walla Walla, WA 99362-9267, phone (509) 527-4274.

Steven L. VanAusdle  
President

**WSR 05-04-036  
NOTICE OF PUBLIC MEETINGS  
WALLA WALLA  
COMMUNITY COLLEGE  
[Memorandum—January 21, 2005]**

Walla Walla Community College board of trustees (District No. 20) will hold a special meeting (retreat) on Wednesday, February 2, 2005, beginning at 9:00 a.m. The meeting will be held in the Walla Walla Community College Board Room, 500 Tausick Way, Walla Walla, WA 99362.

**WSR 05-04-041  
NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF PERSONNEL**

[Memorandum—January 27, 2005]

**DEPARTMENT OF PERSONNEL DIRECTOR'S MEETINGS FOR 2005**

The following is a schedule of the 2005 regular meetings for the Department of Personnel director's meetings. The director's meetings will be held at the times and locations listed below:

Thursday March 10, 2005	10:00 a.m.	Classroom #4 Department of Personnel 600 South Franklin Street Olympia, WA
Thursday April 14, 2005	10:00 a.m.	Classroom #1 Department of Personnel 600 South Franklin Street Olympia, WA
Thursday May 12, 2005	10:00 a.m.	LeeAnn Miller Conference Center 4224 6th Avenue S.E. Building #1 Lacey, WA
Thursday June 9, 2005	10:00 a.m.	Classroom #2 Department of Personnel 600 South Franklin Street Olympia, WA

Meetings will occur on the following dates and they will all be held at 10:00 a.m. in Classroom #4, Department of Personnel, 600 South Franklin Street, Olympia, WA:

- Thursday, July 14, 2005
- Thursday, September 8, 2005
- Thursday, October 13, 2005
- Thursday, November 10, 2005
- Thursday, December 8, 2005

Should you have any questions regarding this matter, please contact Donna Parker at (360) 664-6347.

MISC.

**WSR 05-04-045**  
**INTERPRETIVE STATEMENT**  
**DEPARTMENT OF REVENUE**

[Filed January 27, 2005, 3:56 p.m.]

**ISSUANCE OF INTERPRETIVE STATEMENT**

This announcement of the issuance of these interpretive statements is being published in the Washington State Register pursuant to the requirements of RCW 34.05.230(4).

The Department of Revenue (department) issued Excise Tax Advisory (ETA) 2012.08.12.13601 and nine supplements on March 31, 2003, to address questions regarding the retail sales and use tax exemption provided by RCW 82.08.02565 and 82.12.02565, commonly referred to as the manufacturers' machinery and equipment exemption (M&E exemption). The department has revised the following supplements to recognize statutory changes:

**2012-1S.08.12.13601 (First revision) Manufacturers' Machinery and Equipment Exemption—Rental of Tangible Personal Property and Providing Tangible Personal Property Along With an Operator.** This advisory addresses the application of the M&E exemption to the activities of renting tangible personal property and providing tangible personal property along with an operator. The phrase "rental of equipment with operator" has been replaced with "providing tangible personal property along with an operator" to recognize legislation that adopted provisions and terminology of the streamlined sales and use tax agreement (chapter 168, Laws of 2003).

**2012-4S.08.12.13601 (First revision) Manufacturers' Machinery and Equipment Exemption—design and product development.** This advisory addresses the application of the M&E exemption to design and product development. The term and definition of "software" have been replaced with the term and definition of "computer software" to recognize legislation that adopted provisions of the streamlined sales and use tax agreement (chapter 168, Laws of 2003).

**2012-5S.08.12.13601 (First revision) Manufacturers' Machinery and Equipment Exemption—design and product development.** This advisory addresses the application of the M&E exemption to design and product development. This advisory has been revised to recognize:

- Chapter 8, Laws of 2004, which provides an exemption for computer equipment used by a printer or publisher; and
- Chapter 1, Laws of 2003 2nd sp.s., which provides an exemption for computer equipment used in development, design, and engineering activities by the commercial aerospace manufacturing industry.

**2012-8S.08.12.13601 (First revision) Manufacturers' Machinery and Equipment Exemption—Computers.** This advisory addresses the application of the M&E exemption to computers. This advisory has been revised to recognize:

- Chapter 8, Laws of 2004, which provides an exemption for computer equipment used by a printer or publisher; and
- Chapter 1, Laws of 2003 2nd sp.s., which provides an exemption for computer equipment used in develop-

ment, design, and engineering activities by the commercial aerospace manufacturing industry.

Copies of these documents are available via the internet at <http://www.dor.wa.gov/content/laws/eta/eta.aspx>, or a request for copies may be directed to Roseanna Hodson, Interpretations and Technical Advice Unit, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6119, fax (360) 586-5543.

Alan R. Lynn  
Rules Coordinator

**WSR 05-04-046**  
**INTERPRETIVE STATEMENT**  
**DEPARTMENT OF REVENUE**

[Filed January 27, 2005, 3:57 p.m.]

**CANCELLATION OF INTERPRETIVE STATEMENT**

This announcement of the cancellation of this interpretive statement is being published in the Washington State Register pursuant to the requirements of RCW 34.05.230(4).

The Department of Revenue has cancelled the following excise tax advisory (ETA):

**268.04.192 Indian Owned Corporation Doing Business on a Reservation.** This advisory is being canceled because it provides incorrect information. ETA 268 explains that a corporation owned by Indians is not entitled to the exemption available to Indians engaging in business activities within an Indian reservation. WAC 458-20-192 (Rule 192) explains that a state chartered corporation, a partnership, or any other entity comprised solely of enrolled members of a tribe is not subject to tax on business conducted in Indian country. Rule 192 further provides that in the event that the composition of such an entity includes a family member who is not a member of the tribe, the entity will be considered as satisfying the "comprised solely" criteria if at least half of the owners are enrolled members of the tribe.

Copies of these documents are available via the internet at <http://www.dor.wa.gov/content/laws/eta/eta.aspx>, or a request for copies may be directed to Roseanna Hodson, Interpretations and Technical Advice Unit, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6119, fax (360) 586-5543.

Alan R. Lynn  
Rules Coordinator

**WSR 05-04-049**  
**NOTICE OF PUBLIC MEETINGS**  
**UNIVERSITY OF WASHINGTON**

[Memorandum—January 27, 2005]

At the direction of the chair of the board of regents, changes have been made to the locations, dates and times of the University of Washington board of regents meetings scheduled from March 17 through December 8, 2005. All meetings will now be held in the Peterson Room of the Allen Library, unless otherwise noted (see below). The date and

time for the June meeting has been changed from Friday, June 10 to Thursday, June 9, and will commence at 1:30 p.m. rather than 3:00 p.m.

DAY	DATE	LOCATION
Thursday	March 17	
Thursday	April 21*	
Thursday	May 19	
Thursday	June 9	1:30 p.m., WALKER-AMES ROOM, KANE HALL
Thursday	July 21	
Thursday	August 18*	
Thursday	September 15	
Thursday	October 20	UW BOTHELL
Thursday	November 17	
Thursday	December 8*	

\*The April, August, and December meetings will be canceled, circumstances permitting.

If you have any questions about the meetings of the board of regents, please contact the board of regents' office at (206) 543-1633.

**WSR 05-04-060**

**NOTICE OF PUBLIC MEETINGS**

**SEATTLE COMMUNITY COLLEGES**

[Memorandum—January 26, 2005]

In compliance with RCW 42.30.075, following is the Seattle Community Colleges - District 6 board of trustees regular meeting schedule for 2005, which was adopted by the board on October 14, 2004.

The board of trustees meetings begin with a study session or reception at **1:00 p.m.** Regular meeting agenda sessions will begin at **2:00 p.m.** Dates and locations of the meetings are noted below. **All meetings are on the second Thursday of the month, except for September and December, which will occur on the third Thursday of those months.**

**2005 MEETING SCHEDULE**

DATE	LOCATION
January 13	Seattle Vocational Institute (SVI) 2120 South Jackson Street Seattle, WA 98144
February 10	South Seattle Community College (SSCC) 6000 16th Avenue S.W. Seattle, WA 98106
March 10	North Seattle Community College (NSCC) 9600 College Way North Seattle, WA 98103
April 14	SCCD (Siegal Center) 1500 Harvard Avenue Seattle, WA 98122

DATE	LOCATION
May 12	Seattle Central Community College (SCCC) 1701 Broadway Seattle, WA 98122
June 9	South Seattle Community College (SSCC) 6000 16th Avenue S.W. Seattle, WA 98106
July 14	Seattle Vocational Institute (SVI) 2120 South Jackson Street Seattle, WA 98144
August	NO MEETING
September 15	SCCD (Siegal Center) 1500 Harvard Avenue Seattle, WA 98122
October 13	North Seattle Community College (NSCC) 9600 College Way North Seattle, WA 98103
November 10	Seattle Central Community College (SCCC) 1701 Broadway Seattle, WA 98122
December 15	Seattle Vocational Institute (SVI) 2120 South Jackson Street Seattle, WA 98144

**WSR 05-04-062**

**AGENDA**

**DEPARTMENT OF AGRICULTURE**

[Filed January 31, 2005, 10:20 a.m.]

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-05 issue of the Register.

**WSR 05-04-066**

**NOTICE OF PUBLIC MEETINGS**

**OFFICE OF THE INTERAGENCY COMMITTEE**

(Biodiversity Council)

[Memorandum—January 28, 2005]

The next public meeting of the Biodiversity Council (Executive Order 04-02) will be Wednesday, February 16, 2005, from 9:00 a.m. to 4:00 p.m. at the Gwinwood Conference Center Main Lodge, 6015 30th Avenue S.E., Lacey.

For further information, please contact Patty Dickason, Interagency Committee for Outdoor Recreation (IAC), (360) 902-3012.

The IAC schedules all public meetings at barrier free sites. Persons who need special assistance, such as large type materials, may contact Patty Dickason at the number listed above or by e-mail at [patty@iac.wa.gov](mailto:patty@iac.wa.gov).

**MISC.**

**WSR 05-04-067**  
**NOTICE OF PUBLIC MEETINGS**  
**OFFICE OF THE**  
**INTERAGENCY COMMITTEE**  
 (Salmon Recovery Funding Board)  
 [Memorandum—January 31, 2005]

February 10 and 11 (if needed), 2005  
 Natural Resources Building  
 Room 172  
 Olympia, Washington

**WSR 05-04-069**  
**AGENDA**  
**PUBLIC DISCLOSURE COMMISSION**  
 [Filed January 31, 2005, 4:41 p.m.]

**Agenda for Rules Under Development**  
**January - June, 2005**

Agency Contact: Doug Ellis, Director of Public Outreach, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 664-2735, toll free 1-877-601-2828, fax (360) 753-1112, e-mail dellis@pdc.wa.gov.

At present, the Public Disclosure Commission (PDC) has seven rules under development:

1. Topic: Amending language to remove the requirement to read stipulations into the record.

Status: On December 3, 2004, the commission filed the preproposal statement with the code reviser giving notice that it is considering changes to WAC 390-37-090. Currently, all stipulated agreements are required to be read into the public record. A public hearing and possible adoption of an amended rule may occur on March 22, 2005. If adopted, the amended rule will likely go into effect in May of 2005.

Statutory Authority: RCW 42.17.370(1).

Statute Being Implemented: RCW 34.05.060.

WAC Cite: WAC 390-37-090 Informal settlement—Cases resolved by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.

2. Topic: Enforcement procedures.

Status: On December 3, 2004, the commission filed the preproposal statement with the code reviser giving notice that it is considering a possible rule amendment to clarify what action is included in the notification provided respondents under WAC 390-37-060(3). The term "other consideration" is overly broad as it relates to the ten calendar day notification to respondents prior to a meeting of the commission.

Possible rule amendment would have the ten day notice only apply to actual hearings under the Administrative Procedure Act and not to prehearing conferences and the like. A public hearing and possible adoption of an amended rule may occur on March 22, 2005. If adopted, the amended rule will likely go into effect in May of 2005.

Statutory Authority: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.395.

WAC Cite: WAC 390-37-060 Enforcement procedures—Investigation of complaints—Initiation of hearing (adjudicative proceeding).

3. Topic: Exemption of in-kind contributions from the expenditure threshold.

Status: On December 3, 2004, the commission filed the preproposal statement with the code reviser giving notice that it is considering a possible rule amendment to exempt in-kind contributions from the expenditure threshold for electronic filing under WAC 390-19-030. The possible amendment would exempt in-kind contributions from the \$10,000 mandatory electronic filing threshold, since these funds are not directly spent by the campaigns. A public hearing and possible adoption of an amended rule may occur on March 22, 2005. If adopted, the amended rule will likely go into effect in May of 2005.

Statutory Authority: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.3691.

WAC Cite: WAC 390-19-030 Electronic filing—Reporting threshold.

4. Topic: Proposing language to clarify the steps necessary when a candidate or political committee intends to change reporting options.

Status: On December 3, 2004, the commission filed the preproposal statement with the code reviser giving notice that it is considering changes to WAC 390-16-125. The commission is considering a possible rule amendment to provide more guidance to candidates and political committees as to when a change in reporting options from mini reporting to full reporting is allowed. A public hearing and possible adoption of an amended rule may occur on March 22, 2005. If adopted, the amended rule will likely go into effect in May of 2005.

Statutory Authority: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.040 through 42.17.090.

WAC Cite: WAC 390-16-125 Mini campaign reporting—Exceeding limitations.

5. Topic: Revising the form for statement of employment of legislators, state officers, and state employees.

Status: On December 23, 2004, the commission filed the preproposal statement with the code reviser giving notice that it is considering changes to WAC 390-20-130. The commission is considering a possible rule amendment to update PDC form L-7 the official form for statement of employment of legislators, state officers, and state employees. A public hearing and possible adoption of an amended rule may occur on March 22, 2005. If adopted, the amended rule will likely go into effect in May of 2005.

Statutory Authority: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.210.

WAC Cite: WAC 390-20-130 Forms for statement of employment of legislators, state officers, and state employees.

6. Topic: Amending rule on identification of affiliated entities.

Status: On January 27, 2005, the commission filed the preproposal statement with the code reviser giving notice that

it is considering changes to WAC 390-16-309. The commission is considering a possible rule amendment to conform to Washington State Supreme Court's interpretation of RCW 42.17.640 contained in *Edelman v. State ex rel. Public Disclosure Commission*. A public hearing and possible adoption of an amended rule may occur on March 22, 2005. If adopted, the amended rule will likely go into effect in May of 2005.

Statutory Authority: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.640.

WAC Cite: WAC 390-16-309 Identification of affiliated entities.

7. Topic: Amending rule on contributions after the primary election.

Status: On January 27, 2005, the commission filed the preproposal statement with the code reviser giving notice that it is considering changes to WAC 390-17-302. The commission is considering a possible rule amendment to conform to Washington State Supreme Court's interpretation of RCW 42.17.640 contained in *Edelman v. State ex rel. Public Disclosure Commission*. A public hearing and possible adoption of an amended rule may occur on March 22, 2005. If adopted, the amended rule will likely go into effect in May of 2005.

Statutory Authority: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.640.

WAC Cite: WAC 390-17-302 Contributions after the primary election.

A complete listing of rule-making activity from 1999 to present can be found on the PDC website at [www.pdc.wa.gov](http://www.pdc.wa.gov) under rule-making activity.

January 31, 2005

Douglas J. Ellis

Director of Public Outreach

#### WSR 05-04-070

##### NOTICE OF PUBLIC MEETINGS

#### EASTERN WASHINGTON UNIVERSITY

[Memorandum—February 1, 2005]

##### BOARD OF TRUSTEES

February 4, 2005

Open Public Session at 9:00 a.m. (TAW 215)

Executive Session at 12:00 p.m. (PUB 261)

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling the president's office, (509) 359-6598.

#### WSR 05-04-071

##### RULES COORDINATOR

#### LIQUOR CONTROL BOARD

[Filed February 1, 2005, 9:19 a.m.]

Pam Madson has been designated as the rules coordinator for the Washington State Liquor Control Board as of January 3, 2005. She can be reached by phone (360) 664-1648, e-mail [rules@liq.wa.gov](mailto:rules@liq.wa.gov), and fax (360) 704-4921.

Rick Garza

Deputy

Administrative Director

#### WSR 05-04-076

##### DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 1, 2005, 2:45 p.m.]

As per RCW 39.12.015, 39.12.020 and WAC 296-127-011 and as published on the internet on February 1, 2005, the industrial statistician has determined the statewide prevailing rates of wage. These prevailing rates of wage are effective for public works projects bid on or after March 3, 2005.

Every contractor and subcontractor on every public works project must file a statement of intent to pay prevailing wages and an affidavit of wages paid. Both forms must be filed on every project. The filing of the affidavit of wages paid does not set aside the requirement to also file the statement of intent to pay prevailing wages. The department may fine contractors \$500 for failure to file these forms.

For more information on prevailing wage or a copy of the rates please visit our website at [www.lni.wa.gov/TradesLicensing/PrevailingWage/](http://www.lni.wa.gov/TradesLicensing/PrevailingWage/) or call (360) 902-5335.

Josh Swanson

Prevailing Wage Manager

Industrial Statistician

#### WSR 05-04-095

##### NOTICE OF PUBLIC MEETINGS

#### TACOMA COMMUNITY COLLEGE

[Memorandum—January 28, 2005]

The following date and time need to be reflected for the February Tacoma Community College board of trustees meeting:

**Change from: Thursday, February 10, at 4:00 p.m.**

**To: Wednesday, February 9, at 4:00 p.m.**

The meeting will be held in the College Room of the new Administration Building #27 at Tacoma Community College, 6501 South 19th Street, Tacoma, WA 98466.

If you need any other information, Cathie Bitz can be reached at (253) 566-5101.

**WSR 05-04-096****NOTICE OF PUBLIC MEETINGS  
TRANSPORTATION COMMISSION**

[Memorandum—February 1, 2005]

Following is the Transportation Commission's 2005 meeting schedule:

Tuesday and Wednesday	January 18 and 19
Tuesday and Wednesday	February 15 and 16
Tuesday and Wednesday	March 15 and 16
Tuesday and Wednesday	April 19 and 20
Tuesday and Wednesday	May 17 and 18
Tuesday and Wednesday	June 14 and 15
Tuesday and Wednesday	July 19 and 20
Tuesday and Wednesday	August 16 and 17
Tuesday and Wednesday	September 20 and 21
Tuesday and Wednesday	October 18 and 19
Tuesday and Wednesday	November 15 and 16
Tuesday and Wednesday	December 20 and 21

The above meetings will be held between 8:00 a.m. and 5:00 p.m. in Room 1D2 of the Transportation Building, 310 Maple Park Drive, Olympia.

Please publish the following dates for the commission's local jurisdiction meetings:

Wednesday, June 29	Chelan (Chelan, Douglas and Okanogan counties)
Wednesday, September 28	Anacortes (Island, San Juan, Skagit and Whatcom counties)
Wednesday, October 26	Tacoma (Pierce County)

If you have any questions call (360) 705-7070.

**WSR 05-04-104****NOTICE OF PUBLIC MEETINGS  
NOXIOUS WEED  
CONTROL BOARD**

[Memorandum—February 2, 2005]

The meeting schedule of the Washington State Noxious Weed Control Board for the remainder of 2005 is as follows:

March 16, 8:30 a.m.	Campbell's Resort 104 West Woodin Chelan, WA
May 18, 8:30 a.m.	Michael's On The Lake 901 West Broadway Moses Lake, WA
July 20, 8:30 a.m.	The Summit Lodge 603 State Route 906 Snoqualmie, WA
September 21, 8:30 a.m.	Ocean Shores Convention Center 120 West Chance A La Mer Boulevard Ocean Shores, WA

November 16, 8:30 a.m.

Washington Cattlemen's Association  
1301 Dolar Way Road  
Ellensburg, WA**WSR 05-04-109****DEPARTMENT OF ECOLOGY**

[Filed February 2, 2005, 10:13 a.m.]

**PUBLIC NOTICE OF INTENT TO ISSUE A  
GENERAL MUNICIPAL STORMWATER NPDES PERMIT  
FOR EASTERN WASHINGTON PHASE II**

**Introduction and Purpose:** Federal and state water quality regulations establish national pollutant discharge elimination system (NPDES) and waste discharge general permit requirements for stormwater discharges from certain industries, construction sites, and municipalities. In general, stormwater is the rainfall that flows overland into a drainage system and discharges into a surface water body or a constructed infiltration facility. Stormwater can transport pollutants and disturb flow regimes in streams, wetlands and other water bodies. Municipal stormwater permits regulate discharges from publicly-owned ditches, pipes, and other conveyances.

A municipal stormwater permit is being developed to meet the requirements of chapter 90.48 RCW as amended, and the Federal Water Pollution Control Act (federal Clean Water Act) Title 33 United States Code, Section 1251 et seq., as amended. The permit will comply with C.F.R. 40 Section 122 and chapter 173-226 WAC.

In accordance with the state's waste discharge general permit regulation, WAC 173-226-130, the purpose of this announcement is to:

- 1) Provide notice of a preliminary determination to develop a general permit,
- 2) Request comments as to whether a general permit or individual permits would be more appropriate for such discharges, and
- 3) Provide an opportunity for interested or potentially affected parties to submit information on dischargers and discharges proposed to be covered under the permit as well as any other relevant information.

The federal Clean Water Act establishes a two-part system for implementing municipal stormwater permits. Larger and medium-sized municipalities are covered in Phase I; smaller jurisdictions are addressed later under Phase II. In 2000, the United States Environmental Protection Agency finalized NPDES Phase II rules regulating municipally-owned separate storm sewer systems within census-defined urban areas. These rules require the Department of Ecology to expand its stormwater program by issuing permits to additional operators of MS4s that discharge to surface waters.

The Department of Ecology has proposed to issue separate general permits for Phase II in eastern and western Washington and directed staff to begin developing the permit for western Washington last year. This notice pertains only to the permit for eastern Washington.

The Phase II general NPDES permit for eastern Washington applies to approximately twenty jurisdictions located

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within the five 2000 census-defined urban areas in eastern Washington: Clarkston, Wenatchee, Spokane, Tri-Cities, and Yakima. Another five cities in eastern Washington with populations greater than 10,000 will be evaluated, using other designation criteria, for inclusion in the Phase II process: Ellensburg, Moses Lake, Pullman, Sunnyside, and Walla Walla.

#### Proposed Timeline:

- A preliminary draft permit will be published for public comment in late spring 2005.
- The target for the final draft, public hearings and requesting formal public comments is late summer 2005.
- The target date for issuing the final permit is the end of 2005.

**Documents Available:** The federal Phase II regulations establish minimum requirements for the scope of the permits and content of the related stormwater management program to be developed by each permittee. This rule is posted at: [http://cfpub1.epa.gov/npdes/regresult.cfm?program\\_id=6&view=all&type=1](http://cfpub1.epa.gov/npdes/regresult.cfm?program_id=6&view=all&type=1).

The Department of Ecology assisted eastern Washington jurisdictions in compiling a *Model Municipal Stormwater Program for Eastern Washington*. The model program provides guidance to local jurisdictions on programmatic activities that should be a part of their stormwater management programs. This document and other information about stormwater initiatives in eastern Washington are available at: [http://www.ecy.wa.gov/programs/wq/stormwater/eastern\\_manual/index.html](http://www.ecy.wa.gov/programs/wq/stormwater/eastern_manual/index.html).

More information about the Phase II permit program, the communities that must apply for the Phase II permit, and the federal Phase II regulations is at: [http://www.ecy.wa.gov/programs/wq/stormwater/Phase\\_2/index.html](http://www.ecy.wa.gov/programs/wq/stormwater/Phase_2/index.html).

**Public Comment/Interested Parties:** This is a preliminary notice of the Department of Ecology's intent to issue a general municipal stormwater permit. Public comments may be submitted on the characteristics of municipal storm sewer discharges including effluent quantity, quality and any receiving water impacts. These comments can relate to an individual discharger, or be representative of the category as a whole. Any other relevant information may also be submitted.

There will be further opportunities to supply information, comments, or testimony as the Phase II municipal stormwater general permit for eastern Washington is developed and issued. If you have any information or comments you would like the department to consider in developing the preliminary draft of the eastern Washington Phase II municipal stormwater permit, please send them to the Department of Ecology no later than March 15, 2005. You may send your written comments and/or get on the mailing list for the eastern Washington Phase II NPDES permit by contacting Karen Dinicola, Water Quality Program, Department of Ecology, P.O. Box 47696, Olympia, WA 98504-7696, e-mail [kdin461@ecy.wa.gov](mailto:kdin461@ecy.wa.gov), (360) 407-6550.

**For Further Information:** See our website at <http://www.ecy.wa.gov/programs/wq/stormwater/index.html> or contact Department of Ecology, Water Quality Pro-

gram, (360) 407-6600 and you will be referred to the appropriate person.

*If you have special accommodation needs or require this document in an alternative format, please contact the Department of Ecology's Diversity Program at (360) 407-6020. If you are a person with a speech or hearing impairment, call 711 or 800-833-6388 for TTY.*

#### WSR 05-04-110

#### BUILDING CODE COUNCIL

[Memorandum—February 2, 2005]

#### NOTICE OF PUBLIC HEARING

**SUBJECT: Certification of the state accessibility requirements by DOJ.**

The State Building Code Council (SBCC) will hold a public hearing on March 11, 2005, as part of their regularly scheduled meeting beginning at 10:00 a.m. in the city council chambers at the SeaTac City Hall, 4800 South 188th Street. The SBCC will meet in open session to take public comments regarding the council's intent to seek certification of the state accessibility requirements by the United States Department of Justice (DOJ).

The following documents containing the state accessibility requirements are available for public review at the SBCC office located at 128 10th Avenue S.W., Olympia, WA.

- The 2003 International Building Code (IBC), published by the International Code Council.
- The 2003 ICC/ANSI A117.1 Accessible and Usable Buildings and Facilities, published by the International Code Council and approved by the American National Standards Institute.
- Chapter 51-50 WAC as amended effective July 1, 2005, adopting and amending the 2003 IBC and 2003 ICC/ANSI A117.1.

Submit written comments to John Neff, Chairman, SBCC, P.O. Box 42525, Olympia, WA 98504-2525, e-mail [sbcc@cted.wa.gov](mailto:sbcc@cted.wa.gov), fax (360) 586-9383, by March 11, 2005.

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**Table of WAC Sections Affected**

**KEY TO TABLE**

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

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|--|---|
| <p><b>Symbols:</b></p> <p>AMD = Amendment of existing section<br/>         A/R = Amending and recodifying a section<br/>         DECOD = Decodification of an existing section<br/>         NEW = New section not previously codified<br/>         OBJECT = Notice of objection by Joint Administrative Rules Review Committee<br/>         PREP = Preproposal comments<br/>         RE-AD = Readoption of existing section<br/>         RECOD = Recodification of previously codified section<br/>         REP = Repeal of existing section<br/>         RESCIND = Rescind of existing section<br/>         REVIEW = Review of previously adopted rule<br/>         SUSP = Suspending an existing section</p> | <p><b>Suffixes:</b></p> <p>-C = Continuance of previous proposal<br/>         -E = Emergency action<br/>         -P = Proposed action<br/>         -S = Supplemental notice<br/>         -W = Withdrawal of proposed action<br/>         -X = Expedited rule making<br/>         -XA = Expedited adoption<br/>         -XR = Expedited repeal<br/>         No suffix means permanent action</p> <p><b>WAC #</b> Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.</p> <p><b>WSR #</b> Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.</p> |
|--|---|

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308- 19-200	AMD-P	05-04-105	315- 34-030	AMD-P	05-04-081	357- 58-140	NEW-P	05-04-088
308- 19-210	AMD-P	05-04-105	315- 34-040	AMD-E	05-04-010	357- 58-145	NEW-P	05-04-088
308- 19-220	AMD-P	05-04-105	315- 34-040	AMD-P	05-04-081	357- 58-150	NEW-P	05-04-088
308- 19-230	AMD-P	05-04-105	315- 34-050	AMD-E	05-04-010	357- 58-155	NEW-P	05-04-088
308- 19-240	AMD-P	05-04-105	315- 34-050	AMD-P	05-04-081	357- 58-160	NEW-P	05-04-088
308- 19-250	AMD-P	05-04-105	315- 34-057	AMD-E	05-04-010	357- 58-165	NEW-P	05-04-088
308- 19-300	AMD-P	05-04-105	315- 34-057	AMD-P	05-04-081	357- 58-170	NEW-P	05-04-088
308- 19-305	NEW-P	05-04-105	315- 34-060	AMD-E	05-04-010	357- 58-175	NEW-P	05-04-088
308- 19-310	NEW-P	05-04-105	315- 34-060	AMD-P	05-04-081	357- 58-180	NEW-P	05-04-088
308- 19-315	NEW-P	05-04-105	315- 34-070	REP-E	05-04-010	357- 58-185	NEW-P	05-04-088
308- 19-320	NEW-P	05-04-105	315- 34-070	REP-P	05-04-081	357- 58-190	NEW-P	05-04-088
308- 19-400	AMD-P	05-04-105	315- 34-080	REP-E	05-04-010	357- 58-195	NEW-P	05-04-088
308- 19-410	AMD-P	05-04-105	315- 34-080	REP-P	05-04-081	357- 58-200	NEW-P	05-04-088
308- 19-420	AMD-P	05-04-105	315- 34-090	REP-E	05-04-010	357- 58-205	NEW-P	05-04-088
308- 19-430	AMD-P	05-04-105	315- 34-090	REP-P	05-04-081	357- 58-210	NEW-P	05-04-088
308- 19-445	NEW-P	05-04-105	315- 34-100	REP-E	05-04-010	357- 58-215	NEW-P	05-04-088
308- 19-450	NEW-P	05-04-105	315- 34-100	REP-P	05-04-081	357- 58-220	NEW-P	05-04-088
308- 19-455	NEW-P	05-04-105	315- 37-010	REP-X	05-03-060	357- 58-225	NEW-P	05-04-088
308- 19-460	NEW-P	05-04-105	315- 37-020	REP-X	05-03-060	357- 58-230	NEW-P	05-04-088
308- 20-123	NEW	05-04-012	315- 37-030	REP-X	05-03-060	357- 58-235	NEW-P	05-04-088
308- 48-810	PREP	05-04-106	315- 37-040	REP-X	05-03-060	357- 58-240	NEW-P	05-04-089
308- 48-820	PREP	05-04-106	315- 37-050	REP-X	05-03-060	357- 58-245	NEW-P	05-04-089
308- 48-830	PREP	05-04-106	315- 37-060	REP-X	05-03-060	357- 58-250	NEW-P	05-04-089
308- 56A-500	AMD-W	05-02-069A	315- 37-070	REP-X	05-03-060	357- 58-255	NEW-P	05-04-089
308- 56A-500	AMD-P	05-03-106	315- 37-080	REP-X	05-03-060	357- 58-260	NEW-P	05-04-089
308- 56A-530	AMD-W	05-02-069A	315- 37-090	REP-X	05-03-060	357- 58-265	NEW-P	05-04-089
308- 56A-530	AMD-P	05-03-106	315- 37-100	REP-X	05-03-060	357- 58-270	NEW-P	05-04-089
308- 96A-307	PREP-W	05-03-059	315- 37-110	REP-X	05-03-060	357- 58-275	NEW-P	05-04-089
308- 96A-311	AMD-P	05-03-105	315- 37-120	REP-X	05-03-060	357- 58-280	NEW-P	05-04-089
308- 96A-314	AMD-P	05-03-105	332-120	PREP	05-02-073	357- 58-285	NEW-P	05-04-089
308-124A-460	PREP	05-03-041	332-130	PREP	05-02-073	357- 58-290	NEW-P	05-04-089
308-125-200	AMD-P	05-02-095	356- 10-060	AMD	05-04-043	357- 58-295	NEW-P	05-04-089
315- 10-010	AMD-P	05-04-079	356- 10-065	NEW	05-04-043	357- 58-300	NEW-P	05-04-089
315- 10-020	AMD-P	05-04-079	357- 01-255	NEW-W	05-02-061	357- 58-305	NEW-P	05-04-089
315- 10-022	AMD-P	05-04-079	357- 43-045	NEW-W	05-02-062	357- 58-310	NEW-P	05-04-089
315- 10-023	AMD-P	05-04-079	357- 58-005	NEW-P	05-04-087	357- 58-315	NEW-P	05-04-089
315- 10-024	AMD-P	05-04-079	357- 58-010	NEW-P	05-04-087	357- 58-320	NEW-P	05-04-089
315- 10-030	AMD-P	05-04-079	357- 58-015	NEW-P	05-04-087	357- 58-325	NEW-P	05-04-089
315- 10-035	AMD-P	05-04-079	357- 58-020	NEW-P	05-04-087	357- 58-330	NEW-P	05-04-089
315- 10-040	AMD-P	05-04-079	357- 58-025	NEW-P	05-04-087	357- 58-335	NEW-P	05-04-089
315- 10-055	AMD-P	05-04-079	357- 58-030	NEW-P	05-04-087	357- 58-340	NEW-P	05-04-089
315- 10-070	AMD-P	05-04-079	357- 58-035	NEW-P	05-04-087	357- 58-345	NEW-P	05-04-089
315- 10-075	AMD-P	05-04-079	357- 58-040	NEW-P	05-04-087	357- 58-350	NEW-P	05-04-089
315- 33A-010	AMD-E	05-04-019	357- 58-045	NEW-P	05-04-087	357- 58-355	NEW-P	05-04-089
315- 33A-010	AMD-P	05-04-080	357- 58-050	NEW-P	05-04-087	357- 58-360	NEW-P	05-04-089
315- 33A-020	AMD-E	05-04-019	357- 58-055	NEW-P	05-04-087	357- 58-365	NEW-P	05-04-089
315- 33A-020	AMD-P	05-04-080	357- 58-060	NEW-P	05-04-087	357- 58-370	NEW-P	05-04-089
315- 33A-030	AMD-E	05-04-019	357- 58-065	NEW-P	05-04-087	357- 58-375	NEW-P	05-04-089
315- 33A-030	AMD-P	05-04-080	357- 58-070	NEW-P	05-04-087	357- 58-380	NEW-P	05-04-089
315- 33A-040	AMD-E	05-04-019	357- 58-075	NEW-P	05-04-087	357- 58-385	NEW-P	05-04-089
315- 33A-040	AMD-P	05-04-080	357- 58-080	NEW-P	05-04-087	357- 58-390	NEW-P	05-04-089
315- 33A-050	AMD-E	05-04-019	357- 58-085	NEW-P	05-04-087	357- 58-395	NEW-P	05-04-089
315- 33A-050	AMD-P	05-04-080	357- 58-090	NEW-P	05-04-087	357- 58-400	NEW-P	05-04-089
315- 33A-060	AMD-E	05-04-019	357- 58-095	NEW-P	05-04-087	357- 58-405	NEW-P	05-04-091
315- 33A-060	AMD-P	05-04-080	357- 58-100	NEW-P	05-04-087	357- 58-410	NEW-P	05-04-091
315- 33A-070	REP-E	05-04-019	357- 58-105	NEW-P	05-04-087	357- 58-415	NEW-P	05-04-091
315- 33A-070	REP-P	05-04-080	357- 58-110	NEW-P	05-04-087	357- 58-420	NEW-P	05-04-091
315- 34-010	AMD-E	05-04-010	357- 58-115	NEW-P	05-04-087	357- 58-425	NEW-P	05-04-091
315- 34-010	AMD-P	05-04-081	357- 58-120	NEW-P	05-04-088	357- 58-430	NEW-P	05-04-091
315- 34-020	AMD-E	05-04-010	357- 58-125	NEW-P	05-04-088	357- 58-435	NEW-P	05-04-091
315- 34-020	AMD-P	05-04-081	357- 58-130	NEW-P	05-04-088	357- 58-440	NEW-P	05-04-091
315- 34-030	AMD-E	05-04-010	357- 58-135	NEW-P	05-04-088	357- 58-445	NEW-P	05-04-091

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
357-58-450	NEW-P	05-04-091	388-71-0260	REP-P	05-03-096	388-71-1005	REP-P	05-03-096
357-58-455	NEW-P	05-04-091	388-71-0400	REP-P	05-03-096	388-71-1010	REP-P	05-03-096
357-58-460	NEW-P	05-04-091	388-71-0405	REP-P	05-03-096	388-71-1015	REP-P	05-03-096
357-58-465	NEW-P	05-04-091	388-71-0410	REP-P	05-03-096	388-71-1020	REP-P	05-03-096
357-58-470	NEW-P	05-04-091	388-71-0415	REP-P	05-03-096	388-71-1025	REP-P	05-03-096
357-58-475	NEW-P	05-04-091	388-71-0420	REP-P	05-03-096	388-71-1030	REP-P	05-03-096
357-58-480	NEW-P	05-04-091	388-71-0425	REP-P	05-03-096	388-71-1035	REP-P	05-03-096
357-58-485	NEW-P	05-04-091	388-71-0430	REP-P	05-03-096	388-71-1065	REP-P	05-03-096
357-58-490	NEW-P	05-04-091	388-71-0435	REP-P	05-03-096	388-71-1070	REP-P	05-03-096
357-58-495	NEW-P	05-04-091	388-71-0440	REP-P	05-03-096	388-71-1075	REP-P	05-03-096
357-58-500	NEW-P	05-04-090	388-71-0442	REP-P	05-03-096	388-71-1080	REP-P	05-03-096
357-58-505	NEW-P	05-04-090	388-71-0445	REP-P	05-03-096	388-71-1085	REP-P	05-03-096
357-58-510	NEW-P	05-04-090	388-71-0450	REP-P	05-03-096	388-71-1090	REP-P	05-03-096
357-58-515	NEW-P	05-04-090	388-71-0455	REP-P	05-03-096	388-71-1095	REP-P	05-03-096
357-58-520	NEW-P	05-04-090	388-71-0460	REP-P	05-03-096	388-71-1100	REP-P	05-03-096
357-58-525	NEW-P	05-04-090	388-71-0465	REP-P	05-03-096	388-71-1105	REP-P	05-03-096
357-58-530	NEW-P	05-04-090	388-71-0470	REP-P	05-03-096	388-71-1110	REP-P	05-03-096
357-58-535	NEW-P	05-04-090	388-71-0480	REP-P	05-03-096	388-72A-0005	REP-P	05-03-096
357-58-540	NEW-P	05-04-090	388-71-0500	AMD-P	05-03-096	388-72A-0010	REP-P	05-03-096
357-58-545	NEW-P	05-04-090	388-71-0515	AMD-P	05-03-096	388-72A-0015	REP-P	05-03-096
363-116	PREP	05-04-094	388-71-0520	AMD-P	05-03-096	388-72A-0020	REP-P	05-03-096
363-116-082	AMD	05-04-028	388-71-0540	AMD-P	05-03-096	388-72A-0025	REP-P	05-03-096
388-14A-3304	AMD-P	05-03-095	388-71-05832	NEW-P	05-03-096	388-72A-0030	REP-P	05-03-096
388-14A-3310	AMD-P	05-03-095	388-71-0600	REP-P	05-03-096	388-72A-0035	REP-P	05-03-096
388-14A-3317	NEW-P	05-03-095	388-71-0605	REP-P	05-03-096	388-72A-0036	REP-P	05-03-096
388-14A-3320	AMD-P	05-03-095	388-71-0610	REP-P	05-03-096	388-72A-0037	REP-P	05-03-096
388-14A-3321	NEW-E	05-03-095	388-71-0613	REP-P	05-03-096	388-72A-0038	REP-P	05-03-096
388-14A-4119	NEW-E	05-03-094	388-71-0615	REP-P	05-03-096	388-72A-0039	REP-P	05-03-096
388-14A-4180	NEW-E	05-03-094	388-71-0620	REP-P	05-03-096	388-72A-0041	REP-P	05-03-096
388-14A-5000	AMD-P	05-02-063	388-71-0700	REP-P	05-03-096	388-72A-0042	REP-P	05-03-096
388-14A-5001	AMD-P	05-02-063	388-71-0704	AMD-P	05-03-096	388-72A-0043	REP-P	05-03-096
388-14A-5005	AMD-P	05-02-063	388-71-0706	AMD-P	05-03-096	388-72A-0045	REP-P	05-03-096
388-14A-5008	AMD-P	05-02-063	388-71-0708	AMD-P	05-03-096	388-72A-0050	REP-P	05-03-096
388-14A-5009	NEW-P	05-02-063	388-71-0710	AMD-P	05-03-096	388-72A-0053	REP-P	05-03-096
388-14A-5010	NEW-P	05-02-063	388-71-0716	AMD-P	05-03-096	388-72A-0055	REP-P	05-03-096
388-14A-7100	AMD-P	05-03-095	388-71-0720	AMD-P	05-03-096	388-72A-0057	REP-P	05-03-096
388-14A-7110	NEW-E	05-03-095	388-71-0734	AMD	05-02-064	388-72A-0058	REP-P	05-03-096
388-14A-7115	NEW-E	05-03-095	388-71-0800	REP-P	05-03-096	388-72A-0060	REP-P	05-03-096
388-14A-7117	NEW-E	05-03-095	388-71-0805	REP-P	05-03-096	388-72A-0065	REP-P	05-03-096
388-14A-7120	NEW-E	05-03-095	388-71-0810	REP-P	05-03-096	388-72A-0069	REP-P	05-03-096
388-14A-8600	NEW-E	05-03-095	388-71-0815	REP-P	05-03-096	388-72A-0070	REP-P	05-03-096
388-25-0225	AMD-P	05-03-082	388-71-0820	REP-P	05-03-096	388-72A-0080	REP-P	05-03-096
388-25-0226	NEW-P	05-03-082	388-71-0825	REP-P	05-03-096	388-72A-0081	REP-P	05-03-096
388-25-0227	NEW-P	05-03-082	388-71-0830	REP-P	05-03-096	388-72A-0082	REP-P	05-03-096
388-25-0228	NEW-P	05-03-082	388-71-0835	REP-P	05-03-096	388-72A-0083	REP-P	05-03-096
388-25-0229	NEW-P	05-03-082	388-71-0840	REP-P	05-03-096	388-72A-0084	REP-P	05-03-096
388-25-0230	REP-P	05-03-082	388-71-0845	REP-P	05-03-096	388-72A-0085	REP-P	05-03-096
388-25-0231	NEW-P	05-03-082	388-71-0900	REP-P	05-03-096	388-72A-0086	REP-P	05-03-096
388-71-0194	REP-P	05-03-096	388-71-0905	REP-P	05-03-096	388-72A-0087	REP-P	05-03-096
388-71-0202	REP-P	05-03-096	388-71-0910	REP-P	05-03-096	388-72A-0090	REP-P	05-03-096
388-71-0203	REP-P	05-03-096	388-71-0915	REP-P	05-03-096	388-72A-0092	REP-P	05-03-096
388-71-0205	REP-P	05-03-096	388-71-0920	REP-P	05-03-096	388-72A-0095	REP-P	05-03-096
388-71-0210	REP-P	05-03-096	388-71-0925	REP-P	05-03-096	388-72A-0100	REP-P	05-03-096
388-71-0215	REP-P	05-03-096	388-71-0930	REP-P	05-03-096	388-72A-0105	REP-P	05-03-096
388-71-0220	REP-P	05-03-096	388-71-0935	REP-P	05-03-096	388-72A-0110	REP-P	05-03-096
388-71-0225	REP-P	05-03-096	388-71-0940	REP-P	05-03-096	388-72A-0115	REP-P	05-03-096
388-71-0230	REP-P	05-03-096	388-71-0945	REP-P	05-03-096	388-72A-0120	REP-P	05-03-096
388-71-0235	REP-P	05-03-096	388-71-0950	REP-P	05-03-096	388-76-76505	AMD-P	05-04-058
388-71-0240	REP-P	05-03-096	388-71-0955	REP-P	05-03-096	388-106-0005	NEW-P	05-03-096
388-71-0245	REP-P	05-03-096	388-71-0960	REP-P	05-03-096	388-106-0010	NEW-P	05-03-096
388-71-0250	REP-P	05-03-096	388-71-0965	REP-P	05-03-096	388-106-0015	NEW-P	05-03-096
388-71-0255	REP-P	05-03-096	388-71-1000	REP-P	05-03-096	388-106-0020	NEW-P	05-03-096

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-106-0025	NEW-P	05-03-096	388-106-0650	NEW-P	05-03-096	388-554-500	NEW	05-04-059
388-106-0030	NEW-P	05-03-096	388-106-0655	NEW-P	05-03-096	388-554-600	NEW	05-04-059
388-106-0035	NEW-P	05-03-096	388-106-0700	NEW-P	05-03-096	388-554-700	NEW	05-04-059
388-106-0040	NEW-P	05-03-096	388-106-0705	NEW-P	05-03-096	388-554-800	NEW	05-04-059
388-106-0045	NEW-P	05-03-096	388-106-0710	NEW-P	05-03-096	388-555	PREP-W	05-03-083
388-106-0050	NEW-P	05-03-096	388-106-0715	NEW-P	05-03-096	388-800	PREP	05-02-065
388-106-0055	NEW-P	05-03-096	388-106-0800	NEW-P	05-03-096	388-823-0010	NEW-P	05-04-057
388-106-0060	NEW-P	05-03-096	388-106-0805	NEW-P	05-03-096	388-823-0020	NEW-P	05-04-057
388-106-0065	NEW-P	05-03-096	388-106-0810	NEW-P	05-03-096	388-823-0030	NEW-P	05-04-057
388-106-0070	NEW-P	05-03-096	388-106-0815	NEW-P	05-03-096	388-823-0040	NEW-P	05-04-057
388-106-0075	NEW-P	05-03-096	388-106-0900	NEW-P	05-03-096	388-823-0050	NEW-P	05-04-057
388-106-0080	NEW-P	05-03-096	388-106-0905	NEW-P	05-03-096	388-823-0060	NEW-P	05-04-057
388-106-0085	NEW-P	05-03-096	388-106-0950	NEW-P	05-03-096	388-823-0070	NEW-P	05-04-057
388-106-0090	NEW-P	05-03-096	388-106-0955	NEW-P	05-03-096	388-823-0080	NEW-P	05-04-057
388-106-0095	NEW-P	05-03-096	388-106-1000	NEW-P	05-03-096	388-823-0090	NEW-P	05-04-057
388-106-0100	NEW-P	05-03-096	388-106-1005	NEW-P	05-03-096	388-823-0100	NEW-P	05-04-057
388-106-0105	NEW-P	05-03-096	388-106-1010	NEW-P	05-03-096	388-823-0105	NEW-P	05-04-057
388-106-0110	NEW-P	05-03-096	388-106-1015	NEW-P	05-03-096	388-823-0110	NEW-P	05-04-057
388-106-0115	NEW-P	05-03-096	388-106-1020	NEW-P	05-03-096	388-823-0120	NEW-P	05-04-057
388-106-0120	NEW-P	05-03-096	388-106-1025	NEW-P	05-03-096	388-823-0130	NEW-P	05-04-057
388-106-0125	NEW-P	05-03-096	388-106-1030	NEW-P	05-03-096	388-823-0140	NEW-P	05-04-057
388-106-0130	NEW-P	05-03-096	388-106-1035	NEW-P	05-03-096	388-823-0150	NEW-P	05-04-057
388-106-0135	NEW-P	05-03-096	388-106-1040	NEW-P	05-03-096	388-823-0160	NEW-P	05-04-057
388-106-0140	NEW-P	05-03-096	388-106-1045	NEW-P	05-03-096	388-823-0170	NEW-P	05-04-057
388-106-0200	NEW-P	05-03-096	388-106-1050	NEW-P	05-03-096	388-823-0200	NEW-P	05-04-057
388-106-0210	NEW-P	05-03-096	388-106-1055	NEW-P	05-03-096	388-823-0210	NEW-P	05-04-057
388-106-0213	NEW-P	05-03-096	388-106-1100	NEW-P	05-03-096	388-823-0215	NEW-P	05-04-057
388-106-0220	NEW-P	05-03-096	388-106-1105	NEW-P	05-03-096	388-823-0220	NEW-P	05-04-057
388-106-0225	NEW-P	05-03-096	388-106-1110	NEW-P	05-03-096	388-823-0230	NEW-P	05-04-057
388-106-0230	NEW-P	05-03-096	388-106-1115	NEW-P	05-03-096	388-823-0230	NEW-P	05-04-057
388-106-0235	NEW-P	05-03-096	388-106-1120	NEW-P	05-03-096	388-823-0300	NEW-P	05-04-057
388-106-0300	NEW-P	05-03-096	388-106-1200	NEW-P	05-03-096	388-823-0310	NEW-P	05-04-057
388-106-0305	NEW-P	05-03-096	388-106-1205	NEW-P	05-03-096	388-823-0320	NEW-P	05-04-057
388-106-0310	NEW-P	05-03-096	388-106-1210	NEW-P	05-03-096	388-823-0330	NEW-P	05-04-057
388-106-0315	NEW-P	05-03-096	388-106-1215	NEW-P	05-03-096	388-823-0400	NEW-P	05-04-057
388-106-0320	NEW-P	05-03-096	388-106-1220	NEW-P	05-03-096	388-823-0410	NEW-P	05-04-057
388-106-0325	NEW-P	05-03-096	388-106-1225	NEW-P	05-03-096	388-823-0420	NEW-P	05-04-057
388-106-0330	NEW-P	05-03-096	388-106-1230	NEW-P	05-03-096	388-823-0500	NEW-P	05-04-057
388-106-0335	NEW-P	05-03-096	388-106-1300	NEW-P	05-03-096	388-823-0510	NEW-P	05-04-057
388-106-0350	NEW-P	05-03-096	388-106-1305	NEW-P	05-03-096	388-823-0515	NEW-P	05-04-057
388-106-0355	NEW-P	05-03-096	388-106-1310	NEW-P	05-03-096	388-823-0600	NEW-P	05-04-057
388-106-0360	NEW-P	05-03-096	388-450-0015	AMD	05-03-078	388-823-0610	NEW-P	05-04-057
388-106-0400	NEW-P	05-03-096	388-450-0020	PREP-W	05-02-068	388-823-0615	NEW-P	05-04-057
388-106-0410	NEW-P	05-03-096	388-450-0200	AMD-E	05-03-079	388-823-0700	NEW-P	05-04-057
388-106-0415	NEW-P	05-03-096	388-462-0015	AMD-P	05-03-081	388-823-0710	NEW-P	05-04-057
388-106-0420	NEW-P	05-03-096	388-478-0070	AMD-P	05-02-091	388-823-0800	NEW-P	05-04-057
388-106-0425	NEW-P	05-03-096	388-478-0080	AMD-P	05-02-091	388-823-0810	NEW-P	05-04-057
388-106-0430	NEW-P	05-03-096	388-501-0200	PREP-W	05-02-068	388-823-0820	NEW-P	05-04-057
388-106-0435	NEW-P	05-03-096	388-513-1325	PREP-W	05-02-068	388-823-0830	NEW-P	05-04-057
388-106-0500	NEW-P	05-03-096	388-513-1340	PREP-W	05-02-068	388-823-0840	NEW-P	05-04-057
388-106-0510	NEW-P	05-03-096	388-513-1350	AMD-P	05-03-109	388-823-0850	NEW-P	05-04-057
388-106-0515	NEW-P	05-03-096	388-513-1380	AMD-P	05-03-109	388-823-0900	NEW-P	05-04-057
388-106-0520	NEW-P	05-03-096	388-515-1505	AMD	05-03-077	388-823-0910	NEW-P	05-04-057
388-106-0525	NEW-P	05-03-096	388-515-1540	AMD-P	05-03-096	388-823-0920	NEW-P	05-04-057
388-106-0530	NEW-P	05-03-096	388-515-1550	AMD-P	05-03-096	388-823-0930	NEW-P	05-04-057
388-106-0535	NEW-P	05-03-096	388-535-1070	AMD-P	05-03-080	388-823-0940	NEW-P	05-04-057
388-106-0600	NEW-P	05-03-096	388-538	PREP	05-04-082	388-823-1000	NEW-P	05-04-057
388-106-0610	NEW-P	05-03-096	388-546	PREP-W	05-02-068	388-823-1005	NEW-P	05-04-057
388-106-0615	NEW-P	05-03-096	388-554-100	NEW	05-04-059	388-823-1010	NEW-P	05-04-057
388-106-0620	NEW-P	05-03-096	388-554-200	NEW	05-04-059	388-823-1015	NEW-P	05-04-057
388-106-0625	NEW-P	05-03-096	388-554-300	NEW	05-04-059	388-823-1020	NEW-P	05-04-057
388-106-0630	NEW-P	05-03-096	388-554-400	NEW	05-04-059	388-823-1030	NEW-P	05-04-057
						388-823-1040	NEW-P	05-04-057

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388-823-1060	NEW-P	05-04-057	388-845-0820	NEW-E	05-04-020	388-845-3060	NEW-E	05-04-020
388-823-1070	NEW-P	05-04-057	388-845-0900	NEW-E	05-04-020	388-845-3065	NEW-E	05-04-020
388-823-1080	NEW-P	05-04-057	388-845-0905	NEW-E	05-04-020	388-845-3070	NEW-E	05-04-020
388-823-1090	NEW-P	05-04-057	388-845-0910	NEW-E	05-04-020	388-845-3075	NEW-E	05-04-020
388-823-1095	NEW-P	05-04-057	388-845-1000	NEW-E	05-04-020	388-845-3080	NEW-E	05-04-020
388-823-1100	NEW-P	05-04-057	388-845-1010	NEW-E	05-04-020	388-845-3085	NEW-E	05-04-020
388-825-030	REP-P	05-04-057	388-845-1015	NEW-E	05-04-020	388-845-3090	NEW-E	05-04-020
388-825-035	REP-P	05-04-057	388-845-1100	NEW-E	05-04-020	388-845-3095	NEW-E	05-04-020
388-825-040	REP-P	05-04-057	388-845-1105	NEW-E	05-04-020	388-845-4000	NEW-E	05-04-020
388-827	PREP-W	05-02-066	388-845-1110	NEW-E	05-04-020	388-845-4005	NEW-E	05-04-020
388-827	PREP	05-02-067	388-845-1150	NEW-E	05-04-020	388-845-4010	NEW-E	05-04-020
388-845-0005	NEW-E	05-04-020	388-845-1155	NEW-E	05-04-020	388-845-4015	NEW-E	05-04-020
388-845-0010	NEW-E	05-04-020	388-845-1160	NEW-E	05-04-020	390	PREP	05-04-037
388-845-0015	NEW-E	05-04-020	388-845-1200	NEW-E	05-04-020	390- 17-310	AMD	05-04-039
388-845-0020	NEW-E	05-04-020	388-845-1205	NEW-E	05-04-020	390- 37-160	AMD	05-04-038
388-845-0025	NEW-E	05-04-020	388-845-1210	NEW-E	05-04-020	390- 37-165	AMD	05-04-038
388-845-0030	NEW-E	05-04-020	388-845-1300	NEW-E	05-04-020	390- 37-170	AMD	05-04-038
388-845-0035	NEW-E	05-04-020	388-845-1305	NEW-E	05-04-020	390- 37-175	AMD	05-04-038
388-845-0040	NEW-E	05-04-020	388-845-1310	NEW-E	05-04-020	392-139	PREP	05-04-044
388-845-0041	NEW-E	05-04-020	388-845-1400	NEW-E	05-04-020	415-108-728	AMD	05-03-001
388-845-0045	NEW-E	05-04-020	388-845-1405	NEW-E	05-04-020	415-111-310	PREP	05-04-011
388-845-0050	NEW-E	05-04-020	388-845-1410	NEW-E	05-04-020	415-112-155	AMD	05-03-001
388-845-0051	NEW-E	05-04-020	388-845-1500	NEW-E	05-04-020	415-112-541	AMD	05-03-006
388-845-0055	NEW-E	05-04-020	388-845-1505	NEW-E	05-04-020	446- 20-600	AMD	05-03-034
388-845-0056	NEW-E	05-04-020	388-845-1510	NEW-E	05-04-020	446- 20-610	AMD-P	05-03-036
388-845-0060	NEW-E	05-04-020	388-845-1515	NEW-E	05-04-020	446- 20-630	AMD-P	05-03-035
388-845-0065	NEW-E	05-04-020	388-845-1600	NEW-E	05-04-020	446- 65-010	AMD	05-04-002
388-845-0070	NEW-E	05-04-020	388-845-1605	NEW-E	05-04-020	458- 16-1000	NEW-E	05-04-047
388-845-0075	NEW-E	05-04-020	388-845-1606	NEW-E	05-04-020	458- 20-141	AMD	05-03-053
388-845-0080	NEW-E	05-04-020	388-845-1610	NEW-E	05-04-020	458- 20-144	AMD	05-03-052
388-845-0085	NEW-E	05-04-020	388-845-1615	NEW-E	05-04-020	458- 20-17803	NEW	05-03-051
388-845-0090	NEW-E	05-04-020	388-845-1620	NEW-E	05-04-020	458- 20-190	AMD	05-03-002
388-845-0095	NEW-E	05-04-020	388-845-1700	NEW-E	05-04-020	458- 20-191	REP	05-03-002
388-845-0096	NEW-E	05-04-020	388-845-1705	NEW-E	05-04-020	458- 20-196	AMD	05-04-048
388-845-0100	NEW-E	05-04-020	388-845-1710	NEW-E	05-04-020	458- 20-198	AMD	05-04-048
388-845-0105	NEW-E	05-04-020	388-845-1800	NEW-E	05-04-020	458- 20-267	NEW-E	05-03-016
388-845-0110	NEW-E	05-04-020	388-845-1805	NEW-E	05-04-020	458- 20-268	NEW-E	05-03-017
388-845-0115	NEW-E	05-04-020	388-845-1810	NEW-E	05-04-020	458- 20-99999	REP	05-03-002
388-845-0120	NEW-E	05-04-020	388-845-1900	NEW-E	05-04-020	460- 24A-105	PREP	05-03-104
388-845-0200	NEW-E	05-04-020	388-845-1905	NEW-E	05-04-020	463- 60-382	RECOD-W	05-03-087
388-845-0205	NEW-E	05-04-020	388-845-1910	NEW-E	05-04-020	463- 60-385	RECOD-W	05-03-087
388-845-0210	NEW-E	05-04-020	388-845-2000	NEW-E	05-04-020	463- 60-435	RECOD-W	05-03-087
388-845-0215	NEW-E	05-04-020	388-845-2005	NEW-E	05-04-020	463- 60-525	RECOD-W	05-03-087
388-845-0220	NEW-E	05-04-020	388-845-2010	NEW-E	05-04-020	463- 60-625	RECOD-W	05-03-087
388-845-0300	NEW-E	05-04-020	388-845-2100	NEW-E	05-04-020	463- 60-645	RECOD-W	05-03-087
388-845-0305	NEW-E	05-04-020	388-845-2105	NEW-E	05-04-020	463- 60-655	RECOD-W	05-03-087
388-845-0310	NEW-E	05-04-020	388-845-2110	NEW-E	05-04-020	463- 60-665	RECOD-W	05-03-087
388-845-0400	NEW-E	05-04-020	388-845-2200	NEW-E	05-04-020	463- 60-675	RECOD-W	05-03-087
388-845-0405	NEW-E	05-04-020	388-845-2205	NEW-E	05-04-020	463- 60-680	RECOD-W	05-03-087
388-845-0410	NEW-E	05-04-020	388-845-2210	NEW-E	05-04-020	463- 60-685	RECOD-W	05-03-087
388-845-0500	NEW-E	05-04-020	388-845-3000	NEW-E	05-04-020	463- 60-690	RECOD-W	05-03-087
388-845-0505	NEW-E	05-04-020	388-845-3005	NEW-E	05-04-020	463- 64-060	NEW-W	05-03-087
388-845-0510	NEW-E	05-04-020	388-845-3010	NEW-E	05-04-020	463- 66-010	RECOD-W	05-03-087
388-845-0600	NEW-E	05-04-020	388-845-3015	NEW-E	05-04-020	463- 70-080	RECOD-W	05-03-087
388-845-0605	NEW-E	05-04-020	388-845-3020	NEW-E	05-04-020	463- 76-020	RECOD-W	05-03-087
388-845-0610	NEW-E	05-04-020	388-845-3025	NEW-E	05-04-020	463- 76-030	RECOD-W	05-03-087
388-845-0700	NEW-E	05-04-020	388-845-3030	NEW-E	05-04-020	463- 76-040	RECOD-W	05-03-087
388-845-0705	NEW-E	05-04-020	388-845-3035	NEW-E	05-04-020	463- 76-050	RECOD-W	05-03-087
388-845-0710	NEW-E	05-04-020	388-845-3040	NEW-E	05-04-020	463- 76-060	RECOD-W	05-03-087
388-845-0800	NEW-E	05-04-020	388-845-3045	NEW-E	05-04-020	468- 38	AMD	05-04-053
388-845-0805	NEW-E	05-04-020	388-845-3050	NEW-E	05-04-020	468- 38-001	NEW	05-04-053

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468-38-010	REP	05-04-053	480-93-002	REP-S	05-02-096	480-120-204	REP	05-03-031
468-38-020	REP	05-04-053	480-93-005	AMD-S	05-02-096	480-120-205	REP	05-03-031
468-38-030	AMD	05-04-053	480-93-007	NEW-S	05-02-096	480-120-206	REP	05-03-031
468-38-040	REP	05-04-053	480-93-008	NEW-S	05-02-096	480-120-207	REP	05-03-031
468-38-050	AMD	05-04-053	480-93-009	NEW-S	05-02-096	480-120-208	REP	05-03-031
468-38-060	REP	05-04-053	480-93-010	REP-S	05-02-096	480-120-209	REP	05-03-031
468-38-070	AMD	05-04-053	480-93-012	NEW-S	05-02-096	480-120-211	REP	05-03-031
468-38-071	AMD	05-04-053	480-93-015	AMD-S	05-02-096	480-120-212	REP	05-03-031
468-38-075	AMD	05-04-053	480-93-017	AMD-S	05-02-096	480-120-213	REP	05-03-031
468-38-080	AMD	05-04-053	480-93-018	AMD-S	05-02-096	480-120-214	REP	05-03-031
468-38-095	NEW	05-04-053	480-93-020	AMD-S	05-02-096	480-120-215	REP	05-03-031
468-38-100	AMD	05-04-053	480-93-030	REP-S	05-02-096	480-120-216	REP	05-03-031
468-38-110	REP	05-04-053	480-93-040	AMD-S	05-02-096	480-120-253	AMD	05-03-031
468-38-120	AMD	05-04-053	480-93-080	AMD-S	05-02-096	480-120-262	AMD	05-03-031
468-38-130	REP	05-04-053	480-93-082	REP-S	05-02-096	480-120-302	REP	05-03-031
468-38-135	REP	05-04-053	480-93-100	AMD-S	05-02-096	480-120-322	REP	05-03-031
468-38-140	REP	05-04-053	480-93-110	AMD-S	05-02-096	480-120-349	NEW	05-03-031
468-38-155	NEW	05-04-053	480-93-111	REP-S	05-02-096	480-120-359	NEW	05-03-031
468-38-160	REP	05-04-053	480-93-112	REP-S	05-02-096	480-120-402	AMD	05-03-031
468-38-175	NEW	05-04-053	480-93-115	AMD-S	05-02-096	480-120-414	AMD	05-03-031
468-38-180	REP	05-04-053	480-93-120	REP-S	05-02-096	480-120-439	AMD	05-03-031
468-38-190	REP	05-04-053	480-93-124	AMD-S	05-02-096	480-120-450	AMD	05-03-031
468-38-200	REP	05-04-053	480-93-130	AMD-S	05-02-096	480-120-540	AMD	05-03-031
468-38-220	REP	05-04-053	480-93-140	AMD-S	05-02-096	480-120-999	AMD	05-03-031
468-38-230	REP	05-04-053	480-93-150	REP-S	05-02-096	480-122-020	AMD	05-03-031
468-38-235	REP	05-04-053	480-93-155	AMD-S	05-02-096	480-122-060	REP	05-03-031
468-38-240	REP	05-04-053	480-93-160	AMD-S	05-02-096	504-25-001	AMD-P	05-03-103
468-38-250	REP	05-04-053	480-93-170	AMD-S	05-02-096	504-25-002	REP-P	05-03-103
468-38-260	REP	05-04-053	480-93-175	AMD-S	05-02-096	504-25-003	AMD-P	05-03-103
468-38-280	AMD	05-04-053	480-93-178	NEW-S	05-02-096	504-25-011	AMD-P	05-03-103
468-38-290	AMD	05-04-053	480-93-180	AMD-S	05-02-096	504-25-013	AMD-P	05-03-103
468-38-300	REP	05-04-053	480-93-183	REP-S	05-02-096	504-25-015	REP-P	05-03-103
468-38-310	REP	05-04-053	480-93-184	REP-S	05-02-096	504-25-018	REP-P	05-03-103
468-38-320	REP	05-04-053	480-93-185	AMD-S	05-02-096	504-25-020	AMD-P	05-03-103
468-38-330	REP	05-04-053	480-93-186	AMD-S	05-02-096	504-25-025	AMD-P	05-03-103
468-38-340	REP	05-04-053	480-93-18601	AMD-S	05-02-096	504-25-030	AMD-P	05-03-103
468-38-350	REP	05-04-053	480-93-187	AMD-S	05-02-096	504-25-032	NEW-P	05-03-103
468-38-360	AMD	05-04-053	480-93-188	AMD-S	05-02-096	504-25-035	AMD-P	05-03-103
468-38-390	REP	05-04-053	480-93-190	REP-S	05-02-096	504-25-040	AMD-P	05-03-103
468-38-405	AMD	05-04-053	480-93-200	AMD-S	05-02-096	504-25-041	AMD-P	05-03-103
468-38-420	AMD	05-04-053	480-93-210	REP-S	05-02-096	504-25-042	AMD-P	05-03-103
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478-118-020	AMD-P	05-03-071	480-93-223	AMD-S	05-02-096	504-25-045	AMD-P	05-03-103
478-118-045	NEW-P	05-03-071	480-93-230	AMD-S	05-02-096	504-25-050	AMD-P	05-03-103
478-118-050	AMD-P	05-03-071	480-93-999	AMD-S	05-02-096	504-25-051	AMD-P	05-03-103
478-118-055	NEW-P	05-03-071	480-110-205	AMD-P	05-04-063	504-25-055	AMD-P	05-03-103
478-118-060	AMD-P	05-03-071	480-110-255	AMD-P	05-04-063	504-25-060	AMD-P	05-03-103
478-118-080	AMD-P	05-03-071	480-120-021	AMD	05-03-031	504-25-065	AMD-P	05-03-103
478-118-100	AMD-P	05-03-071	480-120-034	NEW	05-03-031	504-25-070	AMD-P	05-03-103
478-118-200	AMD-P	05-03-071	480-120-112	AMD	05-03-031	504-25-085	AMD-P	05-03-103
478-118-210	AMD-P	05-03-071	480-120-122	AMD	05-03-031	504-25-090	AMD-P	05-03-103
478-118-270	AMD-P	05-03-071	480-120-128	AMD	05-03-031	504-25-095	REP-P	05-03-103
478-118-290	NEW-P	05-03-071	480-120-147	AMD	05-03-031	504-25-115	AMD-P	05-03-103
478-118-300	NEW-P	05-03-071	480-120-161	AMD	05-03-031	504-25-135	AMD-P	05-03-103
478-118-400	AMD-P	05-03-071	480-120-166	AMD	05-03-031	504-25-138	AMD-P	05-03-103
478-118-410	AMD-P	05-03-071	480-120-172	AMD	05-03-031	504-25-200	AMD-P	05-03-103
478-118-420	AMD-P	05-03-071	480-120-173	AMD	05-03-031	504-25-201	AMD-P	05-03-103
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480-80-204	AMD	05-03-031	480-120-201	REP	05-03-031	504-25-205	REP-P	05-03-103
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504- 25-223	AMD-P	05-03-103						
504- 25-224	REP-P	05-03-103						
504- 25-226	AMD-P	05-03-103						
504- 25-227	AMD-P	05-03-103						
504- 25-228	REP-P	05-03-103						
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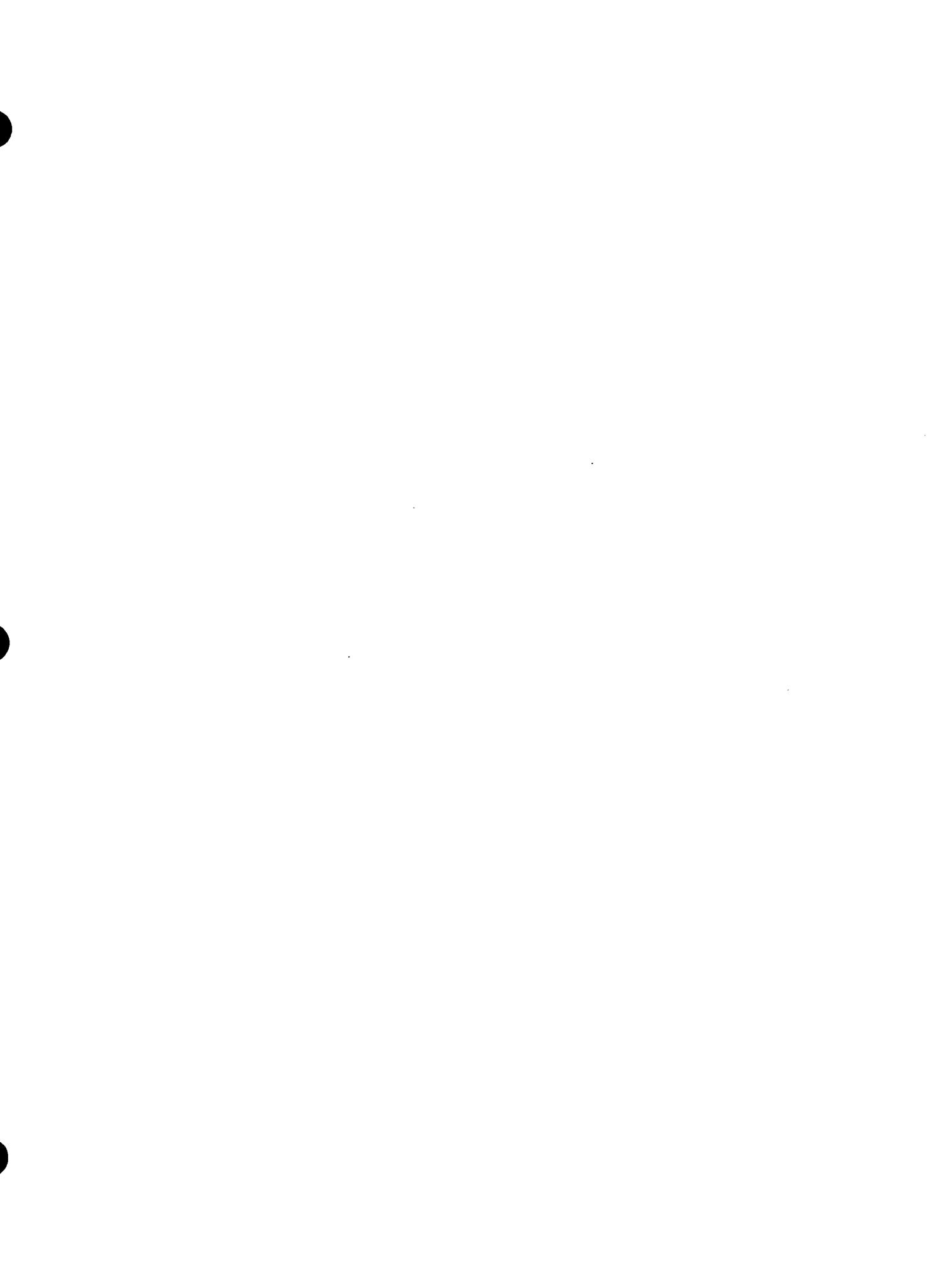
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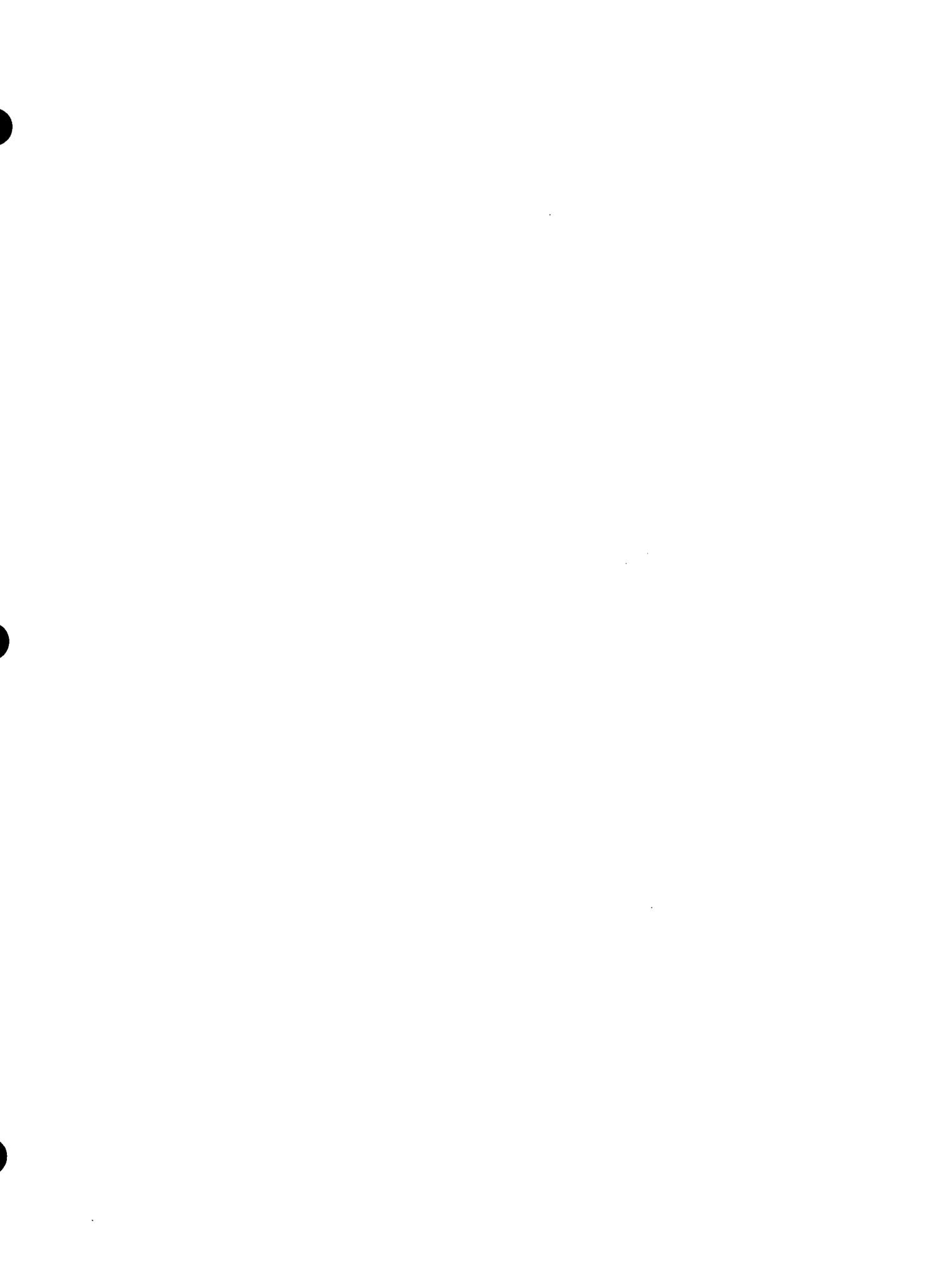
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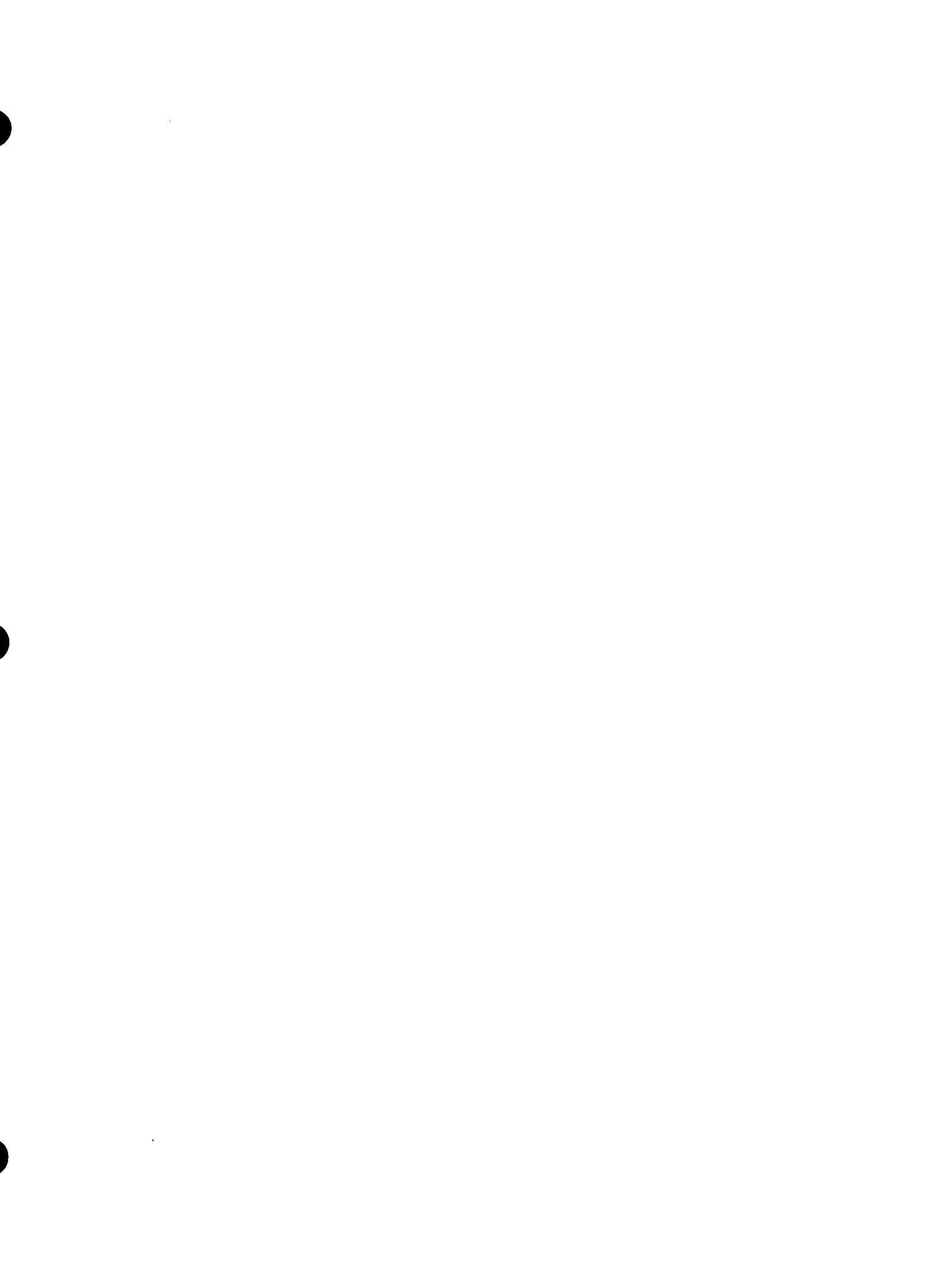




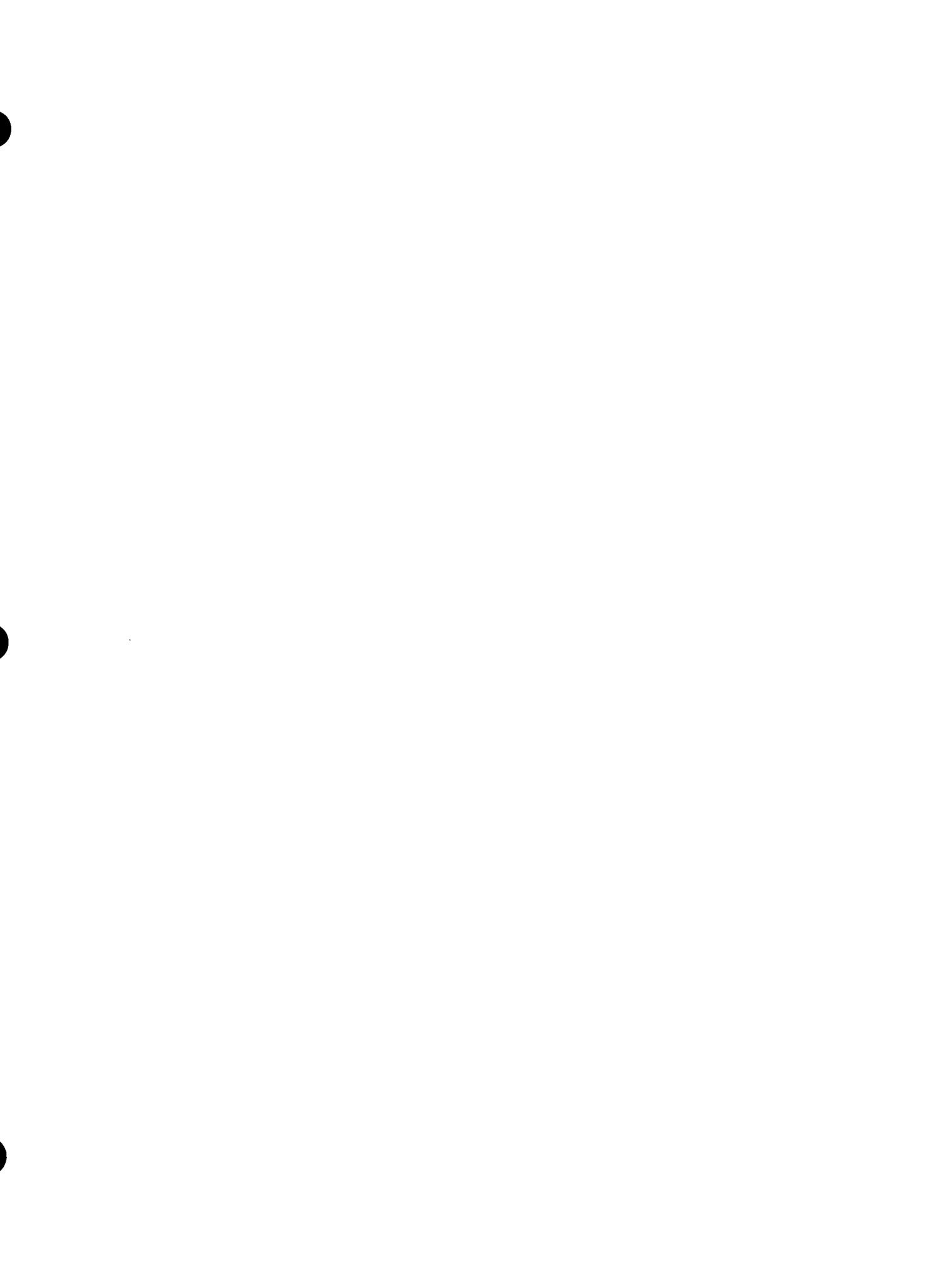












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