

WSR 06-03-046
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed January 10, 2006, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-125.

Title of Rule and Other Identifying Information: Chapter 388-527 WAC, Estate recovery.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 7, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 8, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on March 7, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 3, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to this chapter are necessary to establish rules and procedural guides for the implementation of SHB 2304 (chapter 292, Laws of 2005). Specifically to:

- Include life estates and joint tenancy among assets subject to estate recovery;
- Extend statute of limitations of liens to twenty years;
- Establish the state's use of Tax Equity Fiscal Responsibility Act (TEFRA) liens (liens prior to death) in accordance with 42 U.S.C. Sec. 1396p(a);
- Establish requests for notice of transfer or encumbrance of real property assets;
- Eliminate the homestead exemption as it relates to estate recovery activities; and
- Revise the chapter using "plain talk" as directed by the governor's Executive Order 05-03, dated March 24, 2005.

Statutory Authority for Adoption: Chapter 292, Laws of 2005 (SHB 2304), RCW 43.20B.30 [43.20B.030], 43.20B.80 [43.20B.080], 43.20B.750, 74.08.090, and chapter 43.20B RCW.

Statute Being Implemented: Chapter 292, Laws of 2005 (SHB 2304), RCW 43.20B.30 [43.20B.030], 43.20B.80 [43.20B.080], 43.20B.750, chapter 43.20B RCW, and 42 U.S.C. Section 1396p(a).

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: Wendy L. Boedigheimer, P.O. Box 45533, Olympia, WA

98504-5533, (360) 725-1306; Implementation and Enforcement: Bill Ward, P.O. Box 45862, Olympia, WA 98504-5862, (360) 664-5501.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule does not create more than a minor cost for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Bill Ward, Department of Social and Health Services, Office of Financial Recovery, P.O. Box 45862, Olympia, WA 98504-5862, phone (360) 664-5501, e-mail wardbr@dshs.wa.gov.

January 6, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2700 Purpose. This chapter describes the requirements, limitations, and procedures that apply when the department recovers the cost of medical care from the estate of a deceased client and when the department files liens prior to the client's death.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2730 ((Estate recovery) Definitions. ((For estate recovery purposes)) The following definitions apply to this chapter:

"Contract health service delivery area (CHSDA)" means the geographic area within which contract health services will be made available by the Indian Health Service to members of an identified Indian community who reside in the area as identified in 42 C.F.R. Sec. 136.21(d) and 136.22.

"Estate" means all ~~((real and personal))~~ property and any other assets that pass upon the client's death under the client's will or by intestate succession pursuant to chapter 11.04 RCW or under chapter 11.62 RCW. The value of the estate will be reduced by any valid liability against the ~~((deceased client's))~~ decedent's property at the time of death. An estate also includes:

(1) For a client who died after June 30, 1995 and before July 27, 1997, nonprobate assets as defined by RCW 11.02.-005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997 and before XXXXX (the effective date of this rule), nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after XXXXX (the effective date of this rule):

(a) Any property and other assets to which the individual had any legal title or interest at the time of death (to the extent of such interest). This includes assets conveyed by the client to a survivor, heir, or assignee of the deceased through joint tenancy, tenancy in common survivorship, life estate, living trust, or other arrangement; and

(b) Nonprobate assets as defined by RCW 11.02.005.

"Heir" means the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.

"Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship and tenants by the entirety.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"Lis pendens" means a notice filed in public records warning that title to certain real property is in litigation and ((this)) the outcome of the litigation may affect the title.

"Long-term care services" means, for the purposes of this chapter only, the services administered directly or through contract by the department of social and health services for clients of the home and community services division and division of developmental disabilities including, but not limited to, nursing facility care and home and community services.

"Medicaid" means the state and federally funded program that provides medical services under Title XIX of the Federal Social Security Act.

"Medical assistance" means both Medicaid and medical care services.

"Medicare Savings programs" means the programs described in WAC 388-517-0300 that help a client pay some of the costs that Medicare does not cover.

"Property": Examples include, but are not limited to, personal property, real property, title property, and trust property as described below:

(1) **"Personal property"** means any property that is not classified as real, title, or trust property in the definitions provided here;

(2) **"Real property"** means land and anything growing on, attached to, or erected thereon;

(3) **"Title property"** means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motorcycles, and vehicles.

(4) **"Trust property"** means any type of property interest titled in, or held by, a trustee for the benefit of another person or entity.

"State-only funded long-term care" means the long-term care services that are financed with state funds only.

AMENDATORY SECTION (Amending WSR 99-11-076, filed 5/18/99, effective 6/18/99)

WAC 388-527-2737 Deferring recovery. ~~((When)) (1) For a client who died after June 30, 1994 ((and received services after June 30, 1994)), the department defers recovery from the estate ((is deferred)) until:~~

~~((1)) (a) The death of the surviving spouse, if any; and
 ((2)) (b) There is no surviving child who is:
 ((a)) (i) Under twenty-one years of age, or
 ((b)) (ii) Blind or disabled as defined under chapter 388-511 WAC.~~

(2) The department places a lien to secure the department's interest in the estate while the conditions in subsection (1) of this section exist.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2742 Services subject to recovery. The department considers the medical services the client received and the dates when the services were provided to the client, in order to determine((s)) whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for Medicaid services and subsection (2) covers liability for state-only funded long-term care services. An estate can be liable under both subsections.

(1) The client's estate is liable for:

(a) All Medicaid services provided from July 26, 1987 through June 30, 1994;

(b) The following Medicaid services provided after June 30, 1994 and before July 1, 1995:

(i) Nursing facility services;

(ii) Home and community-based services; and

(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services.

(c) The following Medicaid services provided after June 30, 1995 and before June 1, 2004:

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and disability services administration of the department; and

(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection.

(d) The following services provided on and after June 1, 2004:

(i) All Medicaid services;

(ii) Medicare savings programs services for individuals also receiving Medicaid;

(iii) Medicare premiums only for individuals also receiving Medicaid; and

(iv) Premium payments to managed care organizations.

(2) The client's estate is liable for all state-only funded long-term care services and related hospital and prescription drug services provided to:

(a) Home and community services' clients on and after July 1, 1995; and

(b) Division of developmental disabilities' clients on and after June 1, 2004.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2750 (~~Waiver~~) Delay of recovery ((~~if~~) ~~for~~ undue hardship. The department delays recovery ((is waived)) under this section when the department determines that recovery would cause an undue hardship((, except as provided in subsection (3) of this section)) for the heir(s). This ((waiver)) delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery. The department limits an heir to one request for a delay of recovery due to undue hardship for each estate subject to recovery action.

(1) Undue hardship exists when:

(a) The estate subject to adjustment or recovery is the sole income-producing asset of one or more of the heirs and income is limited; or

(b) Recovery would ((~~deprive an heir of shelter and the heir lacks the financial means to obtain and maintain alternative shelter~~)) cause the heir, who would otherwise be eligible for public assistance, to become homeless.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the ((~~client's~~)) decedent's cost of assistance would merely cause the ((~~client's family members~~)) heir inconvenience or restrict ((~~the family's~~)) his or her lifestyle((-); or

(b) ((~~The heir divests assets to qualify under the undue hardship provision~~)) The undue hardship was created as a result of estate planning methods by which the heir or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.

(3) ((~~When a deceased client's assets were disregarded in connection with a long-term care insurance policy or contract under chapter 48.85 RCW, recovery is not waived.~~

(4)) When ((~~a waiver~~)) a delay in recovery is not granted, the department ((with)) provides notice to the person who requested the ((~~waiver~~)) delay of recovery. The ((~~denial of a waiver must state:~~)) department's notice includes information on how to request an administrative hearing to contest the department's denial.

((~~(a) The requirements of an application for an adjudicative proceeding to contest the department's decision to deny the waiver; and~~

(b) ~~Where assistance may be obtained to make such application;-)~~

(4) When a delay of recovery is granted, the department may revoke the delay of recovery if the heir(s):

(i) Fails to supply timely information and resource declaration when requested by the department;

(ii) Sells, transfers, or encumbers title to the property;

(iii) Fails to reside full-time on the premises;

(iv) Fails to pay property taxes and utilities when due;

(v) Fails to keep the property maintained and in good repair;

(vi) Fails to establish and continuously maintain adequate fire/casualty insurance in an amount equal to the state's lien interest. The insurance policies must identify the State of Washington as the primary payee. The person granted the

delay of recovery must provide the department with documentation of the coverage status on an annual basis.

(vii) Have a change in any circumstances for which the delay of recovery due to undue hardship was granted; or

(viii) Dies.

(5) When a delay of recovery is granted due to undue hardship, the department has the option to:

(a) Apply a lien; and/or

(b) Accept a payment plan.

(6) A person may request an administrative hearing to contest the department's ((~~decision in an adjudicative proceeding~~)) denial of delay of recovery due to undue hardship when that person ((requested the department waive recovery; and)) suffered a loss because ((that request)) the delay was not granted.

((~~(6) An application~~)) (7) A request for an ((adjudicative proceeding)) administrative hearing under this section must:

(a) Be in writing;

(b) State the basis for contesting the department's denial of the request ((~~to waive recovery~~)) for a delay of recovery due to an undue hardship;

(c) Include a copy of the department's denial ((~~of the request to waive recovery~~));

(d) Be signed by the ((~~applicant~~)) requester and include the ((~~applicant's~~)) requester's address and telephone number; and

(e) Be served, as described in WAC 388-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the ((~~applicant received the department's~~)) department sent the decision denying the request for ((~~a waiver~~)) a delay of recovery. ((If the applicant shows good cause, the application may be filed up to thirty days late; and

(f) ~~Be served on OFR as described in WAC 388-527-2795.~~

(7)) (8) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(9) An adjudicative proceeding held under this section is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2790 Filing ((~~a lien against real property~~)) liens. (1) The department files liens, seeks adjustments, and ((~~effects other recoveries for~~)) uses other means to recover the cost of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of a client consistent with 42 U.S.C. 1396p and chapters 43.20B RCW and 388-527 WAC.

(2) ((~~When the department seeks to recover from a client's estate the cost of medical assistance or state-only funded long-term care services, or both, provided to the client, prior to filing a lien against the deceased client's real property, notice shall be given to~~)) Prior to the department filing a lien

under this section, the department sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The probate estate's personal representative, if any;

(c) Any other person known to have title to the affected property and/or to the decedent's heir(s) as defined by WAC 388-527-2730; and

(d) The decedent's last known address or the address listed on the title, if any.

(3) ((Prior to filing a lien against any of the deceased client's real or titled property, a person known to have title to the property will be notified and have an opportunity for an adjudicative proceeding as follows:

(a) Any person known to have title to the property will be served with a notice of intent to file lien, which will state:

(i) The notice in subsection (2) of this section includes:

(a) The ((deceased client's)) decedent's name, ((social security number, if known)) identification number, date of birth, and date of death;

(b) The amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client that the department seeks to recover;

(c) The department's intent to file a lien against the deceased client's property and other assets to recover the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client;

(d) The county in which the property ((is)) and other assets are located; and

(e) The ((right of the person known to have title to the property)) procedures to contest the department's decision to file a lien by applying for an ((adjudicative proceeding with the office of financial recovery (OFR)) administrative hearing.

(4) An ((adjudicative proceeding can determine whether)) administrative hearing only determines:

(a) Whether the ((amount of)) medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the ((deceased client)) decedent alleged by the department's notice ((of intent to file a lien)) is correct; and

(b) Whether the ((deceased client)) decedent had legal title to the property ((at the time of the client's death)).

(5) A request for an ((adjudicative proceeding)) administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the ((department's notice of intent to file the)) lien;

(c) Be signed by the ((applicant)) requester and ((state)) must include the ((applicant's)) requester's address and telephone number; and

(d) Be served ((on OFR)) to the office of financial recovery (OFR) as described in WAC 388-527-2870, within twenty-eight calendar days of the date the ((applicant received the department's notice of intent to file the lien. An application filed up to thirty days late may be treated as

timely filed if the applicant shows good cause for filing late; and

(e) Be served on OFR as described in WAC 388-527-2795)) department mailed the notice.

((5)) (6) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property ((will be notified)) and other assets of the time and place of the ((adjudicative proceeding by the department when it receives an application for the same)) administrative hearing.

((6)) (7) An ((adjudicative proceeding)) administrative hearing under this section is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

((7) If no known title holder requests an adjudicative proceeding, a lien will be filed by the department twenty-eight days after the date that the notice of intent to file the lien letter was mailed. The lien will be filed against the deceased client's real property in the amount of the correctly paid medical assistance or state only funded long term care services, or both.)

(8) If an ((adjudicative proceeding)) administrative hearing is conducted in accordance with this regulation, ((when)) and the final agency decision is issued, the department ((will)) only files a lien against the ((deceased client's real)) decedent's property ((for the amount of the correctly paid medical assistance or state only funded long term care services, or both, as established by that final agency decision)) and other assets if upheld by the final agency decision.

(9) If no known title holder requests an administrative hearing, the department files a lien twenty-eight calendar days after the date the department mailed the notice described in subsection (2) of this section.

NEW SECTION

WAC 388-527-2810 Life estates and joint tenancy.

(1) The department may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death until the lien is satisfied.

(a) The value of the life estate subject to the lien is the value of the decedent's interest in the property subject to the life estate immediately prior to death.

(b) The value of the joint tenancy interest subject to the lien is the value of the decedent's fractional interest he or she would have owned in the jointly held interest in the property had the decedent and the surviving joint tenants held title to the property as tenants in common immediately prior to death.

(2) The department's methodology for calculating the value of the life estate is determined using fair market value of the property.

(a) To determine the value of the life estate, the department multiplies the current fair market value of the property by the life estate factor in the life estate table. (The Centers for Medicare and Medicaid Services based table is found in the department's Eligibility A-Z Manual, Long Term Care,

Appendix II and is available on-line at: [http://www1.dshs.wa.gov/esa/eazmanual/.](http://www1.dshs.wa.gov/esa/eazmanual/)

(b) To determine the value of the asset that was transferred for less than fair market value, the department subtracts the value of the life estate from the fair market value of the property. If the life estate is jointly owned, the department determines the decedent's proportionate share.

NEW SECTION

WAC 388-527-2820 Liens prior to death. (1) Subject to the requirements of 42 USC Section 1396p(a) and the conditions of this section, the department is authorized to file a lien against the property of a medical assistance client prior to his or her death, and to seek adjustment and recovery from the client's estate or sale of the property subject to the lien if:

(a) The client is permanently an inpatient in a nursing facility, intermediate care facility for individuals with mental retardation, or other medical institution as described in WAC 388-500-0005; and

(b) The department determines after notice and opportunity for a hearing that the client cannot reasonably be expected to be discharged from the medical institution and return home.

(2) If the client is discharged from the medical facility and returns home, the department dissolves the lien.

(3) Prior to the department filing a lien under this section, the department sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The client's known address;

(c) Any other person known to have title to the affected property and the client's authorized representative, if any.

(4) The notice in subsection (3) of this section includes:

(a) The client's name, and the date the client began to receive services;

(b) The department's intent to file a lien against the client's property to recover the amount of medical assistance or state-only funded long-term care services, or both correctly paid on behalf of the client;

(c) The county in which the property and other assets are located; and

(d) The procedures to contest the department's decision to file a lien by applying for an administrative hearing.

(5) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, on behalf of the decedent alleged by the department's notice is correct; and

(b) Whether the decedent had legal title to the identified property.

(6) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC 388-527-2870, within twenty-eight calendar days of the date the department mailed the notice.

(7) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property of the time and place of the administrative hearing.

(8) An administrative hearing under this subsection is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

(9) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the department only files a lien against the client's property and other assets if upheld by the final agency decision.

(10) If no known title holder requests an administrative hearing, the department files a lien twenty-eight calendar days after the date the department mailed the notice described in subsection (3) of this section.

NEW SECTION

WAC 388-527-2830 Request for notice of transfer or encumbrance. (1) When a client receives medical assistance subject to recovery under this chapter and the client is the holder of record title to real property or the purchaser under a land sale contract, the department files a request for notice of transfer or encumbrance [DSHS form 18-664] with the county auditor for recording in the deed and mortgage records.

(2) The request for notice of transfer or encumbrance [DSHS 18-664] complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

(a) Client's name and case identifier;

(b) Legal description of the real property, including parcel number; and

(c) Mailing address for the department to receive the notice of transfer or encumbrance.

(3) The request for notice of transfer or encumbrance [18-664] described in subsection (1) of this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property.

(4) When filing a request for notice of transfer or encumbrance [DSHS 18-664] with the county auditor, the department gives the opportunity to request an administrative hearing as follows:

(a) Any person known to have title to the property is served with a copy of the notice. The notice states:

(i) The department's intent to recover from the client's estate the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client;

(ii) The county in which the property is located; and

(iii) The right of the person known to have title in the property to contest the department's decision to file the notice by applying for an administrative hearing with the office of financial recovery (OFR).

(b) An administrative hearing only determines:

(i) Whether the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client alleged by the department's notice is correct; and

(ii) Whether the client has legal title to the identified property.

(5) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the department's notice;

(c) Be signed by the requester and state the requester's address and telephone number; and

(d) Be served on OFR as described in WAC 388-527-2870, within twenty-eight calendar days of the date the individual received the department's notice.

(6) Upon receiving a request for an administrative hearing, the department notifies the persons known to have title to the property of the time and place of the administrative hearing.

(7) An administrative hearing under this section is governed by chapters 388-05 RCW and 388-02 WAC, and this section. If a provision of this section conflicts with a provision in chapter 388-02 WAC, the provision of this section governs.

(8) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance [DSHS 18-664] when performing a title search on real property must disclose the presence of the request for notice or transfer or encumbrance of real property in any report preliminary to, or commitment to offer, a certificate of title insurance for the real property.

(9) If the department has filed a request for notice of transfer or encumbrance [DSHS 18-664], any individual who transfers or encumbers real property must provide the department with a notice of transfer or encumbrance (DSHS 18-663] as described in WAC 388-527-2850.

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 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 388-527-2840 Termination of request for notice of transfer or encumbrance. (1) The department files a termination of notice of transfer or encumbrance [DSHS 18-662], with the county auditor for recording when, in the judgment of the department, it is no longer necessary or appropriate for the department to monitor transfers or encumbrances related to the real property.

(2) The termination of request for notice of transfer or encumbrance [DSHS 18-662] complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

(a) Client's name and case identifier;

(b) Legal description of the real property, including parcel number; and

(c) Mailing address for the department to receive the notice of transfer or encumbrance.

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.

NEW SECTION

WAC 388-527-2850 Notice of transfer or encumbrance. (1) If the department has filed a request for notice of transfer or encumbrance [DSHS 18-664], any individual who transfers or encumbers real property must provide the department with a notice of transfer or encumbrance [DSHS 18-663] or a substantially similar notice as required by chapter 43.20B RCW.

(2) The department's notice of transfer or encumbrance [DSHS 18-663] is available on-line at <http://www1.dshs.wa.gov/msa/forms/index.html> or by writing to Forms and Records Management Services, PO Box 45805, Olympia, WA 98504-5805.

(3) The notice of transfer or encumbrance [DSHS 18-663] must comply with the requirements for recording in RCW 36.18.010, and, at a minimum, contain the:

(a) Client's name and case identifier as listed on the department's request for notice of transfer or encumbrance;

(b) Recording date and recording reference as listed on the department's request for notice of transfer or encumbrance;

(c) Legal description of the real property as listed on the department's request for notice of transfer or encumbrance; and

(d) Type of instrument; and

(e) Recording date and recording reference.

(3) The notice of transfer or encumbrance [DSHS 18-663] or a similar notice and copy of the transfer or encumbrance related to the real property must be sent to the department as specified in WAC 388-527-2870.

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 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 388-527-2860 Interest assessed on past due debt. (1) The recovery debt becomes past due and accrues interest at a rate of one percent per month beginning nine months after the earlier of:

(a) The filing of the department's creditor's claim in the probate of the deceased client's estate; or

(b) The recording of the department's lien against the property of the deceased client in the county where the property is located.

(2) The department may waive interest if:

(a) Insufficient cash, accounts, or stock exist to satisfy the department's claim and no sales of estate property has occurred despite its continuous listing or marketing for sale in a commercially reasonable manner for a reasonable fair market value; or

(b) Suit filed in the probate of the deceased client's estate resulted in the filing of a lis pendens or order prohibiting the personal representative from selling the estate property. However, this section does not apply to such suite contesting the department's assessment of interest or claim for reimbursement of medical assistance or state-only funded long-term care services debt.

NEW SECTION

WAC 388-527-2870 Serving notices on the office of financial recovery (OFR). Serving legal notice on the office of financial recovery (OFR) requires the notice to be served either:

(1) In person at the Blake Office Park, 4450 10th Ave SE, Lacey, Washington; or

(2) By certified mail, return receipt requested, to Office of Financial Recovery, PO Box 9501, Olympia, WA 98507-9501.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-527-2792 Interest assessed on past due debt.

WAC 388-527-2795 Serving notices on office of financial recovery (OFR).

WSR 06-03-067**PROPOSED RULES****COLUMBIA RIVER****GORGE COMMISSION**

[Filed January 12, 2006, 11:34 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Columbia River gorge commission rules 350-11, Open meetings; 350-12, Public records; 350-13, Financial disclosure; 350-16, Administrative procedure; and 350-50, Plan amendments.

Hearing Location(s): Hood River County Administration Building, 601 State Street, Hood River, Oregon, on March 14, 2006, 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 14, 2006.

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 3, 2006.

Assistance for Persons with Disabilities: Contact Nancy Andring by March 3, 2006, (509) 493-3323.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amendments to commission rules 350-11, 350-12, and 350-16, is to conform these rules to the more restrictive of Oregon's and Washington's statutes as required by the Scenic Area Act. These proposed amendments are necessary due to changes made during the 2005 legislative session. There is no anticipated effect for 350-11; two anticipated effects for 350-12 are that the commission may choose to charge for copies of public records on an installment basis rather than as a lump sum and to exempt communications made during mediation from public disclosure. There is no anticipated effect for 350-16.

The purpose of the proposed amendment to commission rule 350-13 is to ease the burden on gorge commissioners filing financial disclosure forms, while still complying [with] the Scenic Area Act's requirement for filing. The proposed amendment would require gorge commissioners to file in their respective states only.

The purpose of the proposed amendments to commission rule 350-50 is to improve the commission's process for reviewing plan amendments.

The proposed amendments would allow a finding that conditions in the scenic area have changed if there is a demonstrable mistake in the management plan; allows typographical and other similar changes without formal amendment of the management plan; requires a preapplication conference for every plan amendment, increases by two weeks the time the commission's executive director has to review an application before submitting a recommendation to the commission, and clarifies what actions the commission may take on the application.

Reasons Supporting Proposal: The proposed amendments would bring the commission's rules into compliance with the more restrictive of the states' statutes; would ease an internal regulatory burden; and improve the commission's plan amendment review procedure.

Statutory Authority for Adoption: 16 U.S.C. 544c(b), RCW 43.97.015, ORS 196.150.

Statute Being Implemented: 16 U.S.C. 544b(c), 544d(h), RCW 43.97.015, ORS 196.150.

Rule is necessary because of federal law, 16 U.S.C. 544c(b).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The commission is especially interested in comments on the proposed amendments to the plan amendment rule concerning the preapplication conference, whether the commission can apply conditions of approval to an application.

Name of Proponent: Columbia River gorge commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Martha J. Bennett, White Salmon, WA, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed amendments do not add substantive regulations. Commission rules 350-11, 350-12, 350-13, and 350-16, govern internal commission procedures; commission rule 350-50 adds a preapplication conference step to the commission's review conference - the purpose of the conference is to streamline the review process - any cost of preparing for or attending the preapplication conference would be minor.

A cost-benefit analysis is not required under RCW 34.05.328. These proposed amendments are exempt pursuant to RCW 34.05.328 [(5)(b)] (ii), (iii), and (v).

January 9, 2006

Nancy A. Andring
Rules Coordinator

AMENDATORY SECTION**350-11-004. Public notice required; special notice for executive sessions, special or emergency meetings**

(1) The commission shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by the commission.

(2) The Commission shall file with the Secretary of State in Oregon and the Code Reviser in Washington a schedule of the time and place of such meetings on or before January of each year for publication in the states' registers. Notice of any change from such meeting schedule shall be published in the states' registers for distribution at least twenty days prior to the rescheduled meeting date. For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.

(3) The commission shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of the commission to consider additional subjects.

(4) If an executive session only will be held, the notice shall be given to the members of the commission, the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(5) No special meeting shall be held without at least 24 hours' notice to the members of the commission, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. The call and notice of the meeting shall specify the time and place of the meeting and the business to be transacted. Notice of a special meeting may be given by delivering written notice personally, by mail, by fax, or by electronic mail. Final disposition shall not be taken on any other matter at a special meeting of the Commission.

(6) The commission shall not adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(7) The commission may adjourn or continue a meeting to a time and place specified in an order of adjournment or continuance. Written notice of the adjournment or continuance shall be provided in accordance with subsection (3) above. A copy of the order of adjournment or continuance shall be conspicuously posted immediately after adjournment or continuance on the door where the meeting was held.

AMENDATORY SECTION**350-12-006. Fees.**

(1) The Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media, and for routine notices and agendas. This applies to both regular and certified copies of records.

(2) If the Commission makes a request available on a partial or installment basis, the Commission may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the Commission is not obligated to fulfill the balance of the request.

AMENDATORY SECTION**350-12-007. Fulfilling requests. Prompt response required.**

(1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond; or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.

(2) The Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or make ready for inspection or disclosure.

(3) The Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION**350-12-008. Public records exempt from disclosure.**

(1) The following public records are exempt from disclosure under 350-12-001 to 350-12-008 unless the public interest requires disclosure in the particular instance:

(a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or

opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigation and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information relating to the appraisal of real estate prior to its acquisition;

(f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complain is resolved, or a final administrative determination is made;

(h) Investigatory information relating to any complaint filed relating to unfair labor practices;

(i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and

(j) A personnel discipline action, or materials or documents supporting that action.

(k) Sensitive fish, wildlife, and plant data obtained by or created by the Gorge Commission. However, sensitive fish,

wildlife and plant data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive fish, wildlife, and plant data includes:

(1) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;

(2) Radio frequencies used in or locational data generated by telemetry studies;

(3) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:

(A) The species has a known commercial or black market value

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(l) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(1) An individual;

(2) Buildings or other property; or

(3) Information processing, communication or telecommunication systems, including the information contained in the systems.

(2) The following public records are exempt from disclosure under 350-12-001 to 350-12-008:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the commission clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;

(e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;

(f) Public records or information described in this section, furnished by the public body originally compiling, pre-

paring or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(g) Information about review or approval of programs relating to the security of:

(1) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined by Oregon or Washington state law;

(D) Petroleum products;

(E) Sewage; or

(F) Water;

(2) Telecommunications systems, including cellular, wireless or radio systems.

(3) Data transmissions by whatever means provided.

(h) Records of mediation communications that are privileged under the Uniform Mediation Act.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(a) A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.

(b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(c) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(5) Notwithstanding the exemptions in 350-12-008(1) and (2), public records that are more than 25 years old shall be available for inspection

(6) Notwithstanding 350-12-001 through 350-12-008, the Commission shall not disclose records in violation of a user agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.

(7) Disclosure of information in violation of Rule 350-12-006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.

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.

NEW SECTION

350-12-009. Public records officer.

The Commission's Executive Director or her appointee shall serve as the Commission's public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the Commission's compliance with the public records disclosure requirement of this division.

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.

AMENDATORY SECTION

350-13-001. Financial Disclosure.

(1) The members of the commission shall file annual financial disclosure forms with their respective state, the States of Washington and Oregon and shall otherwise comply, to the extent possible, with the financial disclosure requirements of both states.

~~(2) Financial disclosure forms filed by members of the commission shall also be maintained at the offices of the commission.~~

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.

AMENDATORY SECTION

350-16-004. Notice Requirements for Rule Adoption; Temporary Rule Adoption, or Amendment; Substantial Compliance Required.

(1) The commission shall prepare a semiannual agenda for rules under development. The commission shall file the agenda with the Oregon Secretary of State and Washington Code Reviser for publication in the states' registers not later than January 31st and July 31st of each year. Not later than three days after its publication in the states' registers, the commission shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda.

(2) When applicable under Washington law, the commission shall prepare a statement of inquiry on the form provided by the Washington Code Reviser, that shall be: filed with the Washington Code Reviser for publication in the state's register at least thirty days before the date the agency files notice of proposed rule making, sent to any party that has requested receipt of the agency's statements of inquiry, and published on the Commission's website or other similar means of electronic communication.

(3) Prior to the adoption, amendment or repeal of any rule, the commission shall give notice of its intended action:

(a) In the manner established by rule adopted by the commission, which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the Oregon bulletin and Washington register at least 21 days prior to the commencement of any commission action;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (9) of this section; and,

(d) On its website or other similar means of electronic communication.

(e) Notice of an intended action under subsection (1)(a), (c) and (d) of this section may be given by regular mail or by electronic mail.

(4)(a) The notice required by subsection (3) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The commission shall include with the notice of intended action given under subsection (3) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(C) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(D) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

(E) A statement of the anticipated effects of the proposed rule;

(F) A statement whether the rule is necessary as a result of federal law or a court decision;

(G) An indication of the person or persons proposing the rule;

(H) The date on which the commission intends to adopt the rule; and

(I) The commission personnel responsible for implementation and enforcement of the rule, with office location and telephone number.

(J) If an advisory committee is not appointed, or an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided, an explanation as to why no advisory

committee or participation by interested persons was used to assist the agency in drafting the rule.

(5) When the commission proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views at a public hearing. The commission shall consider fully any written or oral submissions, including all submissions received by facsimile, telephonic communication, or electronic mail.

(6) Upon request of an interested person received within 15 days after commission notice pursuant to subsection (2) of this section, the commission shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude the commission from adopting a temporary rule pursuant to subsection (7) of this section.

(7) Notwithstanding subsections (1) to (6) of this section, the commission may adopt or amend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the commission prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interests of the parties concerned and the specific reasons of its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspections.

(8) A rule adopted or amended under subsection (7) of this section is temporary and may be effective for a period of not longer than 120 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (6) of this section.

(9) Any person may request in writing that the commission mail to the person copies of its notice of intended action given pursuant to subsection (3) of this section. Upon receipt of any request the commission shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. The commission may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(10) This section does not apply to public contracts and purchasing.

(11) ~~A rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted~~ on the date that the notice required under subsection 3 of this section is delivered to the Oregon Secretary of State and the Washington Code Reviser for the purpose of publication.

(12) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(13) The commission may correct its failure to substantially comply with the requirements of subsections (4) and (7) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subsection (3)(b)(D) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(14) When the commission establishes a deadline for comment on a proposed rule under the provisions of subsection (4) of this section, the commission may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

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.

AMENDATORY SECTION

350-50-030. Criteria for Plan Amendment Approval.

The Commission must find the following criteria are satisfied before it approves an amendment to the Management Plan:

(1) Conditions in the Scenic Area have significantly changed. This means:

(a) physical changes that have widespread or major impacts to the landforms, resources, or land use patterns in the Scenic Area;

(b) new information or inventory data regarding land uses or resources that could result in a change of a plan designation, classification, or other plan provision; ~~or~~

(c) changes in legal, social, or economic conditions, including those that affect public health, safety, or welfare, not anticipated in the Management Plan; or

(d) a demonstrable mistake in the Management Plan, such as, but not limited to, a land use guideline that is less protective of Gorge resources than the policies the guideline was intended to implement; a land use designation that does not conform to the corresponding designation policies; or two or more guidelines that cannot be reasonably reconciled.

~~(2)~~ The proposed amendment is consistent with the purposes and standards of the Scenic Area Act; and,

~~(3)~~ No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists; ~~and~~

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.

NEW SECTION

350-50-035. Matters Not Constituting a Plan Amendment

(1) The Executive Director and Area Manager may jointly correct any typographical, grammatical, cross-reference or other similar error contained in the Management Plan that does not change the substantive provisions of the Management Plan.

(2) The Executive Director and Area Manager shall report such changes to the Commission at a regularly noticed meeting. The meeting agenda shall include notice of a report under this section. For such changes, the Commission shall not be required to amend the Management Plan as provided in this division of the Commission's rules, nor seek concurrence by the Secretary of Agriculture.

(3) A correction shall be considered a final action for the purpose of judicial review at the time the Executive Director and Area Manager report the correction to the Commission.

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.

AMENDATORY SECTION

350-50-040. Origin of Applications.

Applications to amend the Management Plan may originate from the Commission, Commission staff, or interested persons, including state and local governments, all four Indian governments, public interest groups, or affected landowners.

(1) Any person may request that the Commission initiate a legislative amendment to the Management Plan.

(2) Any person may submit an application for a quasi-judicial amendment to the Management Plan. All landowners shall give written consent to the application.

(3) For the purpose of this division of the Commission Rules, a quasi-judicial amendment shall be one that affects only one or any clearly identifiable set of parcels or landowners. All other amendments shall be considered a legislative amendment.

(4) The Executive Director shall determine whether the proposal is for a legislative or a quasi-judicial amendment. The Executive Director may make this determination prior to, or at the pre-application conference.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

350-50-045. Pre-Application Conference

(1) Prior to submitting any application for an amendment to the Management Plan, an applicant shall attend a pre-application conference with the Executive Director.

(2) The applicant shall submit a statement of the proposed plan amendment in as much detail as possible. Proposals for quasi-judicial amendments shall include a list of all properties that would be affected by the proposal and the names and addresses of the owners of the properties. The Executive Director may request the applicant submit additional information about the proposal prior to scheduling a pre-application conference.

(3) The Executive Director shall hold a pre-application conference within 45 days after an applicant requests a pre-application conference. The Executive Director shall invite the following persons to the pre-application conference:

(a) The applicant;

(b) For quasi-judicial amendments, the owners of all properties that would be affected by the proposal;

(c) Representatives of the USDA Forest Service, the county or counties where the subject property or properties are located, the four Indian Tribes with treaty rights in the National Scenic Area, and affected state agencies;

(d) Any other person the Executive Director believes may have an interest in the proposal; and

(e) For legislative amendments, the person who submitted the original request.

(4) The Commission may charge a fee for holding a pre-application conference. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for pre-application conferences.

(5) The purpose of the pre-application conference is to determine the nature of the proposal as quasi-judicial or legislative, identify issues that concern the Commission and other agencies and interested persons, determine what information will be necessary for the Executive Director to review the application, and give an estimated schedule for considering the application.

(6) Within 14 days after a pre-application conference, the Executive Director shall issue a pre-application conference report, which shall summarize the discussion at the conference and shall contain a preliminary list of information necessary to review the application. The list of necessary information shall not be exclusive.

(7) The Executive Director may require an applicant to attend a new pre-application conference if the application submitted is materially different than the proposal discussed at the pre-application conference, or conditions in the Scenic Area have materially changed.

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.

AMENDATORY SECTION

350-50-050. Application for Quasi-Judicial Plan Amendments.

(1) Applications to amend the for quasi-judicial plan amendments shall contain the following: a statement from the sponsor. The statement shall:

(a) explain why the proposed plan amendment is necessary; and The precise language that the applicant proposes to amend or add;

(b) A statement of the applicant's ultimate development proposal;

(c) An explanation why the proposed plan amendment is necessary to accomplish the applicant's ultimate development proposal;

(d) demonstrate why Information identified at the pre-application conference necessary to demonstrate that the proposed plan amendment complies with the purposes and standards of the Act, the provisions in Section 6(h), and this rule;

(e) The names and addresses of all landowners for properties that are within 200 feet of the boundaries of all affected parcels; and

(f) Other information not identified at the pre-application conference, based on content of information already submitted or changes to the proposal;

(2) The Commission may charge a fee for review of quasi-judicial plan amendment applications. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for review of quasi-judicial plan amendment applications.

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.

AMENDATORY SECTION

350-50-060. Processing of Application.

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received. Applications shall be reviewed pursuant to sections 070 through 120 of this division.

(2) The Executive Director shall maintain requests for legislative amendments. The Commission shall review the list of requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. The Executive Director shall hold a pre-application conference as provided in 350-50-045. Following the pre-application conference, the Executive Director shall process a legislative amendment pursuant to sections 080 through 120 of this division.

~~Each application for a plan amendment is reviewed according to the provisions in the Management Plan [Part IV, Chapter 1, section Amendment of the Management Plan, Policy 2] and this rule.~~

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

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.

AMENDATORY SECTION

350-50-070. Submittal and Acceptance of Application for Quasi-Judicial Plan Amendment Application.

(1) ~~The sponsor of the plan amendment shall submit an application to the Commission office. Fifteen copies of each application are required after an application is accepted as complete by the Executive Director.~~

(12) ~~Within ten (10) working 14 days of receiving an application, the Executive Director shall review the application for completeness and adequacy and notify the applicant in writing of any deficiencies, and any additional information that is required as provided in 350-50-050 (1)(f).~~

(23) ~~The Executive Director will shall not accept an application as complete until the applicant corrects all omissions and deficiencies and submits all additional information noted by the Executive Director are corrected.~~

(3) The applicant shall submit 15 copies of the application after the Executive Director determines the application is complete.

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.

REPEALED SECTION

350-50-075. Preliminary Review and Commencement of Review Process

~~(1) Once the application is determined complete, the Executive Director shall notify the applicants and shall bring the matter to the Commission for preliminary review.~~

~~(2) When more than one application is pending, the preliminary review of proposed amendments shall be scheduled in the order they were accepted as complete by the Executive Director.~~

~~(3) The purpose of preliminary review is to allow the Commission to:~~

~~(a) ask questions of Commission staff and of applicants regarding the plan amendment; and~~

~~(b) provide an opportunity to applicants, if they so choose, to revise the application to address issues raised in the preliminary review, provided that such changes are made within 15 working days of the preliminary review.~~

~~(4) Following the preliminary review, the Commission shall either commence or postpone the process for all complete applications. The Commission may postpone the process after evaluating the resources, including financial and personnel, required to process the proposed plan amendment and determining its priority relative to existing or anticipated work. A majority vote of the Commission at a regularly scheduled meeting is required to commence the process for a proposed plan amendment; the process is postponed for proposals that fail to receive the majority vote needed to commence.~~

~~(5) The Commission may reconsider a postponed plan amendment at any subsequent regularly scheduled meeting, and may commence the review process by a majority vote.~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-50-080. Notice of Application.

~~(1) Once the application is deemed complete and 15 working days have expired after the Commission has voted to commence the process, the The Executive Director shall send public notice of the completed application, ~~including any revisions~~, to the U.S. Forest Service - National Scenic Area Office, ~~States of Oregon and Washington~~ affected state agencies, all four Indian tribal governments, the six Gorge county planning offices, and interested parties who have requested notice, and for quasi-judicial applications, all landowners within 200 feet of the boundaries of all affected parcels.~~

(2) The Executive Director shall publish notice of a quasi-judicial plan amendment application in a newspaper serving the community where the affected parcels are located.

~~(3)~~ (2) The Executive Director shall publish notice of the a legislative plan amendment application in local Gorge news-

papers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.

~~(4)~~ (3) The Executive Director shall make copies of the complete application available for inspection at the Commission office during normal office hours.

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.

AMENDATORY SECTION

350-50-085. Public Comment.

~~(1)~~ (1) Interested persons shall have ~~twenty (20) working~~ 30 days from the date the notice is posted to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

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.

AMENDATORY SECTION

350-50-090. Report of the Executive Director.

~~(1)~~ (1) Unless otherwise specified in the pre-application conference, Within ~~thirty (30) working~~ 60 days following the end of the public comment period, the Executive Director will ~~shall~~ prepare a staff report, which may include recommendations. ~~Upon application of the Executive Director, the Commission may extend the time for submission of the report.~~ The report will analyze the proposed amendment based on the criteria of the Scenic Area Act and Rule 350-50-030.

~~(2)~~ (2) For legislative amendments, the Executive Director shall include recommended plan amendment language in the staff report.

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.

AMENDATORY SECTION

350-50-100. Hearings.

~~(1)~~ (1) The Commission shall conduct a hearing on every plan amendment application, ~~the Commission has decided to review pursuant to 350-50-075(4).~~

~~(2)~~ (2) The Commission shall provide ~~30~~ 20 days notice of the hearing to interested parties and members of the public. The notice of the application may include the notice of hearing.

~~(3)~~ (3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues.

(a) The Executive Director shall present the staff report. The Commission may ask questions concerning the staff report.

~~(b)~~ (b) The applicant is required to proceed first in the hearing and shall present the basis for the plan amendment.

~~(c) Interested persons, Federal, state, county, tribal and other government officials may participate through submission of present oral or written comments.~~

~~(e) Members of the public may participate through submission of present oral or written comments.~~

~~(d) After those who participate in the hearing on behalf of the government or the public are finished, Following testimony from interested persons, the applicant shall have the opportunity to respond to the comments presented.~~

~~(e) After all presentations are complete, the Chair shall invite close the public hearing, and the Commission ~~to~~ shall deliberate on the proposed plan amendment.~~

~~(f) If the Commission makes no changes to the original amendment, For quasi-judicial plan amendment applications, the Commission may proceed to vote on the proposal application as submitted or attach conditions of approval necessary to ensure the proposal complies with the criteria for approval. The Commission shall deny the proposed plan amendment if any of the criteria in 350-50-030 are not satisfied by the application as submitted and cannot be satisfied through imposing reasonable conditions of approval.~~

~~(g) For legislative amendments, the Commission may modify the recommended language in any manner.~~

~~(i) If the Commission makes clarifying changes to the recommended language, then it only changes to the amendment are for the purposes of clarification, the Commission may proceed to vote on whether to adopt the amendment recommended language, as clarified, after providing an opportunity for public comment during the hearing on any change.~~

~~(h)(ii) If the Commission makes substantive changes, i.e. those not covered by subparagraph (g) immediately above, to the amendment are approved by the Commission during the hearing recommended language, the Commission shall:~~

~~(i)(A) provide an opportunity for additional public comment during the hearing on the new ~~proposed~~ language, and then proceed to vote on whether to adopt the amendment; or~~

~~(i)(B) continue the hearing to a new date to allow for adequate public notice of the content of the modifications language and for further consideration of the issues. When the hearing is resumed, the Commission shall provide a reasonable opportunity for the applicant and members of the public to respond to the proposed modifications under review language, and then proceed to vote on whether to adopt the amendment.~~

~~(h) The Commission shall determine if the amendment as approved is mandatory for counties to adopt into their land use ordinances. Unless otherwise specified by the Commission, amendments to county land use ordinances shall follow the procedures established in Sections 7 and 8 of the Scenic Area Act (16 U.S.C. §§ 544e and 544f).~~

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.

REPEALED SECTION

350-50-110. Consultation.

~~In considering an amendment to the Management Plan, the Gorge Commission shall consult with the Forest Service, both states, the six Gorge counties, all four Indian tribal gov-~~

~~ernments and agencies or organizations that have a specific interest.~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 06-04-010

PROPOSED RULES

HEALTH CARE AUTHORITY

(Community Health Services)

[Order 05-07—Filed January 20, 2006, 8:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-021.

Title of Rule and Other Identifying Information: Dental residency pilot project established pursuant to SHB 1689, chapter 454, Laws of 2005.

Hearing Location(s): Health Care Authority, The Center, Conference Room, 676 Woodland Square Loop S.E., Lacey, WA, on March 8, 2006, at 9:00 a.m.

Date of Intended Adoption: March 10, 2006.

Submit Written Comments to: Dolores Reyes-Gonzalez, P.O. Box 42721, Olympia, WA 98504-42721, e-mail drey107@hca.wa.gov, fax (360) 923-2605, by 4:00 p.m., on March 8, 2006.

Assistance for Persons with Disabilities: Contact Nikki Johnson by February 22, 2006, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health care authority (HCA) will allocate funds that have been specifically appropriated by the legislature for dental residency programs to contractors with American Dental Association (ADA) accreditation. Support of this pilot project will increase access to oral health care for low-income individuals.

Reasons Supporting Proposal: Rules need to be revised to comply with the requirements of SHB 1689, which was passed by the 2005 legislature.

Statutory Authority for Adoption: RCW 41.05.220.

Statute Being Implemented: Chapter 454, Laws of 2005.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Mix-Clark, Lacey, Washington, (360) 923-2753; Implementation and Enforcement: Dolores Reyes-Gonzalez, Lacey, Washington, (360) 923-2781.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The HCA is not required by chapter 19.85 RCW to prepare a small business economic impact statement. There will be little, if any, cost to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the HCA rules

unless requested by the joint administrative rules [review] committee or applied voluntarily.

January 20, 2006
Pete Cutler
Rules Coordinator

NEW SECTION

WAC 182-20-500 Dental residency pilot project. (1)

The provisions of this section apply to organizations that wish to apply for funding to operate a dental residency program pursuant to the provisions of RCW 18.32.040.

(2) The authority will, upon request, supply to interested parties the application forms and information needed to apply for funding for a dental residency program.

(3) The forms shall require applicants to provide the following information:

(a) The applicant's name, address, and telephone number;

(b) A full description of the dental residency program to be funded;

(c) A brief statement of intent to apply for funding.

(4) Clinics that wish to apply for funding must meet the following criteria:

(a) Have American Dental Association (ADA) accreditation;

(b) Comply with the department of health's dental residency licensure requirements; and

(c) Operate a one-year advanced education in general dentistry residency (AEGD) program.

(5) The authority will allocate funds pursuant to written procedures which may be updated annually. The authority will, upon request, supply a copy of the allocation procedures to interested parties.

WSR 06-04-014

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed January 22, 2006, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-050.

Title of Rule and Other Identifying Information: Emerging commercial pilchard fishery.

Hearing Location(s): Room 172, Natural Resources Building, Commission Office, 1111 Washington Street, Olympia, WA, on March 14, 2006, at 1:00.

Date of Intended Adoption: March 14, 2006.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by March 10, 2006.

Assistance for Persons with Disabilities: Contact Evan Jacoby by February 24, 2006, TTY (360) 902-2207 or (360) 902-2930.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule adjusts the coastal pilchard fishery, which is being managed as an emerging commercial fishery. These rule changes address the process for issuing replacement permits, the criteria for permit renewal, and the amount of pilchards that can be used for purposes other than human consumption and fishing bait. A change will be made to require an ownership interest in the vessel being used. A seasonal adjustment and allowing more than a single trip per day will increase catch effort.

Reasons Supporting Proposal: The fishery is relatively successful, but is marginally undersubscribed. Issuance of replacement permits will utilize the Washington share of the coastal allocation. Requiring an ownership interest in vessels reduces absentee ownership of licenses, increasing the benefit to Washington residents.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Phil Anderson, 1111 Washington Street, Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: Fish buyers will be required to report on fish tickets, as "reduction," the amount of sardine purchased for purposes other than human consumption or fishing bait. Sardine fishers will need to have at least a 50% ownership interest in the designated vessel, beginning in 2007.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: One-third of the current experimental permit holders (five persons) do not own the vessels using the licenses. These persons will be required to have at least a 50% ownership interest in the vessel to be designated, beginning in 2007. Since the estimated cost of a vessel capable of participating in the coastal sardine fishery is, at a minimum, approximately \$200,000, the cost of these five permit holders is expected to be about \$100,000 each.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- Cost per employee;
- Cost per hour of labor; or
- Cost per one hundred dollars of sales.

The 0% of the businesses (two permit holders) that are the largest businesses required to comply with rule (i.e., have at least 50% ownership interest in the vessel designated on their license and permit) are currently vessel owners. Accordingly, there are no compliance costs for these businesses.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The department has reduced the ownership interest from 100% to 50%. This allows a partnership to own the vessel, and assures that a marital community qualifies to hold a permit.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department has held meetings to which all persons currently holding coastal sardine experimental permits have been invited. The fishers who are not vessel owners have been made aware of this proposal, and know they will have to either leave the fishery or buy another vessel. These fishers are making the minimum landing in order to keep the permit (forty metric tons every two years), with an expectation that they will be eligible for a limited entry license if the fishery ever converts from an emerging commercial fishery to a limited entry fishery. Although the limited entry fishery license will have real value, the experimental permit, which is nontransferable, has no value. The failure to these fishers to actively participate in the fishery is part of the reason why the fishery is undersubscribed, and Washington is not taking its full allocation.

8. A List of Industries That Will Be Required to Comply with the Rule: Coastal sardine fishers.

A copy of the statement may be obtained by contacting Evan Jacoby, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail jacobesj@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

January 20, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 05-53, filed 3/30/05, effective 4/30/05)

WAC 220-88C-030 Eligibility to participate in the coastal pilchard fishery. (1) Beginning in 2007, a coastal pilchard experimental fishery permit will be issued only to a natural person who:

(a) Held such a permit or held a replacement permit the previous year;

(b) Can demonstrate by valid Washington fish receiving tickets that at least forty metric tons cumulative weight of pilchard taken from Pacific Ocean waters were landed under the person's emerging commercial fishery license during the previous two calendar years;

(c) Has purchased an emerging commercial fisheries license by April 1st; and

(d) ~~((As of December 1st of the previous licensing year has no outstanding observer fees owed to the department.))~~ Has an ownership interest of at least fifty percent in the vessel designated on the emerging commercial fishery license.

(2) Coastal pilchard experimental fishery permits may be revoked by the director, and future permits denied by the director, for failure to comply with conditions specified in the permits or violation of other commercial fishing rules, and shall be revoked if the emerging commercial fishery license is suspended. A coastal pilchard experimental fishery permit will not be renewed if the emerging commercial fishery license is revoked or future fishing privileges of the licensee are suspended.

(3) ~~((For 2005,))~~ The director may offer ((temporary)) replacement permits ((valid for the 2005 season only)), provided that((:

~~((a))~~ the total number of permits issued by the director, including ((2005 temporary)) replacement permits, shall not exceed twenty-five.

~~((b))~~ 2005 temporary permits may be issued only to a person who can demonstrate by valid Washington fish receiving tickets that pilchard were landed under the person's emerging commercial fishery license in 2000, 2001, and 2002, the person has not previously held a coastal pilchard experimental fishery permit and the person has submitted a completed 2005 temporary permit application to the department by June 1, 2005.

~~((c))~~ A vessel must be designated on the 2005 temporary permit application, and only one 2005 temporary permit application per person or vessel will be allowed.))

(4) A coastal pilchard replacement permit will only be issued to a natural person who:

(a) Has an ownership interest of at least fifty percent in a vessel that was designated on a Washington coastal pilchard experimental fishery permit in 2004 or 2005;

(b) Landed a minimum of 40 mt cumulative weight of pilchard into Washington using the designated vessel referenced in (a) of this subsection in 2004 and 2005; and

(c) Has purchased an emerging commercial fisheries license by June 1, 2006.

(5) Coastal pilchard experimental fishery permits and replacement permits are only valid for the year issued and expire ~~((on November 30 of the year issued))~~ with the expiration of the emerging commercial fishery license.

~~((6))~~ (6) Replacement permit holders must designate a vessel in which the replacement permit holder has an ownership interest of at least fifty percent.

(7) Permit holders must designate a vessel to be used in the coastal pilchard emerging commercial fishery at least forty-eight hours before their first pilchard fishing trip of each season. Once designated, permit holders may not change vessel designation for the remainder of the season, except as provided in subsection (8) of this section in an emergency and then only if allowed by the director. The same vessel may not be designated on more than one emerging commercial fishery license and accompanying coastal pilchard experimental fishery permit.

(8) Vessel designation may be changed during the pilchard season provided that the designated vessel has not yet participated in the pilchard fishery during the current calendar year.

AMENDATORY SECTION (Amending Order 05-53, filed 3/30/05, effective 4/30/05)

WAC 220-88C-040 Coastal pilchard fishery—Seasons and lawful catch. (1) The coastal pilchard fishery season is open to purse seine fishing (~~((May))~~ April 1 through ~~((November 30))~~ December 31 only. Fishing under an experimental commercial fishery permit for pilchard is closed within three miles of shore.

(2) It is unlawful to retain any species taken incidental to pilchard in the coastal pilchard fishery except anchovy, mackerel, and market squid (*Logligo opalescens*). Any salmon encircled in the purse seine must be released prior to completion of the set, and no salmon may be landed on the fishing vessel.

(3) It is unlawful to transfer pilchard catch from one fishing vessel to another.

(4) It is unlawful to fail to have legal purse seine gear aboard the vessel making a pilchard landing.

(5) It is unlawful to fail to deliver pilchard landings to a shoreside processing facility.

(6) It is unlawful to deliver more than ~~((ten))~~ fifteen percent cumulative weight of ~~((a))~~ pilchard ~~((landing))~~ for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products or by-products for purposes other than human consumption or fishing bait during a pilchard fishery season.

~~((7))~~ ~~((It is unlawful to deliver more than one pilchard landing per calendar day.~~

~~((8))~~ Once a delivery has commenced at a processing plant, all fish onboard the vessel must be offloaded at that plant.

AMENDATORY SECTION (Amending Order 05-53, filed 3/30/05, effective 4/30/05)

WAC 220-88C-050 Coastal pilchard fishery—Observer and sampler coverage, logbook requirements.

(1) As a condition of the experimental commercial fishery permit, participants in the coastal pilchard fishery are required to have on-board observers for any pilchard fishing effort at the request of the department.

(2) Up to 500 sardine per vessel trip may be retained by WDFW samplers for biological information.

(3) All persons who obtain an experimental commercial fishery permit, including replacement permits, for the coastal pilchard fishery must complete a department-issued logbook, and the logbook is required to be returned to the department by January 15th of the following year. Failure to submit the logbook will cause the person to be ineligible for a permit in the following season.

AMENDATORY SECTION (Amending Order 05-275, filed 12/9/05, effective 1/9/06)

WAC 220-69-240 Duties of commercial purchasers and receivers. (1) It is unlawful for any person originally receiving fresh or iced fish or shellfish or frozen fish or shellfish that have not been previously delivered in another state, territory, or country, except purchases or receipts made by individuals or consumers at retail, to fail to be a licensed

wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket regarding each and every purchase or receipt of such commodities. Each delivery must be recorded on a separate fish receiving ticket.

It is unlawful for any original receiver of crab or spot shrimp to fail to record all crab or spot shrimp aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish deemed to be unmarketable, discards, or weighbacks must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for such fish or shellfish.

(a) Failure to be licensed under this subsection is punishable under RCW 77.15.620.

(b) Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

(2) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its branch plant locations shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business or firm shall be responsible for the accuracy and legibility of all such documents initiated in its name.

(3) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. Should the delivery of the catch take more than one day, the date that the delivery is completed is required to be entered on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the current date on the fish receiving ticket. Violation of this subsection is punishable under RCW 77.15.630.

(4) Forage fish: It is unlawful for any person receiving forage fish to fail to report the forage fish on fish receiving tickets that are initiated and completed on the day the forage fish are delivered. Herring are also required to be reported on herring harvest logs. The harvested amount of forage fish is to be entered upon the fish ticket when the forage fish are offloaded from the catcher vessel. An estimate of herring, candlefish, anchovy, or pilchards caught but not sold due to mortality must be included on the fish ticket as "loss estimate." In the coastal pilchard fishery, the amount of pilchards, by weight, purchased for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products or by-products for purposes other than human consumption or fishing bait must be included on the fish ticket as "reduction."

Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(5) Geoduck: It is unlawful for any person receiving geoducks, regardless of whether or not the receiver holds a license as required under Title 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual delivery of geoducks from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoducks from the department of natural resources harvest tract to the

point of delivery. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(6) Pacific whiting: It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the delivery. The exact weights of whiting, by grade, and all incidental species in the delivery must be entered on the fish receiving ticket within twenty-four hours of the landing. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(7) Puget Sound shrimp - Pot gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by voice 360-466-4345 extension 245, or facsimile 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by voice 1-866-859-8439, extension 800, or facsimile 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, and the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(a) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 23A, to fail to record either 23A-C, 23A-E, 23A-W or 23A-S on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(b) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26A, to fail to record either 26A-E or 26A-W on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(c) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26B, to fail to record either 26B-1 or 26B-2 on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(d) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, to fail to record either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(8) Puget Sound shrimp - Trawl gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the follow-

ing morning. For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by voice 360-466-4345 extension 245, or facsimile 360-466-0515. For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by voice 1-866-859-8439, extension 600, or facsimile 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, and the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area, and species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(9) Puget Sound crab: It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by nontreaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made to the La Conner District Office by facsimile 360-466-0515 or by telephone number 1-866-859-8439 extension 500 and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by nontreaty fishers by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(10) Salmon and sturgeon: During any fishery opening designated by rule as "quick reporting required," it is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement holder to fail to report all salmon offered for retail sale on the previous calendar day. The report must include dealer or holder name and purchasing location, date of purchase, each fish ticket number used on the purchasing date, and the following catch data for each species purchased: Gear, catch area, species, number and total weight of fish. When quick reporting is required, it is unlawful to fail to comply with the following reporting requirements:

(a) Puget Sound reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-902-2949
- (ii) E-mail to psfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1279

(b) Coastal troll reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-902-2949
- (ii) E-mail to trollfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1279

(c) Grays Harbor and Willapa Bay reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-664-0689
- (ii) E-mail to harborfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1280

(d) Columbia River reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-906-6776 or 360-906-6777

(ii) E-mail to crfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1281

(e) Faxing a copy of each fish receiving ticket used on the previous day satisfies the reporting requirement.

(f) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(11) Sea urchins and sea cucumbers: It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day. For red sea urchins the report must specify the number of pounds received from each sea urchin district. For green sea urchins and sea cucumbers the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area. For sea cucumbers the report must specify whether the landings were "whole-live" or "split-drained." The report must be made by facsimile (fax) transmission to 360-902-2943 or by toll-free telephone to 866-207-8223. Additionally, it is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken, and it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket the name of the port of landing where the sea urchins were landed ashore. Additionally, it is unlawful for the original receiver of sea cucumbers to fail to record on the fish receiving ticket whether the sea cucumbers were delivered "whole-live" or "split-drained." Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(12) Coastal spot shrimp: It is unlawful for any original receiver of spot shrimp taken from Marine Fish Management and Catch Reporting Area 60A-1 to fail to record separately on the fish receiving ticket spot shrimp taken north or south of 47°04.00' north latitude. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

WSR 06-04-018
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed January 23, 2006, 3:03 p.m.]

Continuance of WSR 05-24-043.

Preproposal statement of inquiry was filed as WSR 05-10-006.

Title of Rule and Other Identifying Information: Scientific collection permit rules. This continuance is solely for purposes of continuing the public hearing to March 2006.

Hearing Location(s): Red Lion Hotel Pasco, 2525 North 20th Avenue, Pasco, WA, on March 10-11, 2006, begins 8:00 a.m. on March 10, 2006.

Date of Intended Adoption: March 10, 2006.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by March 3, 2006.

Assistance for Persons with Disabilities: Contact Susan Yeager by February 24, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: See WSR 05-21-140.

Reasons Supporting Proposal: See WSR 05-21-140.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Lew Atkins, (360) 902-2651 and Dave Brittell, (360) 902-2504, 1111 Washington Street, Olympia; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See WSR 05-21-140.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

January 23, 2006

Evan Jacoby

Rules Coordinator

WSR 06-04-019
WITHDRAWAL OF PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed January 23, 2006, 3:04 p.m.]

At this time, we will allow the proposed rule making regarding WAC 180-08-025, filed under WSR 05-15-063 to expire on January 31, 2006. The state board will be taking no action on the proposed changes to this rule.

Larry Davis

Executive Director

WSR 06-04-029
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed January 25, 2006, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-16-052.

Title of Rule and Other Identifying Information: Crab fishery—Seasons and areas, coastal crab fishery limited participation.

Hearing Location(s): Room 172, Natural Resources Building, 1111 Washington Street, Olympia, WA, on March 14, 2006, at 3:00.

Date of Intended Adoption: March 14, 2006.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by March 10, 2006.

Assistance for Persons with Disabilities: Contact Evan Jacoby by February 24, 2006, TTY (360) 902-2207 or (360) 902-2930.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Oregon and Washington will deny fishing in their respective coastal waters to fishers from the other state unless the fisher holds a license from that state.

Reasons Supporting Proposal: The coastal crab fishery is heavily over subscribed, and limiting participation will increase the fishing opportunity for Washington fishers.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Phil Anderson, 1111 Washington Street, Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: Oregon fishers will have to have a Washington Dungeness crab—Coastal fishery license to fish in coastal waters off Washington.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Cost of a Washington crab license.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? Oregon-only licensees will no longer be able to fish off Washington. This may cause a loss of sales if they cannot replace the catch with catch taken off Oregon.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales.

The 10% of the businesses that are the largest businesses required to comply with rule (i.e., have a Washington license) are currently licensed in Washington. Accordingly, there are no compliance costs for these businesses.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: This rule will increase the catch by Washington-licensed fishers. ODFW and WDFW records show that twenty-seven Oregon-only licensed fishers made landings into Oregon of Washington-origin crab, while only seven Washington-only licensed fishers made landings into Washington of Oregon-origin crab ("state"-origin crab being crab taken outside three mile in the coastal waters off the respective states).

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: Extensive meetings with constituents and state officials have been held. This limitation program has been widely publicized.

8. A List of Industries That Will Be Required to Comply with the Rule: Oregon coastal crab fishers not holding a Washington Dungeness crab—Coastal fishery license.

A copy of the statement may be obtained by contacting Evan Jacoby, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail jacobesj@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

January 20, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 05-275, filed 12/9/05, effective 1/9/06)

WAC 220-52-046 Crab fishery—Seasons and areas. "Commercial crab fishing" means any taking, fishing, use, or operation of gear to fish for crabs for commercial purposes, and shall include the possession of crab on the water for commercial purposes, and the landing or initial delivery of crab for commercial purposes.

The lawful open times and areas for commercial crab fishing are as follows:

(1) All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas are open for commercial crab fishing beginning 8:00 a.m. October 1st through the following April 15th and, after 8:00 a.m. October 1st, from one-half hour before sunrise to one-half hour after sunset, except as provided by other subsections below.

(2) For purposes of crab harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (Catch Areas) are modified as follows:

(a) Catch Area 26A-E shall include those waters of Puget Sound south of a line from Sandy Point (on Whidbey Island) to Camano Head and from Camano Head to the north tip of Gedney Island, and from the southern tip of Gedney Island east to the mainland, and north and east of a line that extends from Possession Point to the shipwreck located .8 nautical miles north of Picnic Point.

(b) Catch Area 26A-W shall include those waters of Puget Sound south and east of a line from Foulweather Bluff to Double Bluff, and northerly of a line from Apple Cove Point to Point Edwards, and south and west of a line that

extends from Possession Point to the shipwreck located .8 nautical miles north of Picnic Point.

(3) The following areas are closed to commercial crab fishing except for treaty Indian commercial crab fishing where the treaty Indian crab fisher is following tribal openings that are in accordance with provisions of court orders in *United States v. Washington*:

(a) Areas 25C, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from the entrance buoy at Sandy Point to Gooseberry Point.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder at Point Francis to the pilings at Stevie's Point.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the abandoned dock at the Three Crabs Restaurant.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.

(4) The following areas are closed to commercial crab fishing during the periods indicated:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point are closed October 1 through October 31 and March 1 through April 15.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley are closed October 1 through October 15.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W) are closed from October 1 through October 15.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cap Sante Marina to the northern end of the eastern most oil dock are closed October 1 through October 31, and March 1 through April 15 of each year.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass are closed October 1 through October 31 and March 1 through April 15.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green No. 1 buoy at Possession Point to Possession Point and west of a line from the green No. 1 buoy at Possession Point northward along the 200-foot depth contour to the Glendale Dock are closed October 1 through October 15.

(5) The following areas are closed to commercial crab fishing until further notice:

(a) Those waters of Area 25E south of a line from Contractors Point to Tukey Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected from Rocky Point northeast to the red number 2 buoy north of Ustalady Point, thence to Brown Point on the northeast corner of Ustalady Bay.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from the point at the southern end of Honeymoon Bay (48°03.047'N, 122°32.306'W) to the point just north of Beverly Beach.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River and west of a line projected from the #3 buoy southward to the oil boom pier on the shoreline.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island thence to Chuckanut Rock thence to the most southerly tip of Clark's Point.

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a

line projected east-west through the red number 4 entrance buoy.

(k) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

(l) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.

(m) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A in Cornet Bay south of a line projected true east and west from the northernmost tip of Ben Ure Island.

(n) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(o) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

(6) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are open to commercial crab fishing December 1 through September 15 except that it is lawful to set baited crab gear beginning at 8:00 a.m. November 28. However, the department may delay opening of the coastal crab fishery due to softshell crab conditions, in which case the following provisions will apply:

(a) After consultation with the Oregon Department of Fish and Wildlife, the director may, by emergency rule, establish a softshell crab demarcation line.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area for which the season opening has been delayed due to softshell crab for the first thirty days following the opening of such an area if the vessel was employed in the coastal crab fishery during the previous forty-five days.

(c) Fishers may not set crab gear in any area where the season opening has been delayed, except that gear may be set as allowed by emergency rule and shall allow setting sixty-four hours in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California except during the lawful open seasons, areas and times specified by the individual states, except that it is unlawful for the holder of a Washington state Dungeness crab coastal fishery license to fish for or possess Dungeness crab taken in waters north of 41°59'47"N. Lat. and south of 46°15'00"N. Lat. unless the holder also holds the licenses or permits needed to commercially fish for Dungeness crab within the state waters of Oregon.

WSR 06-04-039
PROPOSED RULES
UNIVERSITY OF WASHINGTON

[Filed January 26, 2006, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-20-006.

Title of Rule and Other Identifying Information: WAC 478-160-163 Waivers of tuition and fees.

Hearing Location(s): Room 309, Husky Union Building (HUB), University of Washington, Seattle, Washington 98195, on March 13, 2006, at 12:00 noon.

Date of Intended Adoption: May 18, 2006.

Submit Written Comments to: Rebecca Goodwin Dear-dorff, Director of Rules Coordination, UW Rules Coordination Office, Box 355509, Seattle, WA 98195-5509, e-mail rules@u.washington.edu, fax (206) 221-6917, by March 13, 2006.

Assistance for Persons with Disabilities: Contact Disability Services Office by February 27, 2006, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the eligibility and limitations for specific University of Washington tuition waivers in order to reflect new definitions established by SHB 1174 (RCW 28B.15.621), effective July 24, 2005. SHB 1174 repealed existing waivers for South East Asia veterans, Persian Gulf veterans, and children of POW/MIAs that had been authorized by RCW 28B.10.265, 28B.15.620, and 28B.15.628, and instead authorized a new permissive waiver for veterans who are Washington domiciles and who were called to active federal duty and who served in a conflict or war on foreign soil/international waters, or in support of such a conflict, and for his/her children or spouse if the veteran became totally disabled or lost his/her life while engaged in active federal military or naval service, or if the veteran was determined to be a POW/MIA. SHB 1174 also removed eligibility for members of the Washington National Guard and veterans of the Korean conflict to use the state employee tuition exemption, although those with qualifying service can apply for the amended veteran's waiver.

Statutory Authority for Adoption: Chapter 28B.15 RCW and RCW 28B.20.130.

Statute Being Implemented: RCW 28B.15.621 and 28B.20.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Eric Godfrey, Acting Vice-President for Student Affairs, 476 Schmitz Hall, University of Washington, Seattle, (206) 543-0128; and Implementation: Harlan Patterson, Vice-Provost for Planning and Budgeting, 185 Gerberding Hall, University of Washington, Seattle, (206) 543-6412.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC 478-160-163 Waivers of tuition and fees, does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 478-160-163 is not considered a significant legislative rule by the University of Washington.

January 25, 2006
Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 02-06-021, filed 2/25/02, effective 3/28/02)

WAC 478-160-163 Waivers of tuition and fees. (1)

The board of regents is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. Each of these laws, with the exception of RCW 28B.15.543 and 28B.15.545, authorizes, but does not require, the board of regents to grant waivers for different categories of students and provides for waivers of different fees. The board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. A list of waivers that the board has implemented can be found in the *University of Washington General Catalog*, which is published biennially. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html.

(2) Even when it has decided to implement a waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws. Where the university has chosen to impose specific limitations on a waiver listed in RCW 28B.15.910, those limitations are delineated in subsection (5) of this section. If the university has not imposed specific limitations on a waiver listed in RCW 28B.15.910, the waiver is not mentioned in subsection (5) of this section. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection ~~((6))~~ (7) of this section. All waivers are subject to subsection ~~((6))~~ (7) of this section.

(3) The board of regents also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waiver programs adopted under RCW 28B.15.915 are described in the *General Catalog*. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html. Waivers granted under RCW 28B.15.915 are subject to subsection ~~((6))~~ (7) of this section.

(4) Waivers will not be awarded to students participating in self-sustaining courses or programs because they do not pay "tuition," "operating fees," "services and activities fees," or "technology fees" as defined in RCW 28B.15.020, 28B.15.031, 28B.15.041, or 28B.15.051, respectively.

(5) Specific limitations on waivers are as follows:

(a) Waivers authorized by RCW ~~((28B.10.265 for children of Washington domiciles who are prisoners of war or missing in action in Southeast Asia or Korea))~~ 28B.15.621 (2)(a) for eligible veterans and National Guard members, shall be awarded only to undergraduate students pursuing

their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.

(b) Waivers authorized by RCW 28B.15.621 (2)(b) and (c) for children or spouses of eligible veterans and National Guard members who became totally disabled, or lost their lives, while engaged in active federal military or naval service, or who are prisoners of war or missing in action, shall be awarded only to undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.

(c) Waivers of nonresident tuition authorized by RCW 28B.15.014 for university faculty and classified or professional staff shall be restricted to four consecutive quarters from their date of employment with the University of Washington. The recipient of the waiver must be employed by the first day of the quarter for which the waiver is awarded. Waivers awarded to immigrant refugees, or the spouses or dependent children of such refugees, shall be restricted to persons who reside in Washington state and to four consecutive quarters from their arrival in Washington state.

~~((e))~~ (d) Waivers authorized by RCW 28B.15.380 for children of ~~((deceased or permanently disabled))~~ police officers or fire fighters who are deceased or permanently disabled, shall be awarded only to undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.

~~((d))~~ (e) Waivers authorized by RCW 28B.15.558 shall be awarded only to:

(i) University of Washington employees who are employed half-time or more, hold qualifying appointments as of the first day of the quarter for which the waivers are requested, are paid monthly, and, for classified staff new to the university, have completed their probationary periods prior to the first day of the quarter; or

(ii) State of Washington permanent employees who are employed half-time or more, are not University of Washington permanent classified employees, are permanent classified or exempt technical college paraprofessional employees, or are permanent faculty members, counselors, librarians or exempt employees at other state of Washington public higher education institutions~~((; or~~

~~((iii) Members of the Washington National Guard.~~

~~(e) Waivers authorized by RCW 28B.15.620 shall be awarded only to Vietnam veterans pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.~~

~~(f) Waivers authorized by RCW 28B.15.628 shall be awarded only to veterans of the Persian Gulf combat zone pursuing a first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education).~~

(6) To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and a DD form 214 (Report of Separation) indicating their service related to

specific United States military operations or campaigns fought on foreign soil or in international waters.

(7) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.-910 and may limit the total funding available under RCW 28B.15.915.

WSR 06-04-040
PROPOSED RULES
GAMBLING COMMISSION

[Filed January 26, 2006, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-096.

Title of Rule and Other Identifying Information: Amending WAC 230-02-205 Gambling service supplier defined, 230-02-208 Punch board and pull-tab service business defined, and 230-04-133 Punch board and pull-tab service business—Registration required—Procedures—Restrictions.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on March 10, 2006, at 9:30 a.m.

Date of Intended Adoption: March 10, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by March 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A punch board and pull-tab (PB/PT) service business provides nonmanagement related record-keeping services to PB/PT operators. If the businesses combined total gross billings are \$20,000 or less, they can operate under a PB/PT service business permit for \$217, with a renewal fee of \$53.

If the business exceeds the \$20,000 threshold, they would need a service supplier license, which costs \$630 each year.

Pull-Tab Countess, a licensed service supplier is requesting an amendment to WAC 230-04-133 to increase the threshold to qualify for a PB/PT service business permit from \$20,000 to \$25,000.

Statutory Authority for Adoption: RCW 9.46.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

January 13, 2006

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 436, filed 9/16/04, effective 1/1/05)

WAC 230-02-205 Gambling service supplier defined.

A "gambling service supplier" is any person who provides gambling related services for compensation, whether directly or indirectly.

(1) Gambling related services include at least the following:

(a) Providing consulting or advisory services regarding gambling activities;

(b) Providing gambling related management services;

(c) Providing financing for purchases or leases of gambling equipment or for providing infrastructure that supports gambling operations for more than one licensee. For purposes of this section, financing by any bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution shall not be deemed as providing gambling related services;

(d) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission;

(e) Providing assembly of components for gambling equipment under a contract with a licensed manufacturer;

(f) Providing installation, integration, maintenance, or any other service of digital surveillance systems that allows direct access to the operating system; or

(g) Training individuals to conduct authorized gambling activities.

(2) The term "gambling services supplier" does not include the following:

(a) Universities and colleges that are regulated by the Washington state board of community and technical colleges and the higher education coordinating board which train individuals to conduct authorized gambling activities;

(b) Licensed manufacturers or distributors who service and repair pull-tab dispensing devices, bingo equipment or any other authorized gambling equipment;

(c) Attorneys, accountants, and governmental affairs consultants whose primary business is providing professional

services that are unrelated to the management or operation of gambling activities; and

(d) Persons that only provide nonmanagement related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such services does not exceed (~~twenty~~) twenty-five thousand dollars during any calendar year.

AMENDATORY SECTION (Amending Order 362, filed 9/23/98, effective 1/1/99)

WAC 230-02-208 Punch board and pull-tab service business defined. "Punch board and pull-tab service business" is defined as a person that provides recordkeeping services for punch board and pull-tab operators for compensation and:

- (1) The individuals are not employees of the operator;
- (2) The recordkeeping services do not include recommendations or advice of a management nature;
- (3) The combined total gross billings for such services during any calendar year does not exceed (~~twenty~~) twenty-five thousand dollars; and
- (4) The records completed are normally the responsibility of the operator. For purposes of this section, recordkeeping duties that are normally the responsibility of the operator include at least the following:
 - (a) Reconciling sales, prizes, and cash on hand for punch boards and pull-tab series;
 - (b) Completing mandatory records required by WAC 230-08-010: Provided, That recordkeeping services provided by a professional accounting business are exempt from these requirements when:
 - (i) The business performs services other than punch board and pull-tab records for the licensee;
 - (ii) The business has clients other than punch board and pull-tab licensees; and
 - (iii) The recordkeeping service only includes transcribing entries from the licensee into the required format; and/or
 - (c) Storing boards and series removed from play.

AMENDATORY SECTION (Amending Order 377, filed 11/30/99, effective 12/31/99)

WAC 230-04-133 Punch board and pull-tab service business—Registration required—Procedures—Restrictions. It is in the public's interest to closely control gambling devices and records relating to the operation of a gambling activity. The commission must identify all individuals and businesses that have control over gambling devices, including punch boards and pull-tabs, and all records relating to the operation of gambling activities. Businesses that provide punch board and pull-tab record services, as defined by WAC 230-02-208, shall register with the commission and receive a permit prior to providing services to a licensee. The following procedures and restrictions apply to punch board and pull-tab service businesses:

(1) Each business seeking to register as a punch board and pull-tab service business shall submit a permit application on a form provided by the commission. Such application shall be complete in every respect, accompanied by proper

fees, and signed by the applicant. The application shall include at least the following:

- (a) A complete description of the services provided; and
- (b) Personal and criminal history forms for all individuals involved in providing services.
- (2) The permit shall be valid for a period not to exceed one year from the date approved.
- (3) Any changes in information provided with the application must be submitted to the commission within thirty days of change.
- (4) The permit becomes void and the business must apply for a gambling service supplier license to continue providing services if any of the conditions listed below occur:
 - (a) The nature of the business being provided changes to include services defined in WAC 230-02-205(1); or
 - (b) The combined total gross billings from providing services exceeds (~~twenty~~) twenty-five thousand dollars during the permit period.
- (5) The permit may be revoked by the director at any time for the following reasons:
 - (a) Reasons set forth in WAC 230-04-400 or RCW 9.46-075; or
 - (b) The permit holder has acted with gross negligence or intentionally misstated or manipulated a licensee's records or punch board/pull-tab games; or
 - (c) Failure to produce an operator's record or copies thereof, or punch board or pull-tab games when requested by a commission agent.
- (6) Immediately upon request, a punch board and pull-tab service business shall provide the commission or any of its representatives a complete list of customers and the location where records of each are maintained.
- (7) If a punch board and pull-tab service business or associate of such business has any interest in a licensed manufacturer or distributor, they shall inform the commission, any operator to which they provide services, and the manufacturer or distributor of the relationship. The director may restrict the manufacturer or distributor from selling punch boards or pull-tabs to such operator.
- (8) Punch board and pull-tab service business permit holders shall follow the records requirements of WAC 230-08-026 (1)(a), (c), (d), (2), and (3). In addition, such businesses shall be familiar with minimum recordkeeping requirements and availability of records for services they provide, including but not limited to WAC 230-08-010, 230-12-010 and 230-30-072.

WSR 06-04-041
PROPOSED RULES
GAMBLING COMMISSION
 [Filed January 26, 2006, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-095.

Title of Rule and Other Identifying Information:
 Amending WAC 230-40-815 Administrative and accounting control structure—Organization—House-banking.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on March 10, 2006, at 9:30 a.m.

Date of Intended Adoption: March 10, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by March 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, one floor supervisor must be on duty for every five tables in a pit. A petition for rule change was submitted by Goldie's Shoreline Casino requesting that the number of tables one pit supervisor can oversee be increased from five to six tables.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0282.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

January 13, 2006

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 418, filed 4/16/03, effective 7/1/03)

WAC 230-40-815 Administrative and accounting control structure—Organization—House-banking. Each licensee operating a house-banked card game shall ensure that all games are closely controlled, operated fairly and in accordance with all rules of the commission. The following control procedures and conditions shall be met:

Internal controls.

(1) The licensee shall have a system of internal controls that include at least the following:

(a) Administrative controls, which include, but are not limited to, the organization's plan, procedures, and records concerned with decision processes leading to management's authorization of transactions; and

(b) Accounting controls which include the licensee's plan, procedures, and records concerned with the safeguarding of assets and the reliability of financial records. These controls must be designed to provide reasonable assurance that:

(i) Transactions are executed in accordance with management's general and specific authorization;

(ii) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles, and to maintain accountability for assets;

(iii) Access to assets is permitted only in accordance with management's authorization; and

(iv) The recorded accountability for assets is compared with existing assets at least annually and appropriate action is taken within five working days with respect to any differences.

Administrative controls.

(2) The licensee's system of administrative controls shall provide for the following:

(a) Competent personnel with an understanding of prescribed procedures;

(b) The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of his or her duties; and

(c) Each employee of a house-banked card room shall be licensed by the commission and shall be knowledgeable in all accounting and internal control practices and procedures relevant to each employee's individual function.

Separate departments and functions.

(3) The licensee shall, at a minimum, establish the following departments or functions that shall be independent from all other departments or functions:

Surveillance.

(a) A surveillance department which shall not include security functions or personnel. The head of surveillance shall be responsible for, but not limited to, the following:

(i) The clandestine surveillance of the operation and conduct of the table games;

(ii) The clandestine surveillance of the operation of the cashier's cage;

(iii) The video and audio recording of activities in the count rooms;

(iv) The detection of cheating, theft, embezzlement, and other illegal activities in the gaming facility, count rooms, and cashier's cage;

(v) The video recording of unusual or suspected illegal activities;

(vi) The notification of appropriate supervisors and commission staff, within three working days, upon the detection of cheating, theft, embezzlement, or other illegal activities;

(vii) Ensuring that each dealer is evaluated to determine if all required dealer procedures and techniques set forth in the licensee's approved internal controls are followed; and

(viii) Ensuring all surveillance employees have a demonstrated knowledge of the following:

(A) Operating surveillance systems;

(B) Rules of play and procedures for the games being played; and

(C) The overall procedures relating to the duties of all employees of the house-banked card room being monitored (dealers, shift managers, floor supervisors, cage cashier's and count team members).

Security.

(b) A security department, supervised by a security department manager, is responsible for at least the following:

(i) Control of cards and dealing shoes, including storage of new and used cards and shoes, and control of the disposition and/or destruction of same when removed from service; and

(ii) Transfer of cash and chips to and from the gaming tables, cage and count room.

Gaming operations.

(c) A gaming operation department supervised by a gaming operation department manager who shall be responsible for the operation of all house-banked card games conducted by ensuring the following:

(i) Card games are operated by licensed dealers who are assigned to each gaming table;

(ii) A floor supervisor is assigned the responsibility for the overall supervision of the conduct of gaming within a pit and can supervise no more than (~~five~~) six tables: Provided, That a single supervisor may supervise up to seven tables, if only seven tables are in operation and the layout was preapproved by commission staff;

(iii) A licensee which utilizes two separate areas of a gaming establishment shall require at least one supervisor in each area; and

(iv) A shift manager, who reports to the gaming operation department manager, is assigned to supervise floor supervisors and all gaming related activities that occur during each shift. In the absence of the gaming operation department manager, the shift manager shall have the authority of a gaming operation department manager: Provided, That in addition to the floor supervisors required in this subsection, licensees operating more than ten tables shall be required to have a shift manager on the premises.

Accounting.

(d) An accounting department supervised by an individual who shall report directly to the chief executive officer or chief operations officer. The responsibilities of the accounting department shall include, but not be limited to, the following:

(i) Implementing and monitoring of accounting controls;

(ii) The preparation, control, and storage of records and data required;

(iii) The control of unused forms inventory along with reconciliation of forms used; and

(iv) The control and supervision of the cashier's cage.

Modifications.

(4) Any changes to the licensee's system of internal controls must be submitted to commission staff and be approved prior to implementation.

Employees shall be informed of internal controls.

(5) All licensed operators shall inform their card room employees of the internal controls related to their respective area of responsibility. Furthermore, both the operator and all card room employees shall follow these internal controls at all times.

WSR 06-04-044

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 26, 2006, 4:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-21-094.

Title of Rule and Other Identifying Information: WAC 388-450-0005 Income—Ownership and availability, 388-450-0015 What types of income are not used when figuring out my benefits?, and 388-450-0175 GA-U earned income incentive and deduction.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 7, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 8, 2006.

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 5:00 p.m. on March 7, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by February 3, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to update references to other department rules and reflect current policy about how the department considers various sources of income in determining eligibility and benefits for department programs.

Reasons Supporting Proposal: The proposed changes update current rules to reflect how the department treats income for cash assistance, Basic Food, and medical programs. RCW 74.04.510 requires the department to adopt rules consistent with federal requirements for administration of the Food Stamp Program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by establishing eligibility rules related [to] who owns income, how certain types of income are counted, and income deductions. The rules impact whether or not income is used to determine a person's eligibility for department programs including cash assistance, Basic Food, and medical programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules update references and clarify department policy for how the department treats income for department programs consistent with Title 74 RCW and Title 7 C.F.R. Part 273.

January 20, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

WAC 388-450-0005 (~~(Income—Ownership and availability.)~~) How does the department decide if I own a type of income and if this income is available to meet my needs? This section applies to cash assistance, medical programs for children, pregnant women and families, and food assistance.

(1) (~~(The department counts)~~) We count all available income owned (~~(or possessed by a client to figure the client's eligibility and benefit level)~~) or held by people in your assistance unit under chapter 388-408 WAC to decide if you are eligible for benefits and calculate your monthly benefits when:

(a) You get or expect to get the income in the month.

(b) (~~(It is income)~~) We must count the income based on rules under chapter 388-450 WAC.

(c) You own the income. We use (~~(applicable)~~) state and federal laws (~~(pertaining to)~~) about who owns property (ownership) to (~~(determine)~~) decide if you actually own the income. (~~(For married persons, ownership of)~~) If you are married, we decide if income is separate (and) or community income (is determined) according to chapter 26.16 RCW.

(d) You have control over the income, which means the income is actually available to you. If you have a representative payee, protective payee, or other person who manages your income for you as described in chapter 388-460 WAC, we consider this as you having control over this income.

(e) You can (~~(user)~~) use the income to meet your current needs. We count the gross amount of available income in the month (~~(it is received)~~) your assistance unit gets it. If you normally get the income:

(i) (~~(If the income is usually available)~~) On a specific day, we (~~(consider)~~) count it (~~(to be)~~) as available on that date.

(ii) (~~(If you usually get the income)~~) Monthly or (~~(semi-monthly)~~) twice monthly and your pay date changes due to a reason beyond your control, such as a weekend or holiday, we count it in the month you (~~(actually get it)~~) would normally get it.

(iii) (~~(If you usually get the income)~~) Weekly or (~~(bi-weekly)~~) every-other week and your pay date changes due to a reason beyond your control, we count it in the month you would normally get it.

(2) (~~(We consider the income that is legally yours as available income.)~~) If income is legally yours, we consider the income as available to you even if it is paid to someone else for you. For example, the father of your child has a court order to pay you two hundred fifty dollars per month in child support. Instead of giving the money directly to you (as required in the court order), he gives the money to your landlord to pay part of your rent. We still count the two hundred fifty dollars as income even though you never actually got the money.

(3) We may also count the income of certain people who live in your home, even if they are not getting (~~(assistance)~~) or applying for benefits. Their income counts as part of your income.

(a) For cash assistance, we count the income of ineligible, disqualified, or financially responsible people as defined in WAC (~~(388-405-0100)~~) 388-450-0100.

(b) For food assistance, we count the income of ineligible assistance unit members as defined in WAC 388-408-0035.

(c) For family and SSI-related medical assistance, we count the income of financially responsible people as defined in WAC 388-408-0055 and chapter 388-475 WAC.

(d) For long-term care services, we count the income of financially responsible people as defined in WAC 388-506-0620.

(4) If you have a joint bank account with someone who is not in your AU, we (~~(consider)~~) count any money deposited into that account as your income unless:

(~~(+)~~) (a) You can show that all or part of the funds belong (~~(exclusively)~~) only to the other account holder and are held or used (~~(solely)~~) only for the benefit of that holder; or

(~~(+)~~) (b) Social Security Administration (SSA) used that money to determine the other account holder's eligibility for SSI benefits.

(5) Potential income is income you may (~~(have access to)~~) be able to get that can be used to (~~(reduce the)~~) lower your need for assistance. If we determine that you have a potential source of income (~~(source exists)~~), you must make a reasonable effort to make the income available in order to get cash or medical assistance.

(a) We do not count that income until you actually get it; and

(b) You can choose whether to (~~(receive)~~) get TANF/SFA or Supplemental Security Income (SSI) benefits.

(6) (~~(The income of an alien's sponsor is considered available to the alien under the rules of this chapter when~~

determining the alien's eligibility and benefit level)) If your assistance unit includes a sponsored immigrant, we consider the income of the immigrant's sponsor as available to the immigrant under the rules of this chapter. We use this income when deciding if your assistance unit is eligible for benefits and to calculate your monthly benefits.

(7) For SSI-related medical:

(a) ~~((Income is considered available and owned when it is))~~ We consider income to be owned by someone and available to the person when the person:

(i) ~~((Received))~~ Gets the income; and

(ii) Can ~~((be used))~~ use the income to meet ((the clients)) their needs for food, clothing and shelter, except as provided in WAC 388-511-1130.

(b) Loans and ~~((certain other receipts))~~ getting cash in certain other ways are not defined as income for SSI-related medical purposes as described in 20 C.F.R. Sec. 416.1103.

(8) For medical programs, see WAC 388-561-0100 for more information about trusts.

(9) You may give us proof about ~~((an))~~ a type of income ((source)) at anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns the income;

(b) Who has legal control of the income;

(c) The amount of the income; or

(d) ~~((The availability of the income))~~ If the income is available.

AMENDATORY SECTION (Amending WSR 05-03-078, filed 1/17/05, effective 2/17/05)

WAC 388-450-0015 What types of income ~~((are))~~ does the department not ((used when figuring)) use to figure out my benefits? This section applies to cash assistance, Children's, Family, or Pregnancy Medical, and Basic Food benefits.

(1) There are some types of income ~~((that))~~ we ((the department)) do not count ((when figuring)) to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC ~~((388-470-0025))~~ 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Title IV-E and state foster care maintenance payments if ~~((the foster child is not included))~~ you choose not to include the foster child in your assistance unit;

(d) Energy assistance payments;

(e) Educational assistance ~~((as specified in))~~ we do not count under WAC 388-450-0035;

(f) Native American benefits and payments ~~((as specified in))~~ we do not count under WAC 388-450-0040;

(g) Income from employment and training programs ~~((as specified in))~~ we do not count under WAC 388-450-0045;

(h) Money withheld from a ~~((client's))~~ benefit to repay an overpayment from the same income source. For Basic Food, ~~((this exclusion does not apply when the))~~ we do not exclude money that is withheld ((to recover an intentional noncompliance overpayment from)) because you were overpaid for pur-

posely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

(i) Legally obligated child support payments received by someone who gets TANF/SFA ((recipients)) benefits;

(j) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(k) Payments ~~((specifically excluded from being counted))~~ we are directly told to exclude as income under state or federal law. ((Disregard certain payments made by the Veterans Administration to children of Vietnam veterans (P.L. 106-419, see FR 67147§3.815);))

(l) **For cash and Basic Food:** payments made to ~~((a third party on behalf))~~ someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

(m) **For medical assistance:** only the portion of income used to repay the cost of obtaining that income source.

(2) For Children's, Family, or Pregnancy Medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0175 ~~((GA-U earned income incentive and deduction.))~~ Does the department offer an income deduction as an incentive for GA-U clients to work? ~~((This section applies to the GA-U cash assistance program.))~~ The department gives special deductions to people who receive income from work while receiving General Assistance-Unemployable (GA-U). We allow the following deductions before using your earnings to determine your eligibility and monthly benefits:

(1) ~~((When a client's countable income is determined.))~~ We subtract eighty-five dollars plus one half of the remainder of ((a client's)) your monthly gross earned income ((is disregarded)) as an incentive to employment.

(2) ~~((In addition to the work incentive provided in subsection (1) of this section, work expenses are disregarded in an amount equal to))~~ We also subtract an amount equal to twenty percent of ((the)) your gross earned income to allow for work expenses((; or

~~(3) At the option of the client, actual verified work expenses, including:~~

~~(a) Mandatory deductions required by law or as a condition of employment, such as FICA, income tax, and mandatory retirement contributions;~~

~~(b) Union dues when union membership is required for employment;~~

~~(c) Clothing costs when the clothing is necessary for employment;~~

~~(d) Tools necessary for employment;~~

~~(e) Other expenses reasonably associated with employment, such as legally binding contracts with employment agencies; and~~

~~(f) Transportation expenses as follows:~~

~~(i) If public transportation (other than for hire vehicles such as taxis) is available and practical, the actual monthly~~

~~cost, based on a commuter's pass, ticket book, or tokens at reduced quantity rates, even if the client does not use public transportation; or~~

~~(ii) If public transportation is not available or practical, the actual amount if the client pays another person to drive; or~~

~~(iii) If public transportation is not available or practical and the client uses his or her own vehicle, the costs, based on the percentage of work-related miles driven, for service and repairs, replacement of worn parts, registration and license fees, the interest on car payments, and either eight cents per mile or the actual cost for gas, oil, fluids, and depreciation)).~~

WSR 06-04-045

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 26, 2006, 4:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-110.

Title of Rule and Other Identifying Information: WAC 388-406-0005 Can I apply for cash, medical, or Basic Food?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on March 7, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 8, 2006.

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 5:00 p.m., on March 7, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 3, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amended rule supports the requirement that the department: Accept public assistance applications submitted prior to release from a public institution by a person with mental illness; determine the person's eligibility for medical assistance and; when possible, issue medical benefits upon the person's release from the public institution. This rule also supports the department accepting other public assistance applications from people in a public institution but without the requirement to determine eligibility before release from the institution.

The anticipated effects are that the department will not reject public assistance applications submitted by persons while they are in a public institution and that the department, applicants and professionals at public institutions understand when and how the department will process these applications.

Reasons Supporting Proposal: The purpose of this proposal is to comply with RCW 74.09.555 and chapter 503, Laws of 2005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.09.555 (chapter 503, Laws of 2005).

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: Doug Sevin, 1009 College S.E., Lacey, WA 98504, (360) 725-4614.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

January 20, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-22-039, filed 10/28/03, effective 12/1/03)

WAC 388-406-0005 Can I apply for cash, medical, or Basic Food? (1) You can apply for any benefit the department offers, including cash assistance, medical assistance, or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

(i) A dependent child;

(ii) An incapacitated person; or

(iii) Someone who is deceased.

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) If you get Supplemental Security Income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.

(5) A person or agency may apply for GAU or medical assistance for you if:

(a) You temporarily live out-of-state; and

(b) You are a Washington state resident.

(6) When you are confined or incarcerated in a Washington State public institution, you may apply for cash or medical assistance within forty-five days prior to your expected release date if you meet the following criteria:

(a) You are confined by or in the following public institutions:

(i) Department of Corrections;

(ii) City or county jail; or

(iii) Institution for Mental Diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

(7) The department will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:

(a) Meet the criteria of subsection (6) in this section; and

(b) Were receiving Medicaid or General Assistance benefits immediately before confinement or within the five years prior to confinement.

(8) If you meet the criteria in subsection (6) but did not receive Medicaid or General Assistance benefits within the past five years, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.

WSR 06-04-057

PROPOSED RULES

GAMBLING COMMISSION

[Filed January 27, 2006, 1:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-042.

Title of Rule and Other Identifying Information: New chapters 230-03 and 230-05 WAC.

Chapter 230-03 WAC, Permitting and licensing rules: WAC 230-03-001 "We," "our," and "us" mean the commission and staff, 230-03-005 Permits for recreational gaming activities, 230-03-010 Fund-raising equipment distributors must report recreational gaming activities, 230-03-015 Permits to conduct bingo at agricultural fairs, 230-03-020 Punch board and pull-tab service business permit, 230-03-025 Applying for a manufacturer's special sales permit, 230-03-030 Other licenses, certificates, inspections, or permits needed to be considered for a gambling license, 230-03-035 Applying for a license, 230-03-040 Signing the application, 230-03-045 Defining substantial interest holder, 230-03-050 Additional information required from applicants for licensing, 230-03-051 Incorporated cities and towns exempt from some information requirements for application, 230-03-055 Reporting changes to application, 230-03-060 Fingerprinting of applicants, 230-03-065 Spouses must also be qualified, 230-03-070 Training required for licensing, 230-03-075 Withdrawing your application, 230-03-080 License approval process, 230-03-085 Denying, suspending, or revoking a license or permit, 230-03-090 Defining "agricultural," 230-03-095 Defining "athletic," 230-03-100 Defining "charitable," 230-03-105 Defining "civic," 230-03-110 Defining "educational," 230-03-115 Defining "fraternal," 230-03-120

Defining "patriotic," 230-03-125 Defining "political," 230-03-130 Defining "religious," 230-03-135 Defining "social," 230-03-140 Full and regular membership requirements, 230-03-145 Additional requirements for charitable and nonprofit licensing, 230-03-150 Additional requirements for branches or chapters of eligible parent organizations, 230-03-155 Submitting a proposed plan of operations for charitable and nonprofit organizations, 230-03-160 Licensed charitable or nonprofit organizations prohibited from managing or operating commercial gambling activities, 230-03-165 Information required with license application for commercial amusement games, 230-03-170 Defining "business premises," 230-03-175 Requirements for commercial stimulant businesses, 230-03-180 Additional materials required for a house-banked card room application, 230-03-185 Applying for a manufacturer license, 230-03-190 Applying for a distributor license, 230-03-195 Additional information required from manufacturer and distributor license applicants, 230-03-200 Defining "gambling equipment," 230-03-210 Applying for a gambling service supplier license, 230-03-215 Gambling service suppliers prohibited from assuming ultimate responsibility, 230-03-220 Marketing level restrictions for punch board or pull-tab manufacturers, distributors, or operators, 230-03-225 Marketing level restrictions for punch board or pull-tab gambling service suppliers, 230-03-230 Applying for linked bingo prize provider license, 230-03-235 Applying for charitable or nonprofit gambling manager license, 230-03-240 Working before receiving a charitable or nonprofit gambling manager license, 230-03-245 Licensing period for charitable or nonprofit gambling manager, 230-03-250 Applying for commercial gambling manager license, 230-03-255 Working before receiving a commercial gambling manager license, 230-03-260 Licensing period for commercial gambling manager, 230-03-265 Applying for a card room employee license, 230-03-270 Working as a card room employee before receiving a license, 230-03-275 Licensing period for card room employee, 230-03-280 Substantial interest holders not required to be licensed as card room employees, 230-03-285 Class III gaming employee working as card room employee, 230-03-290 Card room employees working for additional employer or changing employer, 230-03-300 Applying for a manufacturer's representative license, 230-03-305 Applying for a distributor's representative license, 230-03-310 Applying for gambling service supplier's representative license, 230-03-315 Applying for a linked bingo prize provider's representative license, 230-03-320 Substantial interest holders not required to be licensed as representatives, 230-03-325 Office, clerical, or warehouse workers not required to be licensed as representatives, 230-03-330 Licensed representatives represent only one employer at a time, 230-03-335 Representatives must not work before receiving a license, and 230-03-340 Gambling service supplier representative must report conflicts of interest.

Chapter 230-05 WAC, Fee rules: WAC 230-05-001 Prorating or refunding of fees, 230-05-005 Fees for review of gambling equipment, supplies, services, or games, 230-05-010 Returned checks, 230-05-015 Two-part payment plan for license fees, 230-05-020 Charitable or nonprofit organization fees, 230-05-025 Commercial stimulant fees, 230-05-030

Other business organization fees, and 230-05-035 Individual license fees.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on March 10, 2006, at 9:30 a.m.

Date of Intended Adoption: March 10, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by March 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. The rules manual has been divided into sections and is being rewritten a section at a time. The first sections reviewed are the licensing chapter. As part of the rewrite, some items from other chapters (chapter 230-02 WAC, General provisions and definitions; chapter 230-04 WAC, Licensing; chapter 230-08 WAC, Records and reports; and chapter 230-12 WAC, Rules of general applicability), may have been incorporated into this new chapter.

Following are rules regarding licensing and permitting which are written and now numbered as new chapters.

Chapter 230-03 WAC, will include rules relating to permits and licenses; and chapter 230-05 WAC, will include all fees related to permits, licenses, and identification stamps.

Following are the proposed rule changes that are not strictly just rewritten rules, but changes to the rules.

WAC 230-04-022 (6), (8) and (9), additional information required from all applicants

WAC 230-03-055 Report changes to application information. The proposed change will end our collection of data which we do not need to determine licensure. This will help the commission ensure that we do not collect the personal and privileged information of people we are not investigating for license suitability. The new rule will clarify the responsibility of applicants to provide staff with changes to the application information.

WAC 230-03-160 Licensed charitable or nonprofit organizations prohibited from managing or operating commercial gambling activities. The current rule, WAC 230-04-026, was challenged in Thurston County Superior Court. The court found that a portion of the rule which prohibited ownership by charitable and nonprofit organizations exceeded the authority provided the commission in RCW 9.46.120. The revised rule, WAC 230-03-160, prohibits management or operation of commercial gambling activities by charitable and nonprofit organizations but does not prohibit ownership.

WAC 230-30-220 Interest in separate business involving punchboards and pull tabs at different marketing level prohibited, 230-30-225 Exception to interest in separate business involving punch boards and pull-tabs at a different marketing level prohibited, 230-04-119(7) Licensing of gambling service suppliers, 230-03-220 Marketing level restrictions for punch board or pull-tab manufacturers, distributors, or operators, and 230-03-225 Marketing level restrictions for punch board or pull-tab gambling service suppliers. We repealed

WAC 230-30-220 and 230-30-225 in order to move the rules from the punch board and pull tab chapter to the permitting and licensing chapter, which makes it easier to find the rules. We then combined WAC 230-04-119(7) rule and rewrote all in "plain English." Public safety and the effectiveness of the regulatory enforcement will improve as applicants and licensees can more easily understand the rewritten rule. In rewriting the rules, we have eliminated "exception" language found in the current versions. Exceptions often cause confusion and impede voluntary compliance and regulation.

WAC 230-04-030 Commission may post public notice of license application on premises. The proposal will repeal WAC 230-04-030 which allows the commission, at its discretion, to post a notice of license application on each premises upon which a gambling activity is to be conducted and invites public comment before the commission issues a license. This change will formalize the agency's current practice which is to not post a notice on an applicant's premises of intent to seek a license.

WAC 230-04-035 Certification procedure—Charitable and nonprofit organizations—Classification of purpose. This proposed change will repeal WAC 230-04-035. The rule requires charitable and nonprofit organizations to be classified as such based on their primary purpose or purposes. Licensing procedures now require an organization to "self-select" their primary purpose from a list of purposes as part of the application process. The list is a summary of items found in RCW 9.46.0209.

Statutory Authority for Adoption: RCW 9.46.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Beth Heston, Rules Simplification Project Manager, Lacey, (360) 486-3464; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the proposed rule does not impose more than minor costs to businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

January 25, 2006

Cally Cass

Assistant Director
for Field Operations

Chapter 230-03 WAC

PERMITTING AND LICENSING RULES

TERMS USED IN THIS CHAPTER

NEW SECTION

WAC 230-03-001 "We," "our," and "us" mean the commission and staff. In this chapter, "we," "our," and "us" mean the commission and commission staff. If a rule refers to the duties or rights of the commissioners or the director, the rule states specifically "commissioners" or "director."

ACTIVITIES REQUIRING A PERMIT AND RULES FOR THOSE ACTIVITIES

NEW SECTION

WAC 230-03-005 Permits for recreational gaming activities. A recreational gaming activity (RGA) is a non-gambling activity, using poker tables and gambling equipment authorized for use in fund-raising events, conducted no more than two times per calendar year, by, or on behalf of, a sponsoring organization, business, or association, or department of an organization, business, or association.

(1) An organization, business, or association, or department of an organization, business, or association, that holds or sponsors an RGA must either:

- (a) Apply for and get a permit before the event; or
- (b) Hire a licensed fund-raising equipment distributor to organize and conduct the activity.

(2) Only members and guests of the sponsoring organization, business, or association, or department of the sponsoring organization, business, or association, may participate in the RGA.

(3) Permit holders must:

(a) Rent the gambling equipment used in the activity from:

- (i) A licensed distributor of fund-raising event equipment; or
- (ii) A licensee who has conducted a fund-raising event within the last twelve months; and

- (b) Use scrip or chips which have no cash value; and
 - (c) Limit the recreational gaming activity to eight hours.
- (4) The permit holder may charge a fee to enter the premises if that fee pays for:

- (a) An accompanying meal and entertainment associated with the activity; or
- (b) The costs of renting the equipment used in the recreational gaming activities.

(5) The permit holder may allow participants to redeem their scrip or chips for prizes. All prizes must be donated to, or provided by, the permit holder.

NEW SECTION

WAC 230-03-010 Fund-raising equipment distributors must report recreational gaming activities. If a licensed fund-raising equipment distributor contracts to organize and conduct a recreational gaming activity (RGA) on

behalf of the organization, business, or association, or department of an organization, business, or association, the licensed distributor must send us a monthly schedule of those activities. The schedule must:

(1) Include the name of the sponsoring organization, business, or association, or department of an organization, business, or association, and the date, location, and time of the activity.

(2) Identify any prior RGAs conducted by all licensed distributors on behalf of the sponsoring organization, business, or association, or department of an organization, business, or association, within the last calendar year.

NEW SECTION

WAC 230-03-015 Permits to conduct bingo at agricultural fairs. (1) You must apply to us if you wish to operate bingo games at agricultural fairs licensed to conduct bingo. You may apply for either:

- (a) An annual permit to conduct bingo games at agricultural fairs; or
- (b) A special property bingo permit to conduct bingo games at a single agricultural fair.

(2) Each agricultural fair is fully responsible for the operation of bingo conducted under its license.

NEW SECTION

WAC 230-03-020 Punch board and pull-tab service business permit. (1) You must apply for a punch board and pull-tab service business permit if you:

- (a) Reconcile sales, prizes, and cash on hand for punch board and pull-tab series; or
- (b) Complete records we require; or
- (c) Store punch boards and pull-tab series removed from play.

(2) The owners or employees of the service business must not be employees of the operator.

(3) The owners or employees of the service business must not provide management advice to the operator.

(4) The punch board and pull-tab service business must apply for a gambling service supplier license if combined gross billings exceed twenty thousand dollars during the permit period.

NEW SECTION

WAC 230-03-025 Applying for a manufacturer's special sales permit. (1) You may apply for a manufacturer's special sales permit if you:

- (a) Sell authorized gambling equipment; and
- (b) Demonstrate that the anticipated profits from your sales will be below the cost of obtaining a manufacturer license.

(2) Otherwise, you must apply for a manufacturer license.

NEW SECTION

WAC 230-03-030 Other licenses, certificates, inspections, or permits needed to be considered for a gambling license. Applicants must prove that they have the required applicable business licenses, permits, health certificates, fire inspections, and use and occupancy permits required by local authorities before being considered for a gambling license.

NEW SECTION

WAC 230-03-035 Applying for a license. (1) You must fully complete the license application form we provide in order to be considered for a license. You must return it, along with the appropriate fees, to our headquarters office.

(2) If your application is incomplete, you must provide us with the required items within thirty days of notification or we may administratively close the application.

NEW SECTION

WAC 230-03-040 Signing the application. The applicant signs the application under oath and under penalty of perjury under the laws of the state of Washington. This oath affirms that the information on the application and any accompanying materials is accurate and complete.

(1) The person signing the application must be:

(a) The highest ranking officer of a charitable, nonprofit, or profit-seeking corporation, or limited liability company seeking licensure; or

(b) The owner of a sole proprietorship seeking licensure; or

(c) All partners of a partnership or general partner of a limited partnership seeking licensure; or

(d) The mayor or the mayor's designated representative of an incorporated city or town submitting the application.

(2) The person seeking an individual license and a designated officer of the organization for which the person will work must both sign the application.

NEW SECTION

WAC 230-03-045 Defining substantial interest holder. (1) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any organization, association, or other business entity.

(2) Evidence of substantial interest may include, but is not limited to:

(a) Directly or indirectly owning, operating, managing, or controlling an entity or any part of an entity; or

(b) Directly or indirectly profiting from an entity or assuming liability for debts or expenditures of the entity; or

(c) Being an officer or director or managing member of an entity; or

(d) Owning ten percent or more of any class of stock in a privately or closely held corporation; or

(e) Owning five percent or more of any class of stock in a publicly traded corporation; or

(f) Owning ten percent or more of the membership shares/units in a privately or closely held limited liability company; or

(g) Owning five percent or more of the membership shares/units in a publicly traded limited liability company; or

(h) Providing ten percent or more of cash, goods, or services for the start up of operations or the continuing operation of the business during any calendar year or fiscal year. To calculate ten percent of cash, goods, or services, take the operational expenses of the business over the past calendar or fiscal year, less depreciation and amortization expenses, and multiply that number by ten percent; or

(i) Receiving, directly or indirectly, a salary, commission, royalties, or other form of compensation based on the gambling receipts.

NEW SECTION

WAC 230-03-050 Additional information required from applicants for licensing. (1) Applicants must also give us details or copies of the following information on or attached to their application:

(a) Articles of incorporation and bylaws; or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization; and

(b) The name of the resident agent as required by state law, and the agent's business and home address; and

(c) Internal Revenue Service tax exemption letter, if one is necessary; and

(d) All lease or rental agreements, whether oral or written, between the applicant and the owner of the site where applicant will conduct gambling activity; and

(e) Any franchise agreements or other agreements, whether written or oral, between applicant and distributors or manufacturers of equipment or between applicant and any other person whose agreements relate to gambling activities or gambling equipment; and

(f) All proposed financing, consulting, and management agreements or contracts between applicant and any gambling service supplier; and

(g) Enough personal information to ensure each substantial interest holder is qualified to hold a license or participate in an authorized gambling activity.

(2) Applicants must also give us any other information we request within thirty days of the request or within any other time frame we provide.

NEW SECTION

WAC 230-03-051 Incorporated cities and towns exempt from some information requirements for application. Incorporated cities or towns in the state of Washington must provide:

(1) All lease or rental agreements, whether oral or written, between the applicant and the owner of the site where applicant will conduct gambling activity; and

(2) Any franchise agreements or other agreements, whether written or oral, between applicant and distributors or manufacturers of equipment or between applicant and any

other person whose agreements relate to gambling activities or gambling equipment; and

(3) All proposed financing, consulting, and management agreements or contracts between applicant and any gambling service supplier.

NEW SECTION

WAC 230-03-055 Reporting changes to application.

You must notify us if any information required on the application changes or becomes inaccurate in any way within ten days of the change.

NEW SECTION

WAC 230-03-060 Fingerprinting of applicants.

Applicants or persons holding a substantial interest may undergo a national criminal history background check, using fingerprints for the following permits and licenses:

- (1) Amusement games for commercial use: Class E and above; and
- (2) Card games: Class E, Class F and house-banked card rooms; and
- (3) Punch boards/pull-tabs for commercial stimulant: Class F and above; and
- (4) Manufacturers: Class B and above; and
- (5) Distributors: Class B and above; and
- (6) Gambling service suppliers; and
- (7) Representatives for distributors, manufacturers, gambling service suppliers, and linked bingo prize providers; and
- (8) Managers of commercial gambling operations; and
- (9) Public card room employees; and
- (10) Linked bingo prize providers.

NEW SECTION

WAC 230-03-065 Spouses must also be qualified. (1)

Applicants' spouses must also meet the qualifications to hold a gambling license when married persons who maintain a marital community apply for or hold a license to operate gambling activities. This includes, but is not limited to, owners and substantial interest holders of commercial gambling establishments and officers of charitable or nonprofit organizations.

(2) If you are a licensed employee of a gambling operation, we do not require your spouse to meet the licensing qualifications.

NEW SECTION

WAC 230-03-070 Training required for licensing. (1)

You must complete a training course we establish if you:

- (a) Signed the licensing application; or
 - (b) Are a manager; or
 - (c) Are responsible for conducting gambling activities or completing records.
- (2) You must complete training within thirty days of the effective date of your license.
- (3) We do not require manufacturers or manufacturers' representatives to complete training.

NEW SECTION

WAC 230-03-075 Withdrawing your application. (1)

You may withdraw your license application for any reason by sending written notice to us. We must receive your written request at our headquarters office before we issue or deny the license.

(2) Withdrawing an application will not affect any future application for a license.

NEW SECTION

WAC 230-03-080 License approval process. (1) The director may issue a temporary license on completion of the licensing investigation for licenses issued under RCW 9.46.070 (1) and (2).

(2) The commissioners take action on applications at a public meeting. These actions may include license approval, holding an application over to a future meeting, or returning an application to staff for further investigation.

NEW SECTION

WAC 230-03-085 Denying, suspending, or revoking a license or permit. We may deny, suspend, or revoke any license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

- (1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or
- (2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or
- (3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or
- (4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority must petition us to take action; or
- (5) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or
- (6) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or
- (7) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:
 - (a) Prior activities; or
 - (b) Criminal record; or
 - (c) Reputation; or
 - (d) Habits; or
 - (e) Associations; or
 - (8) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities.

ADDITIONAL LICENSING REQUIREMENTS FOR CHARITABLE AND NONPROFIT APPLICANTS

NEW SECTION

WAC 230-03-090 Defining "agricultural." (1) "Agricultural" as used in RCW 9.46.0209 means promoting the art or science of:

- (a) Cultivating land;
- (b) Harvesting crops or aquatic resources; or
- (c) Raising livestock.

(2) This definition includes incorporated granges as described in chapter 24.28 RCW.

NEW SECTION

WAC 230-03-095 Defining "athletic." "Athletic" as used in RCW 9.46.0209 means activities which promote physical fitness, sportsmanship, or development of amateur athletes.

NEW SECTION

WAC 230-03-100 Defining "charitable." "Charitable," eleemosynary, and benevolent as used in RCW 9.46.0209 mean the same thing. They mean:

- (1) Relief of poverty, indigence, or personal distress;
- (2) Help for disadvantaged persons;
- (3) Treatment and prevention of physical or mental distress;
- (4) Assisting youths, seventeen years old or younger, through programs that teach them cultural and social skills necessary to integrate them into society, improve their physical fitness, or prevent delinquency.

NEW SECTION

WAC 230-03-105 Defining "civic." "Civic" as used in RCW 9.46.0209 means relating to or belonging to a city, a citizen, or citizenship.

NEW SECTION

WAC 230-03-110 Defining "educational." "Educational" as used in RCW 9.46.0209 means training or instructing individuals for the purpose of improving or developing their capabilities. It also means instructing the public on subjects useful to individuals and beneficial to the community.

NEW SECTION

WAC 230-03-115 Defining "fraternal." "Fraternal" as used in RCW 9.46.0209 means fraternal societies incorporated under chapter 24.20 RCW and organized under the lodge system with local self-governing branches chartered by a parent organization.

NEW SECTION

WAC 230-03-120 Defining "patriotic." "Patriotic" as used in RCW 9.46.0209 means encouraging love of country,

loyalty, and support of the United States; veterans' groups are included in this definition.

NEW SECTION

WAC 230-03-125 Defining "political." "Political" as used in RCW 9.46.0209 means the process of electing candidates to public or party offices.

NEW SECTION

WAC 230-03-130 Defining "religious." "Religious" as used in RCW 9.46.0209 means the advancement of a theological philosophy and the practices and rituals associated with the beliefs or creed of a church, religious society, congregation, or religious denomination, when such practices or rituals are legal.

NEW SECTION

WAC 230-03-135 Defining "social." "Social" as used in RCW 9.46.0209 means providing recreation or recreational facilities and conducting other activities for a membership.

NEW SECTION

WAC 230-03-140 Full and regular membership requirements. (1) "Bona fide member" means the same thing as "bona fide active member." Bona fide members hold full and regular membership status.

(2) To have full and regular membership status in a Washington charitable or nonprofit organization, you must:

- (a) Be at least eighteen years old, unless the organization:
 - (i) Has a primary purpose that is the development of youth; and
 - (ii) Is applying only for a raffle or amusement game license; and
 - (iii) Has at least three members or advisors who are at least eighteen years old and who supervise the operation of the gambling activity; and
 - (iv) Has an adult member or advisor designated as the manager for the gambling activity; and
- (b) Take part in at least one of the following activities of the organization:
 - (i) Attend at least one regular membership meeting per year; or
 - (ii) Vote for officers and/or board members; or
 - (iii) Help set policy by serving as a member of the board of directors or a similar policy setting position; or
 - (iv) Serve as a volunteer providing services or raising funds from nongambling sources; or
 - (v) Maintain a level of communication that demonstrates knowledge of the activities of the organization; and
- (c) Live within one hundred miles of the main administrative offices of your organization which are located in Washington, or attend seventy-five percent of the organization's board meetings.

NEW SECTION

WAC 230-03-145 Additional requirements for charitable and nonprofit licensing. (1) Organizations must provide the following records for us to determine the organization's qualifications as a bona fide charitable or nonprofit organization as set forth in RCW 9.46.0209:

(a) Official minutes of the organization's formation meeting and all membership and board meetings for the last twelve months including issues discussed, decisions made, and members in attendance; and

(b) A listing of the names of all "full and regular members." The organization must provide full names, addresses, telephone numbers, and the dates they became full and regular members; and

(c) A copy of the most recently approved articles of incorporation or bylaws or both; and

(d) All correspondence with the Internal Revenue Service and the secretary of state regarding the organization's status as a nonprofit organization; and

(e) Proof of federal tax deductible status for contributions to the organization.

(2) Organizations must submit documents that demonstrate that the organization made significant progress in meeting its stated charitable or nonprofit purpose(s) during the twelve consecutive months before applying for a license.

(3) Organizations must provide, in their bylaws or in their articles of incorporation, a statement that guarantees that, if the organization is dissolved, all the assets remaining after satisfaction of all their debts must be distributed to another charitable or nonprofit organization qualified under RCW 9.46.0209.

(4) Charitable or nonprofit organizations must provide us with the names of gambling managers who will oversee gambling activities. The organization must note on the application which manager has the highest level of authority and assign that person the title "primary gambling manager" on the application.

NEW SECTION

WAC 230-03-150 Additional requirements for branches or chapters of eligible parent organizations. The parent organization must be eligible for a license if an applicant is a branch or chapter of a parent organization. The branch or chapter must also prove that it is, in its own right, qualified to receive a license.

NEW SECTION

WAC 230-03-155 Submitting a proposed plan of operations for charitable and nonprofit organizations. (1) An organization must submit a proposed plan of operations, including a market study, if the organization:

(a) Requests licensing to conduct gambling activities with combined annual gross receipts in excess of three million dollars; or

(b) Plans to pay premises rent exceeding two thousand dollars per month, including all terms.

(2) The plan must show enough detail to allow us to assess the potential for compliance with cash flow require-

ments. It must also include at least the following information:

(a) Research procedures and planning assumptions used; and

(b) Planned number of customers or attendance; and

(c) Days and hours of operations; and

(d) Estimated gross gambling receipts from each activity; and

(e) Estimated expenses and net income; and

(f) Details of income generating activities planned in conjunction with the gambling activity, such as snack bar operations or other retail sales and the anticipated net income from those activities; and

(g) Any other information related to your gambling license application that we request.

(3) If planned activities include bingo, the organization must provide:

(a) Anticipated market area and map of competing organizations that operate similar gambling activities, along with their days of operation; and

(b) Number of bingo sessions, bingo card prices, and estimated sales per player; and

(c) Bingo prize payouts and game schedules.

NEW SECTION

WAC 230-03-160 Licensed charitable or nonprofit organizations prohibited from managing or operating commercial gambling activities. If a licensed charitable or nonprofit organization manages or operates an authorized gambling activity, it must not manage or operate any commercial gambling activity authorized under chapter 9.46 RCW.

ADDITIONAL REQUIREMENTS FOR COMMERCIAL AMUSEMENT GAME LICENSE APPLICANTS

NEW SECTION

WAC 230-03-165 Information required with license application for commercial amusement games. You must provide in writing all information necessary to comply with RCW 9.46.0331 if you are applying for a commercial amusement game license. Additionally, you must provide the following information:

(1) All locations:	<p>(a) A list of times and dates when the applicant will operate the activity; and</p> <p>(b) A copy of any rental/lease agreement which allows operation of commercial amusement games at any location the applicant does not own or otherwise control.</p>
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	<p>The applicant must disclose full details of the rental/lease agreement, including any revenue sharing provisions, all costs the applicant will share, and any restrictions on the number of amusement games the applicant operates; and</p> <p>(c) Copies of any rental or lease contracts related to the amusement game equipment.</p>
<p>(2) Permanent locations:</p>	<p>(a) Amusement parks: The number of mechanical or aquatic rides, theatrical productions, motion pictures, and slide show presentations available for the public.</p> <p>(b) Regional shopping centers: Size of the shopping center, in gross square feet, not including parking areas.</p> <p>(c) Taverns and restaurants with cocktail lounges: Washington state liquor control board license number and expiration date, and a statement of whether the business prohibits minors from all portions of the premises.</p> <p>(d) Movie theaters, bowling alleys, miniature golf course facilities, skating facilities, and amusement centers: Complete description of the business activities conducted. For an amusement center, the number of amusement devices, income derived from those devices, and all other business activities conducted during the last twelve months.</p> <p>(e) Any business whose primary activity is to provide food service for on-premises consumption: Amount of gross income the entire business generates; and the portion of gross income the food service for on-premises consumption generates.</p> <p>(f) Department or grocery stores: Type of retail products sold; size of the store premises, in gross square feet, not including parking areas.</p>

<p>(3) Limited time locations:</p>	<p>The applicant must receive written permission from the sponsor of any activity and submit planned operating dates for all locations at which the applicant plans to operate during the year. This operating plan must be updated any time the dates of operation change.</p>
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ADDITIONAL REQUIREMENTS FOR COMMERCIAL STIMULANT APPLICANTS

NEW SECTION

WAC 230-03-170 Defining "business premises." "Business premises" as used in RCW 9.46.0217 means the building, or portion of the building, set out on the license application.

NEW SECTION

WAC 230-03-175 Requirements for commercial stimulant businesses. Businesses must provide evidence for us to determine the business' qualifications as a commercial stimulant as set forth in RCW 9.46.0217. That evidence includes, but is not limited to:

(1) Proof that it is an "established business" as used in RCW 9.46.0217. "Established business" means any business that has been open to the public for sales of food or drink for on-premises eating and drinking for ninety days or more; or

(a) Provides us with a proposed operating plan which includes:

(i) Hours of operation; and

(ii) Estimated gross sales from each separate activity the business will conduct on the business premises including, but not limited to:

(A) Food or drinks for "on-premises" eating and drinking; and

(B) Food or drinks "to go"; and

(C) All other business activities; and

(b) Is ready to conduct food or drink sales; and

(c) Passes an inspection by us; and

(2) Proof that it is "primarily engaged in the selling of food or drink for consumption on premises" as used in RCW 9.46.070(2). "Primarily engaged in the selling of food or drink for consumption on premises" means that before receiving a gambling license the business has total gross sales of food or drink for on-premises consumption equal to or greater than all other combined gross sales, rentals, or other income-producing activities which occur on the business premises when measured on an annual basis.

ADDITIONAL LICENSING REQUIREMENTS CARD ROOM LICENSE APPLICANTS

NEW SECTION

WAC 230-03-180 Additional information required for a house-banked card room application. If you apply for

a house-banked card room license, you must submit at least the following as part of your application:

(1) A detailed description, including flow charts, of your planned internal accounting and administrative control system. You must submit the information in the standard format we require; and

(2) A detailed diagram of the planned physical layout of the business premises. The diagram must include at least:

- (a) The location of all gambling tables; and
- (b) The location of all surveillance cameras; and
- (c) The count room; and
- (d) The surveillance room; and
- (e) The cashier's cage; and

(3) A detailed description of the card games offered for play, including rules of play, and the type of gambling tables operated, including table layouts.

ADDITIONAL REQUIREMENTS FOR MANUFACTURER, DISTRIBUTOR, AND GAMBLING SERVICE SUPPLIER LICENSE APPLICANTS LICENSING MANUFACTURERS AND DISTRIBUTORS

NEW SECTION

WAC 230-03-185 Applying for a manufacturer license. You must apply for a manufacturer license if you:

(1) Make or assemble a completed piece or pieces of gambling equipment for use in authorized gambling activities; or

(2) Convert, modify, combine, add to, or remove parts or components of any gambling equipment for use in authorized gambling activities.

NEW SECTION

WAC 230-03-190 Applying for a distributor license. You must apply for a distributor license if you:

(1) Buy or otherwise obtain a finished piece of gambling equipment for use in authorized gambling activities from another person and sell or provide that gambling equipment to a third person for resale, display, or use; or

(2) Are a manufacturer who sells or provides gambling equipment you do not make to any other person for resale, display, or use; or

(3) Service and repair authorized gambling equipment. However, distributors must not add, modify, or alter the gambling equipment; or

(4) Modify gambling equipment using materials provided by manufacturers to upgrade equipment to current technology.

NEW SECTION

WAC 230-03-195 Additional information required from manufacturer and distributor license applicants. If you are applying for a manufacturer or distributor license, you must attach the following to your application form:

(1) A list of all businesses or corporations which you, or officers, directors, or substantial interest holders of your busi-

ness, either directly or indirectly, own or control as a substantial interest holder; and

(2) A list of all businesses or corporations licensed to conduct gambling activities or to supply gambling-related equipment, supplies, or services in which you, officers, directors, or substantial interest holders of your business have any interest; and

(3) A list of all jurisdictions in which you or any of the officers, directors, or substantial interest holders of your business have had a gambling-related license at any level during the previous ten years; and

(4) A statement about whether you, or officers, directors, or substantial interest holders have ever been part of a business that had a gambling-related license denied, revoked, or suspended by any jurisdiction for a period longer than thirty days.

NEW SECTION

WAC 230-03-200 Defining "gambling equipment." "Gambling equipment" means any device, gambling-related software, expendable supply, or any other paraphernalia used as a part of gambling or to make gambling possible. "Gambling equipment" includes, but is not limited to:

- (1) Amusement games;
- (2) Punch boards and pull-tabs;
- (3) Devices for dispensing pull-tabs;
- (4) Electronic devices for conducting, facilitating, or accounting for the results of gambling activities, including, but not limited to:
 - (a) Components of a tribal lottery system;
 - (b) Electronic devices for reading and displaying outcomes of gambling activities; and
 - (c) Accounting systems that are a part of, or directly connected to, a gambling system including, but not limited to:
 - (i) Bet totalizers; or
 - (ii) Progressive jackpot meters; or
 - (iii) Keno systems;
- (5) Bingo equipment;
- (6) Devices and supplies used to conduct card games, fund-raising events, recreational gaming activities, or Class III gaming activities, as defined in the Indian Gaming Regulatory Act at U.S.C. 25 chapter 29 § 2703 and in tribal-state compacts including, but not limited to:
 - (a) Gambling chips;
 - (b) Cards;
 - (c) Dice;
 - (d) Card shuffling devices;
 - (e) Graphical game layouts for table games;
 - (f) Ace finders or no-peek devices;
 - (g) Roulette wheels;
 - (h) Keno equipment; and
 - (i) Tables manufactured exclusively for gambling purposes.

LICENSING GAMBLING SERVICE SUPPLIERS

NEW SECTION

WAC 230-03-210 Applying for a gambling service supplier license. (1) You must apply for a gambling service

supplier license if you perform any of the following gambling-related services for compensation:

- (a) Consulting or advisory services regarding gambling activities; or
 - (b) Gambling management services; or
 - (c) Financing for purchases or leases of gambling equipment or for providing infrastructure that supports gambling operations for more than one licensee; or
 - (d) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer; or
 - (e) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or
 - (f) Training individuals to conduct authorized gambling activities; or
 - (g) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission.
- (2) You do not need a gambling service supplier license if you are:
- (a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or
 - (b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or
 - (c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; or
 - (d) A person that only provides nonmanagement-related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such services does not exceed twenty thousand dollars during any calendar year.

NEW SECTION

WAC 230-03-215 Gambling service suppliers prohibited from assuming ultimate responsibility. If you are or are applying to be a gambling service supplier, you must not assume ultimate responsibility for any licensee's gambling activity.

NEW SECTION

WAC 230-03-220 Marketing level restrictions for punch board or pull-tab manufacturers, distributors, or operators. (1) The different marketing levels for punch board and pull-tabs are:

- (a) Operator; and
 - (b) Distributor or manufacturer.
- (2) If you are a manufacturer or distributor, or spouse of a manufacturer or distributor of punch boards, pull-tabs, pull-tab dispensing devices, or related equipment, you must not have a substantial interest in a business that operates punch boards or pull-tabs.

NEW SECTION

WAC 230-03-225 Marketing level restrictions for punch board or pull-tab gambling service suppliers. If you are a substantial interest holder in a licensed gambling service supplier who provides services to punch board and pull-tab operators, you must not hold a substantial interest in a licensed manufacturer or distributor of punch boards or pull-tabs.

LICENSING LINKED BINGO PRIZE PROVIDERS

NEW SECTION

WAC 230-03-230 Applying for linked bingo prize provider license. (1) You must apply for a linked bingo prize provider license if you provide bingo operators the means to link bingo prizes, including:

- (a) Equipment and supplies to offer linked bingo; and
 - (b) Linked bingo prize management; and
 - (c) Distribution of necessary gambling equipment and supplies.
- (2) Distributors must receive a linked bingo prize provider license before providing gambling equipment and supplies to play linked bingo games.

INDIVIDUAL LICENSES

Licensing Charitable or Nonprofit Gambling Managers

NEW SECTION

WAC 230-03-235 Applying for charitable or nonprofit gambling manager license. You must apply for a charitable or nonprofit gambling manager license if you are an employee or member of a charitable or nonprofit organization who:

- (1) Will have control to a material degree over a Class D and above bingo license; or
- (2) Will have control to a material degree over a Class C and above punch boards and pull-tabs license; or
- (3) Will be the supervisor of gambling managers who manage a Class D and above bingo license or Class C and above punch boards and pull-tabs license; or
- (4) Will be assigned the highest level of authority by the officers or governing board of directors to manage the day-to-day affairs of the organization and is responsible for safeguarding assets purchased with gambling funds and/or managing the disbursement of gambling funds when the organization:
 - (a) Is licensed to receive more than three hundred thousand dollars in gross gambling receipts; or
 - (b) Has established a trust and/or endowment fund to which gambling receipts in excess of one hundred thousand dollars have been contributed; or
 - (5) Will be the supervisor of the operation of progressive jackpot pull-tab games.

NEW SECTION

WAC 230-03-240 Working before receiving a charitable or nonprofit gambling manager license. (1) You may begin performing the duties of a charitable or nonprofit gambling manager only after you have submitted a completed application for licensing.

(2) If you meet any of the conditions of RCW 9.46.158, you must not perform any of the duties of a charitable or nonprofit gambling manager until you receive a license from us.

(3) If you elect to perform any of the duties of a charitable or nonprofit gambling manager before licensing, we will keep your entire application fee regardless of the outcome of your application.

NEW SECTION

WAC 230-03-245 Licensing period for charitable or nonprofit gambling manager. The charitable and nonprofit gambling manager license is valid for no more than one year beginning on the date we received your application and fees.

LICENSING COMMERCIAL GAMBLING MANAGERS

NEW SECTION

WAC 230-03-250 Applying for a commercial gambling manager license. You must have a commercial gambling manager license if you supervise the operation of progressive jackpot pull-tab games. We do not require owners, partners, major officers, or owners of a substantial interest of a corporation to have commercial gambling manager licenses.

NEW SECTION

WAC 230-03-255 Working before receiving a commercial gambling manager license. (1) You may begin performing the duties of a commercial gambling manager only after you have submitted a completed application for licensing.

(2) If you meet any of the conditions of RCW 9.46.158, you must not perform any of the duties of a commercial gambling manager until you receive a license from us.

(3) If you elect to perform any of the duties of a commercial gambling manager before licensing, we will keep your entire application fee, regardless of the outcome of your application.

NEW SECTION

WAC 230-03-260 Licensing period for commercial gambling manager. The commercial gambling manager license is valid for no more than one year beginning on the date we received your application and fees.

LICENSING CARD ROOM EMPLOYEES

NEW SECTION

WAC 230-03-265 Applying for a card room employee license. You must apply for a card room employee license if you will be involved in the operation of a:

- (1) Class E card room; or
- (2) Class F card room; or
- (3) House-banked card room; and
- (4) You perform any of the following functions:
 - (a) Collecting fees; or
 - (b) Dealing; or
 - (c) Supervising any card game or other card room employee, such as acting as a pit boss, floor person, or section supervisor; or
 - (d) Selling or redeeming chips; or
 - (e) Performing cashier or cage duties such as counting and handling chips or cash, completing credit slips, fill slips, or inventory slips, or accounting for other card room receipts in the cage; or
 - (f) Observing dealers and card games to detect cheating or control functions; or
 - (g) Controlling card room funds including keys to secure locations; or
 - (h) Taking part in the operation of a card game.

NEW SECTION

WAC 230-03-270 Working as a card room employee before receiving a license. (1) If you have applied for a card room employee license, you may perform card room duties before receiving the license if you have waited at least ten days from the date we received your application and fees.

- (2) We may waive the ten-day waiting period if:
 - (a) Your employer can demonstrate an urgent and unexpected need for you as an employee; and
 - (b) Your employer's business would close or the control structure of the activity would be weakened if we failed to grant such waiver; and
 - (c) Your employer could not control the circumstances causing the need for a waiver; and
 - (d) You pay the fee for the waiver.
- (3) If you meet any of the conditions of RCW 9.46.158, you must not perform the duties of a card room employee until you receive a license.
- (4) If you choose to perform the duties of a card room employee before receiving your license, we will keep the entire application fee regardless of the outcome of your application.

NEW SECTION

WAC 230-03-275 Licensing period for card room employee. The card room employee license is valid for no more than one year beginning on the date we receive your application and fees.

NEW SECTION

WAC 230-03-280 Substantial interest holders not required to be licensed as card room employees. If you are a substantial interest holder in a business licensed to operate a public card room or a spouse of the same, you do not have to have an additional license to perform card room employee duties connected with that card room.

NEW SECTION

WAC 230-03-285 Class III gaming employee working as card room employee. A certified Class III gaming employee may work as a card room employee if he or she submits an add/transfer application and pays a fee before beginning work.

NEW SECTION

WAC 230-03-290 Card room employees working for additional employer or changing employer. A card room employee must submit an add/transfer application and pay a fee before beginning work for an additional public card room or changing public card room employers.

REPRESENTATIVE LICENSINGNEW SECTION

WAC 230-03-300 Applying for a manufacturer's representative license. You must apply for a manufacturer's representative license if you are employed by a licensed manufacturer to sell, promote, or provide that manufacturer's gambling equipment, or supplies, or you supervise those who do.

NEW SECTION

WAC 230-03-305 Applying for a distributor's representative license. You must apply for a distributor's representative license if you are employed by a licensed distributor to sell, promote, or provide that distributor's gambling equipment, or supplies, or you supervise those who do.

NEW SECTION

WAC 230-03-310 Applying for a gambling service supplier's representative license. You must apply for a gambling service supplier's representative license if you are employed by a licensed gambling service supplier to provide gambling-related services, or you supervise those who do.

NEW SECTION

WAC 230-03-315 Applying for a linked bingo prize provider representative license. You must apply for a linked bingo prize provider representative license if you are employed by a linked bingo prize provider in any of the provider's activities in connection with the management of a linked bingo prize game or distribution of supplies for those games.

NEW SECTION

WAC 230-03-320 Substantial interest holders not required to be licensed as representatives. If you are a substantial interest holder in a business licensed to operate a manufacturer, distributor, gambling service supplier, or linked bingo prize provider or a spouse of the same, you do not have to have an additional license to perform representative duties connected with that licensed business.

NEW SECTION

WAC 230-03-325 Office, clerical, or warehouse workers not required to be licensed as representatives. If you are an office, clerical, or warehouse worker and have contact with customers or potential customers only by telephone at your employer's business premises and work under the immediate and direct supervision of a substantial interest holder or a licensed manager or supervisor, you do not have to have a representative license.

NEW SECTION

WAC 230-03-330 Representing only one employer at a time. (1) If you are a licensed representative or applying for a representative license, you must represent only one licensed manufacturer, distributor, gambling service supplier, or linked bingo prize provider at a time.

(2) If the owner you work for owns more than one licensed business, you may represent the owner in all those licensed businesses without applying for another representative license.

NEW SECTION

WAC 230-03-335 Representatives must not work before receiving a license. If you are applying for a license as a representative for a manufacturer, distributor, gambling services supplier, or linked bingo prize provider, you must not work until you receive a new license from us.

NEW SECTION

WAC 230-03-340 Gambling service supplier representative must report conflicts of interest. If a licensed gambling service supplier representative has a substantial interest in a licensed manufacturer or distributor, they must inform us, the punch board, pull-tab, or bingo operators to whom they provide services, and the affected licensed manufacturer or distributor of the substantial interest and their intention to act as a gambling service supplier representative.

Chapter 230-05 WAC**FEES**NEW SECTION

WAC 230-05-001 Prorating or refunding of fees. (1) We may prorate license fees when we adjust expiration dates to schedule our workload.

(2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust license expiration dates under this provision, we may prorate the required fees.

(3) We will not prorate or refund fees when:

- (a) You discontinue your gambling activities; or
- (b) You voluntarily surrender your license or permit; or
- (c) We suspend or revoke your license.

(4) We keep a portion of your application fees whether we deny or administratively close your application or you withdraw it.

(5) If you are a licensee, you may apply for a partial refund of your license fee if your annual gross gambling receipts are less than the minimum for your license class. We will refund the difference between the fees you paid and the fees for the license class level you actually met. You must request the refund within twelve months.

NEW SECTION

WAC 230-05-005 Fees for review of gambling equipment, supplies, services, or games. You must apply to us if you want to submit gambling equipment, supplies, services, or games for our review. You must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review.

NEW SECTION

WAC 230-05-010 Returned checks. (1) If your bank returns your check for license fees to us for any reason, you must:

(a) Pay us in full, by certified check, money order, or cash, within five days of notification; and

(b) Pay an additional processing charge of thirty dollars.

(2) If you fail to pay within five days of notification:

(a) We will administratively close your application; or

(b) Your license expires and all gambling activity must stop.

(3) If we administratively close your application or your license expires, you must give us a new application with fees paid by certified check, money order, or cash in order to be considered for a license.

NEW SECTION

WAC 230-05-015 Two-part payment plan for license fees. (1) If you are renewing an annual license or applying for an additional license, you may pay the license fee in two payments if:

(a) You elect to participate; and

(b) The license fee is at least eight hundred dollars; and

(c) You pay an administrative processing fee as set out in WAC 230-05-020 or 230-05-030, plus one-half of the annual license fee at the time of application or renewal.

(2) We issue licenses under the two-part payment plan with an expiration date of not more than one year and a second-half payment due date.

(a) If we receive your second-half payment on or before the due date, the license will remain in effect until the expiration date.

(b) If you fail to submit the second-half payment on or before the due date, the license expires and gambling activities must stop.

(3) Your gross gambling receipts during the first-half payment period must not exceed fifty percent of the authorized class limitation for annual gross gambling receipts. Licensees whose gross gambling receipts exceed fifty percent of the authorized level must apply for a license at the appropriate license class and pay the full upgrade fee, plus an administrative processing fee, as set out in WAC 230-05-020 and 230-05-030.

NEW SECTION

WAC 230-05-020 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

1. Amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	\$54
Class B	Up to \$10,000	\$54
Class C	Up to \$25,000	\$294
Class D	Up to \$50,000	\$472
Class E	Over \$50,000	\$822

2. Bingo

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$25,000	\$54	\$1,000
Class B	Up to \$75,000	\$171	\$1,000
Class C	Up to \$150,000	\$350	\$2,000
Class D	Up to \$350,000	\$944	\$4,000
Class E	Up to \$650,000	\$1,590	\$8,000
Class F	Up to \$1,500,000	\$3,196	\$15,000
Class G	Up to \$2,000,000	\$4,612	\$23,000
Class H	Up to \$3,000,000	\$6,162	\$30,000
Class I	Up to \$4,000,000	\$7,700	\$38,000
Class J	Up to \$5,000,000	\$9,238	\$45,000
Class K	Up to \$6,000,000	\$10,364	\$53,000
Class L	Up to \$7,000,000	\$11,846	\$60,000
Class M	Up to \$8,000,000	\$13,330	\$65,000
Class N	Up to \$9,000,000	\$14,500	\$70,000
Class O	Up to \$10,000,000	\$16,000	\$75,000
Class P	Up to \$11,000,000	\$17,500	\$80,000
Class Q	Up to \$12,000,000	\$21,000	\$85,000
Class R	Up to \$13,000,000	\$24,000	\$90,000
Class S	Up to \$14,000,000	\$27,000	\$95,000

*See chapter 230-06 WAC, Exceeding license class.

3. Card games

License	Description	Fee
Class A	Nonhouse-banked - fee to play	\$589
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$171
Class C	Tournament only - no more than thirty consecutive days per tournament	\$54
Class D	Nonhouse-banked - no fee to play	\$54

4. Fund-raising event

License	Description	Fee
Class A	One event - not more than 24 consecutive hours	
	First time applicant	\$350
	Previously licensed applicant	\$206
Class B	One event - not more than 72 consecutive hours	
	First time applicant	\$589
	Previously licensed applicant	\$361
Class C	Additional participant in joint event - not lead organization	\$171
Class D	Limited fund-raising event - one event - not more than six consecutive hours	
	First time applicant	\$154
	Previously licensed applicant	\$103
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$233
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$589

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$561	\$5,000
Class B	Up to \$100,000	\$1,002	\$5,000
Class C	Up to \$200,000	\$1,892	\$10,000
Class D	Up to \$300,000	\$2,750	\$10,000
Class E	Up to \$400,000	\$3,552	\$10,000
Class F	Up to \$500,000	\$4,288	\$10,000
Class G	Up to \$600,000	\$4,970	\$10,000
Class H	Up to \$700,000	\$5,594	\$10,000
Class I	Up to \$800,000	\$6,162	\$10,000
Class J	Up to \$1,000,000	\$6,986	\$20,000
Class K	Up to \$1,250,000	\$7,756	\$25,000
Class L	Up to \$1,500,000	\$8,470	\$25,000
Class M	Up to \$1,750,000	\$9,038	\$25,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class N	Up to \$2,000,000	\$9,594	\$25,000
Class O	Up to \$2,500,000	\$10,542	\$30,000
Class P	Up to \$3,000,000	\$11,200	\$35,000
Class Q	Up to \$4,000,000	\$13,200	\$40,000
Class R	Up to \$5,000,000	\$15,000	\$50,000
Class S	Up to \$6,000,000	\$17,000	\$60,000
Class T	Up to \$7,000,000	\$19,000	\$70,000
Class U	Up to \$8,000,000	\$21,000	\$80,000
Class V	Over \$8,000,000	\$23,000	\$80,000

*See chapter 230-06 WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee
Class A	Up to \$5,000	\$54
Class B	Up to \$10,000	\$171
Class C	Up to \$25,000	\$350
Class D	Up to \$50,000	\$589
Class E	Up to \$75,000	\$944
Class F	Over \$75,000	\$1,414

7. Combination license

License	Description	Fee
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$106
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$276
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$639

8. Special property bingo

Once annually	\$26
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9. Permits

Recreational gaming activity	\$54
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10. Changes

Type	Fee
Name	\$26
Location	\$26
Fund-raising event date or time	\$26
License class	\$26
Duplicate license	\$26

11. Other fees

Type	Fee
Replacement identification stamps	\$26
Failing to apply for license class upgrade	Fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required

12. Two part payment plan participation

Annual participation	\$26
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NEW SECTION

WAC 230-05-025 Commercial stimulant fees. All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Card games - Nonhouse-banked

License	Description	Fee
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	\$175
Class C	Tournament only, no more than thirty consecutive days per tournament	
C-5	Up to five tables	\$175
C-10	Up to ten tables	\$318
C-15	Up to fifteen tables	\$529
Class D	Up to five tables - no fee to play	\$55
Class E	Fee to play	
E-1	One table only	\$422
E-2	Up to two tables	\$727
E-3	Up to three tables	\$1,210
E-4	Up to four tables	\$2,426
E-5	Up to five tables	\$3,650

License	Description	Fee
Additional tables	Per table - up to a maximum of fifteen	\$1,060
Class F	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	\$1,590

2. Card games - House-banked

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee
Annual	\$6,368
Additional fee per table - up to fifteen tables	\$1,590

3. Punch boards and pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$577	\$5,000
Class B	Up to \$100,000	\$1,030	\$10,000
Class C	Up to \$200,000	\$1,942	\$10,000
Class D	Up to \$300,000	\$2,826	\$10,000
Class E	Up to \$400,000	\$3,650	\$10,000
Class F	Up to \$500,000	\$4,408	\$10,000
Class G	Up to \$600,000	\$5,108	\$10,000
Class H	Up to \$700,000	\$5,748	\$10,000
Class I	Up to \$800,000	\$6,332	\$10,000
Class J	Up to \$1,000,000	\$7,180	\$20,000
Class K	Up to \$1,250,000	\$7,970	\$25,000
Class L	Up to \$1,500,000	\$8,704	\$25,000
Class M	Up to \$1,750,000	\$9,310	\$25,000
Class N	Up to \$2,000,000	\$9,862	\$25,000
Class O	Up to \$2,500,000	\$10,836	\$30,000
Class P	Up to \$3,000,000	\$11,200	\$35,000
Class Q	Up to \$4,000,000	\$13,200	\$40,000
Class R	Up to \$5,000,000	\$15,000	\$50,000
Class S	Up to \$6,000,000	\$17,000	\$60,000
Class T	Up to \$7,000,000	\$19,000	\$70,000
Class U	Up to \$8,000,000	\$21,000	\$80,000
Class V	Over \$8,000,000	\$23,000	\$80,000

*See chapter 230-06 WAC, Exceeding license class.

NEW SECTION

WAC 230-05-030 Fees for other businesses. All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Commercial amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$301/ \$137
Class B	Up to \$50,000	\$422
Class C	Up to \$100,000	\$1,086
Class D	Up to \$250,000	\$2,426
Class E	Up to \$500,000	\$4,256
Class F	Up to \$1,000,000	\$7,306
Class G	Over \$1,000,000	\$9,140

*We reduce the license fee by \$164 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

2. Distributor

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$603
Class B	Up to \$250,000	\$1,210
Class C	Up to \$500,000	\$1,818
Class D	Up to \$1,000,000	\$2,426
Class E	Up to \$2,500,000	\$3,160
Class F	Over \$2,500,000	\$3,890

3. Fund-raising event equipment distributor

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$239
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$603

4. Gambling service supplier

License	Fee
Annual	\$630
Financing, consulting, and management contract review	\$136

5. Linked bingo prize provider

License	Fee
Annual	\$4,048

6. Manufacturer

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$603
Class B	Up to \$250,000	\$1,210
Class C	Up to \$500,000	\$1,818
Class D	Up to \$1,000,000	\$2,426
Class E	Up to \$2,500,000	\$3,160
Class F	Over \$2,500,000	\$3,890

7. Permits

Type	Description	Fee
Agricultural fair	One location and event only	\$26
Agricultural fair annual permit	Annual permit for specified different events and locations	\$175
Recreational gaming activity		\$55
Manufacturer's special sales permit		\$211
Punch board and pull-tab service business permit	Initial application fee	\$217
Punch board and pull-tab service business permit	Renewal	\$53

8. Changes

Application	Description	Fee
Name		\$26
Location		\$26
Business classification	Same owners	\$55
Exceeding license class	New class fee, less previous fee paid, plus	\$26
Duplicate license		\$26
Corporate stock/limited liability company shares/units		\$55
License transfers		\$55

9. Other fees

Type	Fee
Defective punch board/pull-tab cost recovery fees	\$100
Failing to apply for license class upgrade	Fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review of gambling equipment, supplies, services, or games	Cost reimbursement

10. Identification stamps

Type	Fee	
(a) Punch boards and pull-tabs		
(i) Standard	Wagers fifty cents and below	\$0.27
	Wagers over fifty cents	\$1.05

Type		Fee
(ii) Progressive jackpot pull-tab series	Per series	\$10.60
(iii) Pull-tab series with carry-over jackpots	Per series	\$1.05
(b) Pull-tab dispensing devices		
(i) Mechanical and electro-mechanical		\$.27
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes	\$106.17 annually
Replacement of identification stamps		\$26
(c) Disposable bingo cards		
(i) Single game sets of individual cards or sheets of cards		\$.27
(ii) Multigame card packets		\$1.16
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards	\$.42
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards	\$8.49
(d) Coin or token-activated amusement games		
Annually - operated at any Class A amusement game license location		\$26.53
(e) Electronic bingo card daubers		
Annual		\$10.60
(f) Electronic card facsimile table		
Annual		\$361.51

11. Two-part payment plan participation

Annual participation	\$26
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NEW SECTION

WAC 230-05-035 Individuals license fees. Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

1. Charitable or nonprofit gambling manager

License	Fee
Original	\$171

License	Fee
Renewal	\$82
Change of employer	\$82

2. Linked bingo prize provider representative

License	Fee
Original	\$239
Renewal	\$146

3. Commercial gambling manager

License	Fee
Original	\$175
Renewal	\$84
Change of employer	\$84

4. Distributor's or gambling services supplier's representative

License	Fee
Original	\$239
Renewal	\$146

5. Manufacturer's representative

License	Fee
Original	\$239
Renewal	\$146

6. Public card room employee

License	Fee
Class A - Performs card room employee duties in a Class E card room	
Original	\$175
Renewal	\$84
Class B - Performs card room employee duties in enhanced and house-banked card rooms	
Original, in-state	\$237
Original, out-of-state	\$295
Renewal	\$146
Transfer/additional employee/conversion/emergency waiver request	\$57

7. Other fees

Change of name	\$26
Duplicate license	\$26

WSR 06-04-062

PROPOSED RULES

FOREST PRACTICES BOARD

[Filed January 30, 2006, 10:40 a.m.]

Continuance of WSR 05-17-173 and 05-20-098.

Title of Rule and Other Identifying Information: Forest road construction and maintenance (Title 222 WAC). The rule making consists of forest road maintenance and abandonment planning for small forest landowners and clarifications of the definitions, "road construction" and "road maintenance."

Date of Intended Adoption: May 10, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a continuance of draft rule language published September 7, 2005.

Statutory Authority for Adoption: RCW 76.09.040.

January 26, 2006

Pat McElroy
Chair

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"**Act**" means the Forest Practices Act, chapter 76.09 RCW.

"**Affected Indian tribe**" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"**Alluvial fan**" see "sensitive sites" definition.

"**Appeals board**" means the forest practices appeals board established in the act.

"**Aquatic resources**" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"**Area of resource sensitivity**" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060 (2).

"**Bankfull depth**" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the floodplain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"**Bankfull width**" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain 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 character distinct from that of the abutting upland.

"**Basal area**" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"**Bedrock hollows**" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

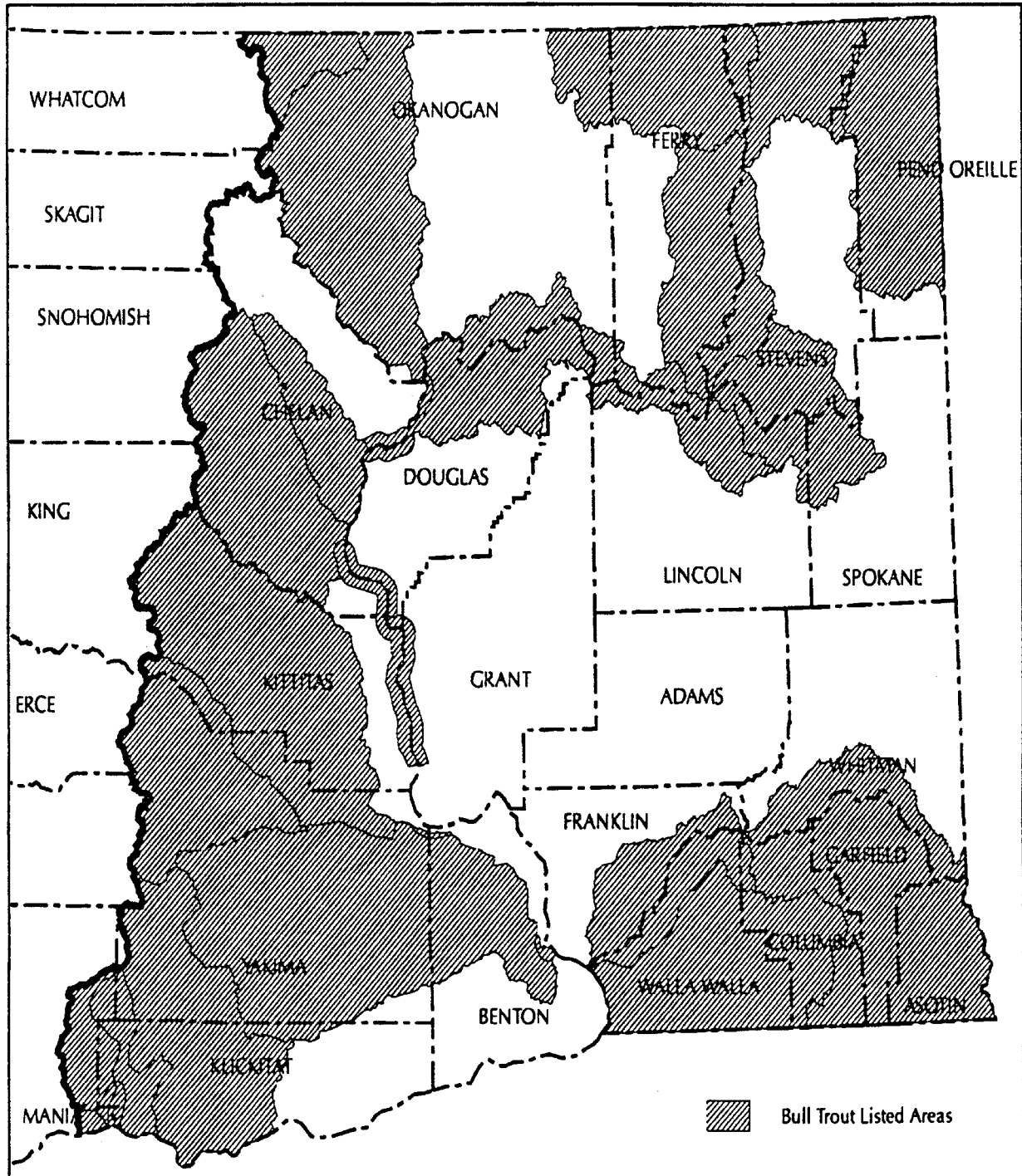
"**Board**" means the forest practices board established by the act.

"**Bog**" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"**Borrow pit**" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"**Bull trout habitat overlay**" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local

governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"**Drainage structure**" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"**Eastern Washington**" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



"**Eastern Washington timber habitat types**" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"**Edge**" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"**End hauling**" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"**Equipment limitation zone**" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"**Erodible soils**" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"**Even-aged harvest methods**" means the following harvest methods:

- Clearcuts;
 - Seed tree harvests in which twenty or fewer trees per acre remain after harvest;
 - Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;
 - Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;
 - Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;
 - Partial cutting in which fewer than fifty trees per acre remain after harvest;
 - Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and
 - Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.
- Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-

34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"**Fen**" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"**Fertilizers**" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"**Fill**" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"**Fish**" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"**Fish habitat**" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"**Fish passage barrier**" means any artificial in-stream structure that impedes the free passage of fish.

"**Flood level - 100 year**" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"**Forest land**" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"**Forest land owner**" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber

on such land in any manner(~~(- Provided, That)~~). However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(a) "**Large forest landowner**" is a forest landowner who is not a small forest landowner.

(b) "**Small forest landowner**" is a forest landowner who at the time of submitting a forest practices application or notification:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state; and

- Has not exceeded this harvest level for the past three years; and

- Certifies to the department this annual harvest level will not be exceeded for the next ten years.

Except the department will agree an applicant is a small forest landowner if the landowner can demonstrate the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"**Forest practice**" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"**Forest road**" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices (~~(or forest management activities such as fire control)~~). "Forest roads" does not include skid trails, highways, or (~~(county)~~) local government roads except where the (~~(county)~~) local governmental entity is a forest landowner (~~(or operator)~~). For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"**Forest trees**" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees"

includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Horizontal distance" means the distance between two points measured at a 0% slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized

expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

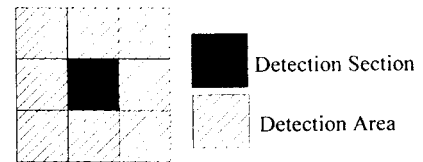
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

- Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.
- Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.
- Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds 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 character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and

other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

- For fish and water:
 - Physical fish habitat, including temperature and turbidity;
 - Turbidity in hatchery water supplies; and
 - Turbidity and volume for areas of water supply.
- For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) For Western Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) For Eastern Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'
IV	75' or 100'
V	75' or 100'

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) For exempt 20 acre parcels, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) For Western Washington, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) For Eastern Washington, the 30 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel

migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means ~~((the establishment of any new sub-grade including widening, realignment, or modification of an existing road prism, with the exception of replacing or installing drainage structures, for the purposes of managing forest land under Title 222 WAC));~~

(a) Establishing any new forest road;

(b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means ~~((any road work specifically related to maintaining water control or road safety and visibility (such as; grading, spot rocking, resurfacing, road-side vegetation control, water barring, ditch clean out, replacing or installing relief culverts, cleaning culvert inlets and outlets) on existing forest roads));~~

(a) All road work located within an existing forest road prism;

(b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

• Maintaining, replacing, and installing drainage structures;

• Controlling road-side vegetation;

• Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via

overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by

the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least 40% of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33-035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams

have dikes and levees that may temporarily or permanently restrict channel movement.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-16-050 *Classes of forest practices. There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices rules.

(1) **"Class IV - special."** Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than 5 MBF within any developed park recreation area and park managed salvage of merchantable forest products.

*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (i) below that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see

WAC 222-10-030 SEPA policies for potential unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See the board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than 35 degrees (70%);

(B) Toes of deep-seated landslides, with slopes steeper than 33 degrees (65%);

(C) Ground water recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application/notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports or other information provided by the applicant.

(iii) An application would not be classified as Class IV-Special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a WAU that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with an approved prescription from the watershed analysis (or as modified through the 5-year review process); and

(C) The applicable prescription is specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

*(e) Timber harvest, in a watershed administrative unit not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on archaeological or historic sites registered with the Washington state office of archaeology and historic preservation, or on sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department shall consult with affected Indian tribes in identifying such sites.

*(g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) in the watershed analysis.

*(h) Filling or draining of more than 0.5 acre of a wetland.

(2) "**Class IV - general.**" Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special."

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(b) Forest practices (other than those in Class I) on lands that have been or are being converted to another use;

(c) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(d) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest products operations for ten years accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the State Environmental Policy Act pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a 30-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with the State Environmental Policy Act.

(3) "**Class I.**" Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*(b) Road maintenance except: (i) Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or (ii) movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

*(c) Construction of landings less than 1 acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(d) Construction of less than 600 feet of road on a side-slope of 40 percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a

Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than 5,000 board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any 12-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding 40 percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(o) Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than 40 contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within 100 feet of lands used for farming, or within 200 feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

*(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 77.55.100) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or on lands that have been or are being converted to another use. No forest practice enumerated below involving timber harvest or road construction may be conducted as a "Class II" if it takes place within urban growth areas designated pursuant to chapter 37.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal. Renewal of a previously approved multiyear permit for forest practices within a WAU with an approved watershed analysis requires completion of a necessary 5-year review of the watershed analysis.

*(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than 1 acre.

*(d) Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent.

*(e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of 40 percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of 5,000 board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than 40 percent of the total timber volume is removed in any 12-month period.

(iv) Any harvest on less than 40 acres.

(v) Construction of 600 or more feet of road, provided that the department shall be notified at least 2 business days before commencement of the construction.

(5) "**Class III.**" Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 77.55.100).

*(b) Those within the shorelines of the state other than those in a Class I forest practice.

*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

*(f) All road construction (~~and reconstruction~~) except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over 1 acre.

*(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, are:

(i) On or are eligible for listing on the National Register of Historic Places; or

(ii) Have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding 19 acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

*(n) Any filling of wetlands, except where classified as Class IV forest practices.

*(o) Multiyear permits.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-20-010 Applications and notifications—Policy. (1) **No Class II, III or IV forest practices** shall be

commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in *WAC 222-20-020(1)* exist, the operation may commence. (NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application, which shall specify what information is needed for a notification, and the information required for the department to approve or disapprove the application.

(3) **Except as provided in subpart (4) below, applications and notifications** shall be signed by the landowner, the timber owner and the operator, or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)).

(4) In lieu of a landowner's signature, where the timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign a forest practices application or notification for operations not converting to another use and the statement of intent not to convert for a set period of time. The holder of perpetual timber rights shall serve the signed forest practices application or notification and the signed statement of intent on the forest landowner. The forest practices application shall not be considered complete until the holder of perpetual timber rights has submitted evidence acceptable to the department that such service has occurred.

(5) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

(6) **Transfer of the approved application or notification** to a new landowner, timber owner or operator requires written notice by the original landowner or applicant to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices rules as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(7) **Applications and notifications** must be delivered to the department at the appropriate region office. Delivery should be in person or by registered or certified mail.

(8) **Applications and notifications** shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application.

(a) A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the CRGNSA special management area guidelines is necessary information for an application or notification within the CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate the U.S. Forest Service received a complete plan application and failed to act within 45 days.

(b) An environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications.

(c) A local governmental entity clearing and/or grading permit is necessary information for all Class IV applications on lands that have been or will be converted to a use other than commercial timber production or on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW, if the local governmental entity has jurisdiction and has an ordinance requiring such permit.

(d) A checklist road maintenance and abandonment plan is necessary information for all small forest landowners' applications or notifications for timber harvest (including salvage), unless exempt under WAC 222-24-0511. If a notification or application is delivered in person to the department by the operator or the operator's authorized agent, the department shall immediately provide a dated receipt. In all other cases, the department shall immediately mail a dated receipt to the applicant.

(9) **An operator's name**, if known, must be included on any forest practices application or notification. The landowner or timber owner must provide notice of hiring or change of operator to the department within 48 hours. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070. Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.

(10) **Financial assurances** may be required by the department prior to the approval of any future forest practices application or notification to an operator or landowner under the provisions of WAC 222-46-090.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-015 Multiyear permits. (1) Where a watershed analysis has been approved for a WAU under WAC 222-22-080, landowner(s) may apply for a multiyear permit. The information provided and level of detail must be comparable to that required for a two-year permit. At a minimum, the application must include:

(a) A description of the forest practices to be conducted during the period requested for the permit, and a map(s) showing their locations; and

(b) Prescriptions must be identified where operations are proposed within or include areas of resource sensitivity.

(2) A landowner with an approved road maintenance and abandonment plan (other than a checklist) may apply for a multiyear permit to perform road maintenance ~~((or abandonment if the landowner has an approved road maintenance and abandonment plan where))~~ road abandonment, and/or associated right of way timber harvest, if the schedule for implementing the plan is longer than two years. ((The information provided and level of detail must be comparable to that required for two-year permits under WAC 222-24-050-))

(3) A landowner may apply for a multiyear permit to perform an approved alternate plan.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-20-040 Approval conditions. (1) **Whenever an approved** application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department 2 business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

(3) **Local governmental entity conditions.**

(a) RCW 76.09.240(4) allows a local governmental entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local governmental entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to Class IV general applications on lands that have been or are being converted to a use other than commercial timber production or to Class IV general applications on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW.

(c) The department shall transmit the applications to the appropriate local governmental entity within two business days from the date the department receives the application.

(d) The department shall condition the application consistent with the request of the local governmental entity if:

(i) The local governmental entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local governmental entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local governmental entity has entered into an interagency agreement with the department consistent with WAC 222-50-030 addressing enforcement of forest practices.

(e) The local governmental entity conditions may only cover:

- (i) The location and character of open space and/or vegetative buffers;
- (ii) The location and design of roads;
- (iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or
- (iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) Local governmental entity conditions shall be filed with the department within twenty-nine days of the filing of the application with the department or within fourteen business days of the transmittal of the application to the local governmental entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local governmental entity conditions consistent with this subsection as conditions of the forest practices approval.

(h) Any exercise of local governmental entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

(4) Lead agency mitigation measures.

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters 76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under SEPA. (See WAC 197-11-758.)

(c) The department shall transmit the application to the lead agency within two business days from the date the department receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within the later of (i) twenty-nine days of the receipt of the application by the department, (ii) fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local governmental entity; or (iii) one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must deny the application or require an EIS. (See WAC 197-11-738.)

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall deny the application.

(5) Small forest landowner approval conditions. The department shall not disapprove a small forest landowner's application/notification on the basis that fish passage barriers have not been removed or replaced if the landowner has committed to participate in the department's family forest fish passage program for:

- Any barriers on their forest roads located within the boundaries of their application/notification; and
- Any barriers on their forest roads needed for their proposed forest practice, but located outside the boundaries of the application/notification.

(6) CRGNSA special management area.

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special management area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirement controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control. Copies of the guidelines can be obtained from the department's Southeast and ((Southwest)) Pacific Cascade regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-055 Continuing forest land obligations. Continuing forest land obligations include reforestation, road maintenance and abandonment plans, and harvest strategies on perennial nonfish habitat waters in Eastern Washington. This section does not apply to small forest landowner checklist road maintenance and abandonment plans.

(1) Prior to the sale or transfer of land or perpetual timber rights subject to continuing forest land obligations under the Forest Practices Act and rules, the seller must notify the

buyer of the existence and nature of such a continuing obligation and the buyer must sign a notice of continuing forest land obligation indicating the buyer's knowledge of the obligations. The notice must be:

- (a) On a form prepared by the department;
- (b) Sent to the department by the seller at the time of sale or transfer of land or perpetual timber rights; and
- (c) Retained by the department.

(2) If the seller fails to notify the buyer about the continuing forest land obligation, the seller must pay the buyer's costs related to continuing forest land obligations, including all legal costs and reasonable attorneys' fees incurred by the buyer in enforcing the continuing forest land obligation against the seller.

(3) Failure by the seller to send the required notice to the department at the time of sale will be prima facie evidence in an action by the buyer against the seller for costs related to the continuing forest land obligation prior to sale.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-24-010 Policy. *(1) A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems.

*(2) To protect water quality and riparian habitat, roads must be constructed and maintained in a manner that will prevent potential or actual damage to public resources. This will be accomplished by constructing and maintaining roads so as not to result in the delivery of sediment and surface water to any typed water in amounts, at times or by means, that preclude achieving desired fish habitat and water quality by:

- Providing for fish passage at all life stages (see Washington state department of fish and wildlife hydraulic code Title 220 WAC);
- Preventing mass wasting;
- Limiting delivery of sediment and surface runoff to all typed waters;
- Avoiding capture and redirection of surface or ground water. This includes retaining streams in their natural drainages and routing subsurface flow captured by roads and road ditches back onto the forest floor;
- Diverting most road runoff to the forest floor;
- Providing for the passage of some woody debris;
- Protecting stream bank stability;
- Minimizing the construction of new roads; and
- Assuring ~~((that))~~ there is no net loss of wetland function.

The road construction and maintenance rules in this chapter must be applied in achieving these goals. Additional guidance is identified in ~~((the))~~ board manual section 3. If these goals are not achieved using the rules and the applied

guidance, additional management strategies must be employed.

*(3) Extra protection is required during road construction and maintenance to protect public resources and timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate in the development of road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction.

*(4) This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

(Note: Other laws and rules and/or permit requirements may apply. See chapter 222-50 WAC.)

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-24-050 *Road maintenance and abandonment. The goals for road maintenance are established in WAC 222-24-010. ~~((All forest roads must be improved and maintained to the standards of this chapter within 15 years of the effective date of these rules.))~~ Guidelines for how to meet these goals and standards are in the board manual, section 3. ~~((Work performed toward meeting the standards must generally be even flow over the 15-year period with priorities for achieving the most benefit to public resources early in the period.))~~ Replacement will not be required for existing culverts functioning with little risk to public resources or for culverts installed under an approved forest practices application or notification if they have been properly maintained and are capable of passing fish, until the end of the culvert's functional life.

The goals for road maintenance outlined in this chapter are expected to be achieved by July 1, 2016. The strategies for achieving the goals are different for large forest landowners and small forest landowners.

For large forest landowners, all forest roads must be improved and maintained to the standards of this chapter prior to July 1, 2016. Work performed toward meeting the standards must generally be even flow over the fifteen-year period with priorities for achieving the most benefit to the public resources early in the period. These goals will be achieved through the road maintenance and abandonment plan process outlined in WAC 22-24-051.

For small forest landowners, the goals will be achieved through the road maintenance and abandonment plan process outlined in WAC 222-24-0511, by participation in the state-led family forest fish passage program, and by compliance with the Forest Practices Act and rules. The purpose of the family forest fish passage program is to assist small forest landowners in providing fish passage by offering cost-share funding and prioritizing projects on a watershed basis, fixing the worst fish passage barriers first. The department, in consultation with the departments of ecology and fish and wildlife, will monitor the extent, effectiveness, and progress of checklist road maintenance and abandonment plan imple-

mentation and report to the legislature and the board by December 31, 2008, and December 31, 2013.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-24-051 *Large forest landowner road maintenance schedule. All forest roads must be ~~((covered under))~~ included in an approved road maintenance and abandonment plan ~~((within 5 years of the effective date of this rule or))~~ by ~~((December 31, 2005))~~ July 1, 2006. This includes all roads that were constructed or used for forest practices after 1974. Inventory and assessment of orphan roads must be included in the road maintenance and abandonment plans as specified in WAC 222-24-052(4).

*~~((1))~~ (1) Landowners ~~((with 500 acres or more of forest land in a DNR region))~~ must maintain a schedule of submitting plans to the department that cover 20% of their roads or land base each year.

*~~((2))~~ (2) ~~((Landowners with less than 500 acres of forest land in a DNR region must submit with their first forest practices application or notification a road maintenance and abandonment plan covering the roads that will be used by the application. Within one year of the date of submittal of the first forest practices application or notification or before the end of 2005, whichever comes first, the landowner must submit a road maintenance and abandonment plan for the rest of their ownership in that region. Once the plan is approved, the landowner must attach or reference the approved road maintenance and abandonment plan when submitting subsequent applications.~~

~~((3))~~ (3) For those portions of their ownership that fall within a watershed administrative unit covered by an approved watershed analysis plan, chapter 222-22 WAC, landowners may follow the watershed administrative unit-road maintenance plan, providing the roads they own are covered by the plan. A proposal to update the road plan to meet the current road maintenance standards must be submitted to the department for review on or before the next scheduled road maintenance plan review. If annual reviews are not required as part of the watershed analysis road plan, the plan must be updated by October 1, 2005. All roads in the planning area must be in compliance with the current rules by ~~((the end of calendar year 2015))~~ July 1, 2016. See the board manual section 3 for road maintenance and abandonment plan outline.

*~~((4))~~ (4) Plans will be submitted by landowners on a priority basis. Road systems or drainages in which improvement, abandonment or maintenance have the highest potential benefit to the public resource are the highest priority. Based upon a "worst first" principle, work on roads that affect the following are presumed to be the highest priority:

(a) Basins containing, or road systems potentially affecting, waters which either contain a listed threatened or endangered fish species under the federal or state law or a water body listed on the current 303(d) water quality impaired list for road related issues.

(b) Basins containing, or road systems potentially affecting, sensitive geology/soils areas with a history of slope failures.

(c) Road systems or basins where other restoration projects are in progress or may be planned coincident to the implementation of the proposed road plan.

(d) Road systems or basins likely to have the highest use in connection with future forest practices.

*~~((5))~~ (5) Based upon a "worst first" principle, road maintenance and abandonment plans must pay particular attention to:

(a) Roads that block fish passage;

(b) Roads that deliver sediment to typed water;

(c) Roads with evidence of existing or potential instability that could adversely affect public resources;

(d) Roads or ditchlines that intercept ground water; and

(e) Roads or ditches that deliver surface water to any typed waters.

*~~((6))~~ (6) Road maintenance and abandonment plans must include:

(a) Ownership maps showing all forest roads, including orphan roads; planned and potential abandonment, all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream adjacent parallel roads and an inventory of the existing condition; and

(b) Detailed description of the first years work with a schedule to complete the entire plan within fifteen years; and

(c) Standard practices for routine road maintenance; and

(d) Storm maintenance strategy that includes prestorm planning, emergency maintenance and post storm recovery; and

(e) Inventory and assessment of the risk to public resources or public safety of orphaned roads; and

(f) The landowner or landowner representative's signature.

*~~((7))~~ (7) Priorities for road maintenance work within plans are:

(a) Removing blockages to fish passage beginning on roads affecting the most habitat first, generally starting at the bottom of the basin and working upstream;

(b) Preventing or limiting sediment delivery (areas where sediment delivery or mass wasting will most likely affect bull trout habitat will be given the highest priority);

(c) Correcting drainage or unstable sidecast in areas where mass wasting could deliver to public resources or threaten public safety;

(d) Disconnecting road drainage from typed waters;

(e) Repairing or maintaining stream-adjacent parallel roads with an emphasis on minimizing or eliminating water and sediment delivery;

(f) Improving hydrologic connectivity by minimizing the interruption of surface water drainage, interception of subsurface water, and pirating of water from one basin to another; and

(g) Repair or maintenance work which can be undertaken with the maximum operational efficiency.

*~~((8))~~ (8) Initial plans ~~((for landowners with 500 acres or more of forest land in a DNR region))~~ must be submitted to the department during the year 2001 as scheduled by the department.

*~~((9))~~ (9) Each year on the anniversary date of the plan's submittal, landowners must report work accomplished for the previous year and submit to the department a detailed

description of the upcoming year's work including modifications to the existing work schedule.

The department's review and approval will be conducted in consultation with the department of ecology, the department of fish and wildlife, affected tribes and interested parties. The department will:

(a) Review the progress of the plans annually with the landowner to determine if the plan is being implemented as approved; and

(b) The plan will be reviewed by the department and approved or returned to the applicant with concerns that need to be addressed within forty-five days of the plan's submittal.

(c) Additional plans will be signed by the landowner or the landowner's representative.

~~*((10))~~ (9) The department will facilitate an annual water resource inventory area (WRIA) meeting with landowners, the department of fish and wildlife, the department of ecology, affected tribes, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, affected counties, local U.S. Forest Service, watershed councils, and other interested parties. The purpose of the meeting is to:

(a) Suggest priorities for road maintenance and abandonment planning; and

(b) Exchange information on road maintenance and stream restoration projects.

~~*((11) A forest practices application with a detailed one to five year work plan associated with a submitted road maintenance and abandonment plan will be treated as a multiyear permit. The application will be reviewed, approved, conditioned and/or disapproved within 45 days of acceptance. The application will be reviewed in consultation with the department of ecology, department of fish and wildlife, affected tribes and interested parties.)~~

~~*((12))~~ (10) Regardless of the schedule for plan development, roads that are currently used or proposed to be used for timber hauling must be maintained in a condition that prevents potential or actual damage to public resources. If the department determines that log haul on such a road will cause or has the potential to cause material damage to a public resource, the department may require the applicant to submit a plan to address specific issues or segments on the haul route.

~~*((13))~~ (11) If a landowner is found to be out of compliance with the work schedule of an approved road maintenance and abandonment plan and the department determines that this work is necessary to prevent potential or actual damage to public resources, then the department will exercise its authority under WAC 222-46-030 (notice to comply) and WAC 222-46-040 (stop work order) to restrict use of the affected road segment.

(a) The landowner may submit a revised maintenance plan for maintenance and abandonment and request permission to use the road for log haul.

(b) The department must approve use of the road if the revised maintenance plan provides protection of the public resource and maintains the overall schedule of maintenance of the road system or basin.

~~*((14))~~ (12) If a landowner is notified by the department that their road(s) has the potential to damage public resources, the landowner must, within 90 days, submit to the

department for review and approval a plan or plans for those drainages or road systems within the area identified by the department.

NEW SECTION

WAC 222-24-0511 *Small forest landowner road maintenance planning. (1) Small forest landowners who own a total of eighty acres or less forest land in Washington state are not required to submit any road maintenance and abandonment plan for any block of forest land that contains twenty contiguous acres or less.

(2) Small forest landowners other than those described in subsection (1) of this section, are only required to submit a checklist road maintenance and abandonment plan when they submit a forest practices application or notification that includes timber harvest or salvage. The checklist must include all their forest roads that are used for the forest practice. Instead of a checklist, landowners may submit a road maintenance and abandonment plan as described in WAC 222-24-051 with the following modifications:

- They are not required to submit an annual report; and
- If they participate in the family forest fish passage program, they may schedule their barrier projects accordingly.

(3) Forest roads must be maintained only to the extent necessary to prevent damage to public resources.

*((4)) If the department determines that a road will cause or has the potential to cause damage to a public resource, the department may require the applicant to submit a compliance schedule of work to fix the problem(s) identified by the department.

(5) Fish passage barriers will be assessed on a watershed basis focusing on fixing the worst barriers first.

(a) The department's family forest fish passage program is available to assist with the removal, replacement, or repair of fish passage barriers that were installed prior to May 14, 2003. The program includes limits on landowner costs and the opportunity for in-kind contributions. One hundred percent public funding shall be provided if an existing barrier was installed under an approved forest practices application, and hydraulics project approval, and that barrier becomes a high priority for replacement.

(b) Small forest landowners who participate in the family forest fish passage program are not required to remove, replace or repair barriers until cost share funding is available and higher priority barriers on lands within the watershed have been removed or funded. Small forest landowners participating in the program may make use of prioritization without any obligations to receive funding from the program.

WSR 06-04-069

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 30, 2006, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-099.

Title of Rule and Other Identifying Information: WAC 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant, 388-310-0500 WorkFirst—Individual responsibility plan, 388-310-0600 WorkFirst—Job search, 388-310-0700 WorkFirst—Employability evaluation, 388-310-0900 WorkFirst—Basic education, and 388-310-1000 WorkFirst—Vocational education.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 7, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 8, 2006.

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 5:00 p.m., March 7, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 3, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules will implement a comprehensive evaluation process for WorkFirst clients and make changes to the approval criteria for training that is determined necessary to assist a client to find and keep employment.

Reasons Supporting Proposal: These amended rules implement the recommendations of the WorkFirst reexamination workgroup as endorsed by Governor Gregoire. They are being filed under the authority of RCW 74.08.090 which directs the department to ensure uniform statewide application of rules. This authority also directs the department to ensure that the spirit and purpose of this title is complied with.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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: Sandy Jsames, 1009 College S.E., Lacey, WA 98504, (360) 725-4648.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and

health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

January 25, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

WAC 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant. (1) What happens when I enter the WorkFirst program as a mandatory participant?

If you are a mandatory participant, you must follow instructions as written in your individual responsibility plan (see WAC 388-310-0500), which is written after ~~((the case manager asks you a series of questions about your situation to evaluate))~~ you have participated in a comprehensive evaluation of elements related to your employability. If you have been identified as someone who needs necessary supplemental accommodation (NSA) services (defined in chapter 388-472 WAC) your case manager will first develop an accommodation plan to help you access WorkFirst services. The case manager will use the accommodation plan to help develop your IRP with you. If you have been identified as a victim of family violence (defined in WAC 388-61-001), you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

If you are a mandatory participant, your case manager will refer you to ~~((job search))~~ WorkFirst activities unless any of the following applies to you:

(a) You work thirty-two or more hours a week. **"Work"** means to engage in any legal, income generating activity which is taxable under the United States Tax Code or which would be taxable with or without a treaty between an Indian Nation and the United States;

(b) You work sixteen or more hours a week in the federal or state work study program and you attend a Washington state community or technical college at least half time;

(c) You work twenty or more hours a week in unsubsidized employment and attend a Washington state community or technical college at least half time;

(d) You are under the age of eighteen, have not completed high school, GED or its equivalent and are in school full time;

(e) You are eighteen or nineteen years of age and are attending high school or an equivalent full time;

(f) You are pregnant or have a child under the age of twelve months, and are participating in other pregnancy to employment activities. See WAC 388-310-1450;

(g) Your situation prevents you from looking for a job and you are conducting activities identified on your IRP to help you with your situation. (For example, you may be unable to look for a job while you have health problems or you are homeless); or

(h) Your situation prevents you from looking for work because you are a victim of family violence and you are conducting activities on your IRP to help you with your situation.

~~(2) (What are my requirements if I am not required to participate in job search activities?) How will I know what my participation requirements are?~~

~~(a) (If and when you are not required to participate in job search activities, you may be required to take part in an employability evaluation.)~~ Your individual responsibility plan will describe what you need to do to be able to enter job search or other WorkFirst activities and then find a job (see WAC 388-310-0500 and 388-310-0700).

(b) If you enter the pregnancy to employment pathway (described in WAC 388-310-1450(2)), you must take part in an assessment.

(3) What happens if I do not follow my WorkFirst requirements?

If you do not participate in creating an individual Responsibility Plan, job search, or in the activities listed in your individual responsibility plan, and you do not have a good reason, the department will ~~((reduce your WorkFirst grant-))~~ follow the sanction((-see) rules in WAC 388-310-1600(~~+~~)).

AMENDATORY SECTION (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

WAC 388-310-0500 WorkFirst—Individual responsibility plan. (1) **What is the purpose of my individual responsibility plan?**

The purpose of your individual responsibility plan is to give you a written statement that describes:

- (a) What your responsibilities are; and
- (b) Which WorkFirst activities you are required to participate in; and
- (c) What services you will receive so you are able to participate.

(2) What is included in my individual responsibility plan?

Your individual responsibility plan includes the following:

- (a) What WorkFirst activities you must do and the participation requirements for those activities including the amount of time you will spend doing the activities, a start and end date for each activity and the requirement to participate fully.
- (b) Any other specific requirements that are tied to the WorkFirst work activity. For example, you might be required to learn English as part of your work experience activity.
- (c) What services we will provide to help you participate in the activity. For example, you may require support services (such as help with paying for transportation) or help with paying childcare.
- (d) Your statement that you recognize the need to become and remain employed as quickly as possible.

(3) How is my individual responsibility plan developed?

You and your case manager will work together and use information gathered from your ~~((employability))~~ comprehensive evaluation (see WAC 388-310-0700) to develop your individual responsibility plan and decide what activities will be included in it. Then, your case manager will assign you to specific WorkFirst activities that will help you find employment ~~((as quickly as possible))~~.

(4) What happens after my individual responsibility plan is completed?

Once your individual responsibility plan is completed:

(a) You will sign and get a copy of your individual responsibility plan.

(b) You and your case manager will review your plan as necessary over the coming months to make sure your plan continues to meet your employment needs. You will sign and get a copy of your individual responsibility plan every time it is reviewed and changed.

(5) What should I do if I cannot go to a required WorkFirst appointment or activity because of a temporary situation outside of my control?

If you cannot participate because of a temporary situation outside of your control, you must call the telephone number shown on your individual responsibility plan on the same day you were to report to explain your situation. You will be given an excused absence. Some examples of excused absences include:

- (a) You, your children or other family members are ill;
- (b) Your transportation or child care arrangements break down and you cannot make new arrangements in time to comply;
- (c) A significant person in your life died; or
- (d) A family violence situation arose or worsened.

(6) What happens if I don't call in on the same day I am unable to attend to get an excused absence?

If you do not call in on the same day you are unable to attend to get an excused absence, it will be considered an unexcused absence.

If you exceed the number of unexcused absences allowed on your individual responsibility plan, without good cause, your case manager will begin the sanction process. (See WAC 388-310-1600 for more details.)

AMENDATORY SECTION (Amending WSR 05-16-107, filed 8/2/05, effective 9/2/05)

WAC 388-310-0600 WorkFirst—Job search. (1) **What is job search?**

Job search is an opportunity to learn and use skills you need to find and keep a job. Job search may include:

- (a) Classroom instruction; and/or
- (b) Structured job search that helps you find job openings, complete applications, practice interviews and apply other skills and abilities with a job search specialist or a group of fellow job-seekers; and/or
- (c) Preemployment training; and/or
- (d) High-wage/high-demand training.

(2) What is preemployment training?

Preemployment training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Preemployment training is an acceptable job search activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete preemployment training.

(b) You can find out about current preemployment training opportunities by asking your job service specialist, your

case manager or staff at your local community and technical college.

(3) What is high-wage/high-demand training?

(a) There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care or other professional-technical programs: This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology, health care fields or other professional-technical programs that meet high-wage high-demand criteria; and/or

(ii) Certificate/degree completion: This option allows you to finish up the last year of any certificate or degree program in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.

(b) For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy). There is no work requirement with either option for the twelve months of training time.

(c) To qualify for HWHD training, you must also:

(i) Meet all of the prerequisites for the course;

(ii) Obtain the certificate or degree within twelve calendar months;

(iii) Participate full time in the training program and make satisfactory progress;

(iv) Work with colocated ESD staff during the last quarter of training for job placement; and

(v) Return to job search once you complete((s)) the educational program if still unemployed.

(4) Who provides me with job search?

You get job search from the employment security department or another organization under contract with WorkFirst to provide these services.

(5) How long do I stay in job search?

Periods of job search will start with a review of the work skills assessment portion of your comprehensive evaluation and may last up to twelve continuous weeks. Job search specialists will monitor your progress. By the end of the first four weeks, a job search specialist will determine whether you should continue in job search. Job search will end when:

(a) You find a full-time job; or

(b) You become exempt from WorkFirst requirements (see WAC 388-310-0300); or

(c) Your situation changes and the case manager changes the activities on your IRP to fit your new circumstances (see WAC 388-310-0400); or

(d) After fully participating in job search, and based on your experience in looking for work in the local labor market, it is determined that you need additional skills and/or experience to find a job; or

(e) You have not found a job at the end of the job search period.

(6) What happens at the end of job search if I have not found a job?

At the end of each job search period, you will be referred back to your case manager who will ~~(conduct a new employability)~~, at a minimum, review and update the DSHS portion of your comprehensive evaluation if you have not found a job. You and your case manager will also modify your individual responsibility plan.

AMENDATORY SECTION (Amending WSR 00-06-062, filed 3/1/00, effective 3/1/00)

WAC 388-310-0700 WorkFirst—~~(Employability)~~ Comprehensive evaluation. (1) Why do I receive ~~(an employability)~~ a comprehensive evaluation?

You ~~(receive an employability)~~ participate in a comprehensive evaluation ~~(from)~~ with your case manager and other WorkFirst staff to determine:

(a) ~~(Why you are unable to look for work (if you are temporarily deferred from job search) or why you have been unable to find work in your local labor market))~~ Your employment strengths, your educational background, family situation and other factors; and

(b) Which WorkFirst activities you need to become employed ~~(in the shortest time possible)~~.

(2) What is the ~~(employability)~~ comprehensive evaluation and when will it be used?

(a) The ~~(employability)~~ comprehensive evaluation is a series of questions ~~(and)~~, answers and evaluations focused on your strengths, job skills, education and other relevant elements. The results of the comprehensive evaluation are used to determine your ability to find and keep a job in your local labor market and what WorkFirst activities will help you prepare for and find work. It includes:

(i) An employability evaluation with your case manager, discussing important issues that can affect your ability to find a job, like child care, family violence or substance abuse;

(ii) A work skills assessment to review your education, employment history, employment strengths and job skills; and

(iii) Educational and other evaluations.

(b) You and your case manager and/or social worker use the information and recommendations from ~~((this))~~ these evaluations to create or modify your individual responsibility plan, adding activities that help you become employable.

~~(Your case manager evaluates your ability to find employment when you are a mandatory WorkFirst participant and have:~~

~~(i) Gone through a period of job search without finding a job;~~

~~(ii) Been referred back early from job search; or~~

~~(iii) Been temporarily deferred from job search.~~

~~(d))~~ After your ~~(employability)~~ comprehensive evaluation, you may receive more assessments to find out if you need additional services.

AMENDATORY SECTION (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

WAC 388-310-0900 WorkFirst—Basic education. (1) What is basic education?

Basic education is high school completion, classes to prepare for general equivalency diploma (GED) ~~((and)),~~ testing to acquire GED certification ~~((It may include)),~~ adult basic education (ABE) or English as a second language (ESL) training ~~((if:~~

~~((a) It is determined you need this education to become employed or get a better job; and~~

~~((b) This activity is combined with paid or unpaid employment or job search; or~~

~~((c) You have fully participated in job search without finding a job)).~~

(2) When do I participate in basic education as part of WorkFirst?

You may participate in basic education as part of WorkFirst under any of the following circumstances:

~~((a) ((f)) You are twenty years of age or older and ((are working in paid or unpaid employment or in job search for a minimum of twenty hours a week your case manager may add basic education to your IRP as part of your full-time participation-)) your comprehensive evaluation shows you need this education to become employed or get a better job and:~~

~~((i) You are enrolled in an approved WorkFirst work activity for at least twenty hours per week; or~~

~~((b)) ((j)) You ((may attend full-time basic education classes if you)) have fully participated in job search without finding a job ~~((, and it has been determined that you need this training to become employed)).~~~~

~~((c)) ((b)) You may be required to participate if you are a mandatory participant, a parent eighteen or nineteen years of age, you do not have a high school diploma or GED certificate and you need this education in order to find employment.~~

~~((d)) ((c)) You will be required to be in high school or a GED certification program if you are a mandatory participant, sixteen or seventeen years old and you do not have a high school diploma or GED certificate.~~

~~((e)) ((d)) Employment security department (ESD) has determined that you are a seasonal worker (that is, your usual pattern of employment is based on recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season.~~

~~((f)) ((e)) You are enrolled in the Pregnancy to Employment pathway and your comprehensive evaluation shows basic education would help you find and keep employment. (See WAC 388-310-1450.)~~

AMENDATORY SECTION (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

WAC 388-310-1000 WorkFirst—Vocational education. (1) What is vocational education?

Vocational education is training that leads to a degree or certificate in a specific occupation and is offered by an accredited:

- (a) Public and private technical college or school;
- (b) Community college; or
- (c) Tribal college.

(2) When can vocational education be included in my individual responsibility plan?

We may add vocational education to your individual responsibility plan for up to twelve months if:

~~((a) ((You are working twenty or more hours a week in paid unsubsidized work; or~~

~~((b) You are working sixteen or more hours per week in a federal or state work study position; or~~

~~((c) You are working in a subsidized job, like a community jobs position, at least twenty hours per week)) Your comprehensive evaluation shows you need this education to become employed or get a better job and you participate full time in vocational education or by combining vocational education with any approved WorkFirst work activity; or~~

~~((d)) ((b)) Employment security department (ESD) has determined that you are a seasonal worker (that is, your usual pattern of employment is based on a recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season; or~~

~~((e)) ((c)) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand field, as determined by the employment security department; or~~

~~((f)) ((d)) You have limited English proficiency and you lack job skills that are in demand for entry level jobs in your area; and the vocational education program is the only way that you can acquire the job skills you need to qualify for entry level jobs in your area (because there is no available work experience, preemployment training or on-the-job training that can teach you these skills)) ~~((:)) or~~~~

~~((g)) ((e)) You are in the Pregnancy to Employment pathway and your comprehensive evaluation shows vocational education would help you find and keep employment. (See WAC 388-310-1450.)~~

(3) Can I get help with paying the costs of vocational education?

WorkFirst may pay for the costs of your vocational education, such as tuition or books, for up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

WSR 06-04-076

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed January 31, 2006, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-103.

Title of Rule and Other Identifying Information: WAC 446-65-010 Commercial motor vehicle regulations/transportation requirements.

Hearing Location(s): General Administration Building, Commercial Vehicle Division Conference Room, 210 11th

Avenue S.W., Olympia, WA 98504, on March 7, 2006, at 10:00 a.m.

Date of Intended Adoption: April 4, 2006.

Submit Written Comments to: Ms. Christine Fox, Equipment and Standards Review Unit, P.O. Box 42614, Olympia, WA 98504-2614, e-mail Christine.Fox@wsp.wa.gov, fax (360) 586-8233, by March 6, 2006.

Assistance for Persons with Disabilities: Contact Ms. Christine Fox, (360) 753-3697.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Additional Title 49 Code of Federal Regulations is to be adopted to remain compliant with federal enforcement requirements.

Statutory Authority for Adoption: RCW 46.32.020.

Rule is necessary because of federal law, Title 49 Code of Federal Regulations.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ms. Christine Fox, General Administration Building, P.O. Box 42614, Olympia, WA 98504-2614, (360) 753-3697.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Additional Title 49 Code of Federal Regulations is to be adopted to remain compliant with federal enforcement requirements.

A cost-benefit analysis is not required under RCW 34.05.328. There will be no cost to the industry.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 05-20-090, filed 10/5/05, effective 11/5/05)

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 (CFR), for motor carriers used in intrastate or interstate commerce, in their entirety: Parts 40 Procedures for transportation workplace drug and alcohol testing programs, 325 Compliance with interstate motor carrier noise emission standards, 350 Commercial motor carrier safety assistance program, 355 Compatibility of state laws and regulations affecting interstate motor carrier operations, 365 Rules governing applications for operating authority, 367 Standards for registration with states, 380 Special training requirements, 382 Controlled substances and alcohol use and testing, 383 Compliance with commercial driver's license program, 385 Safety fitness procedures, 387 Minimum levels of financial responsibility for motor carriers, 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)~~) 40 and 325 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 06-04-081
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed January 31, 2006, 3:55 p.m.]

Continuance of WSR 05-23-039 and 05-24-060.

Preproposal statement of inquiry was filed as WSR 05-19-077.

Title of Rule and Other Identifying Information: WAC 390-05-400 relating to changes in the I-134 dollar amounts subject to inflationary adjustment under RCW 42.17.690; WAC 390-12-010 relating to the regular meetings of the public disclosure commission (PDC); and WAC 390-37-136 relating to production of documents and use at hearing (adjudicative proceeding).

Hearing Location(s): Public Disclosure Commission, 711 Capitol Way, Room 206, Olympia, WA 98504, on February 23, 2006, at 9:00 a.m.

Date of Intended Adoption: February 23, 2006.

Submit Written Comments to: Doug Ellis, Assistant Director, 711 Capitol Way, Room 206, Olympia, WA 98504, e-mail dellis@pdc.wa.gov, fax (206) 753-1112, by February 20, 2006.

Assistance for Persons with Disabilities: Contact Chip Beatty by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adjust the I-134 dollar amounts based on changes in economic conditions as reflected in the inflationary index used by the commission (WAC 390-05-400); to adjust the PDC regular meeting schedule to accommodate commissioner scheduling conflicts (WAC 390-12-010); and to incorporate modifications for the submission of hearing materials to include timing, electronic format, spacing, page limits, etc.

Reasons Supporting Proposal: To comply with RCW 42.17.690 providing inflationary adjustments to the I-134 dollar amounts; to accommodate commissioner scheduling conflicts; and to update outdated rule in light of current technology and clarify the process for submission of hearing materials.

Statutory Authority for Adoption: RCW 42.17.370.

Statute Being Implemented: RCW 42.17.370.

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: The rule amendments are needed to implement RCW 42.17.690; to comply with RCW 42.30.075; and to update procedures for the production and use of documents at hearings of the PDC.

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule amendment has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The public disclosure commission (PDC) is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to this rule adoption.

January 30, 2006

Vicki Rippie

Executive Director

AMENDATORY SECTION (Amending WSR 03-22-064, filed 11/4/03, effective 1/1/04)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17.690 that the commission biennially revise the dollar amounts found in Initiative 134 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	((2004)) 2006 Revision
.020	Definition of "Independent Expenditure"	\$ ((625)) <u>675</u>	\$ ((675)) <u>700</u>
.125	Reimbursement of candidate for loan to own campaign	\$ ((3,800)) <u>4,000</u>	\$ ((4,000)) <u>4,300</u>
.180(1)	Report— Applicability of provisions to Persons who made contributions	\$ ((12,500)) <u>13,500</u>	\$ ((13,500)) <u>14,500</u>
	Persons who made independent expenditures	\$ ((625)) <u>675</u>	\$ ((675)) <u>700</u>
.640(1)	Contribution Limits— Candidates for state leg. office	\$ ((625)) <u>700</u>	((675))
	Candidates for other state office	\$ ((1,250)) <u>1,400</u>	((1,350))
.640(2)	Contribution Limits— State official up for recall or pol comm. supporting recall—		

Code Section	Subject Matter	Amount Enacted or Last Revised	((2004)) <u>2006</u> Revision
	State Legislative Office	\$((625)) <u>700</u>	((675))
	Other State Office	\$((1,250)) <u>1,400</u>	((1,350))
.640(3)	Contribution Limits— Contributions made by political parties and caucus committees		
	State parties and caucus committees	((64)) <u>.70</u> per voter	((68 per voter))
	County and leg. district parties	((32)) <u>.35</u> per voter	((34 per voter))
	Limit for all county and leg. district parties to a candidate	((32)) <u>.35</u> per voter	((34 per voter))
.640(4)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	((64)) <u>.70</u> per voter	((68 per voter))
	County and leg. district parties	((32)) <u>.35</u> per voter	((34 per voter))
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	((32)) <u>.35</u> per voter	((34 per voter))
.640 (6)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$((625)) <u>700</u>	((675))
	To political party	\$((3,200)) <u>3,500</u>	((3,400))
.740	Contribution must be made by written instrument	\$((60)) <u>65</u>	\$((65)) <u>70</u>

AMENDATORY SECTION (Amending WSR 04-12-053, filed 5/28/04, effective 6/28/04)

WAC 390-12-010 Public disclosure commission—Regular meetings. Pursuant to RCW 42.30.075, regular meetings of the public disclosure commission are scheduled to be held on the fourth (~~Tuesday~~) Thursday of each month at 9:00 a.m. unless a different time is noted on an agenda, except November and December when a combined meeting is scheduled to be held during the first or second week of December. The meetings shall be held in the commission meeting room, second floor, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington, unless circumstances require relocating to another site. If relocating is required, the meeting shall be held at a place designated by the executive director of the commission.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-136 Production of documents and use at hearing and other hearing procedures (adjudicative proceedings). (1) (~~Upon request by either the agency or its legal representative, or the party against whom the enforcement action is being taken or his/her representative, copies of all materials to be presented at the adjudicative proceeding shall be provided to the requester within seven calendar days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.~~

~~(2) When exhibits of a documentary character are to be offered into evidence at the adjudicative proceeding, the party offering the exhibit shall provide a minimum of ten copies.~~

~~(3) If documentary evidence has not been exchanged prior to the hearing under subsection (1) of this section, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the adjudicative proceeding for the purpose of exchanging copies of exhibits to be introduced.) Unless a prehearing order states otherwise, the provisions of this rule apply to evidence and written argument (legal briefs) filed and served in hearings (adjudicative proceedings). Parties or the executive director may request a prehearing conference if provisions of this rule need to be adjusted or if the provisions are not adhered to by the parties.~~

(2) The parties are encouraged to exchange copies of proposed exhibits, exhibit lists and witness lists, at least eight calendar days prior to the date of the hearing. The parties are encouraged to exchange documents by e-mail. The parties are encouraged to confer and determine whether there are any objections to the evidence and whether any agreements or stipulations can be reached regarding proposed exhibits, witnesses, and legal and factual issues.

(3)(a) Unless the commission determines otherwise, when evidence is to be offered at the adjudicative proceeding or when briefs are to be submitted at the adjudicative proceeding, the party offering the evidence or brief shall file a

copy of proposed exhibits, exhibit lists, witness lists, and briefs with the commission via an e-mail to the executive director or his or her designee by the date and time designated by the executive director or designee, which is typically by 1:00 p.m. Pacific Time at least eight calendar days prior to the hearing. The e-mail shall provide the name of the party submitting the documents, the total number of pages, the software used to prepare the document, and the name, address, telephone number and e-mail address of the person sending the e-mail message.

(b) In the event electronic submission is not readily available to a *pro se* respondent or the evidence is not suited to e-mail transmission, other means of providing these materials to the commission may be approved by the chair or the executive director, or their designees if requested in advance of the date and time in (a) of this subsection.

(c) On the day the parties provide these materials electronically to the commission, they shall also mail or otherwise deliver a paper (or hard copy) set of the materials to the commission.

(d) The parties shall confirm in advance with the executive director that any documents provided electronically are able to be accessed by software available at the agency. If they are not accessible, the executive director shall direct how the documents are to be submitted.

(e) The documents are considered filed when received during actual business hours at the commission office. If received after actual business hours, they will be deemed filed the next business day.

(4) Respondent's exhibits shall be numbered R-1, R-2, etc. Commission staff exhibits shall be numbered S-1, S-2, etc. Jointly submitted exhibits shall be numbered J-1, J-2, etc. If an exhibit is not jointly submitted but there is no objection to it by the responding party, the party offering the exhibit shall designate agreed-to exhibits on the party's exhibit list.

(5) Briefs shall contain the name of the respondent in the caption and the cause number. Briefs shall be no more than twenty-five pages, double-spaced, excluding attachments or exhibits.

(6) The parties shall inform the executive director of any special equipment necessary for the adjudicative proceeding at the time documents are filed with the commission.

WSR 06-04-082

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed January 31, 2006, 3:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-005.

Title of Rule and Other Identifying Information: WAC 390-16-011 Forms—Registration statement for political committees and 390-16-012 Forms—Registration statement for candidates.

Hearing Location(s): Public Disclosure Commission, 711 Capitol Way, Room 206, Olympia, WA 98504, on March 23, 2006, at 9:00 a.m.

Date of Intended Adoption: March 23, 2006.

Submit Written Comments to: Doug Ellis, Assistant Director, 711 Capitol Way, Room 206, Olympia, WA 98504, e-mail dellis@pdc.wa.gov, fax (206) 753-1112, by March 20, 2006.

Assistance for Persons with Disabilities: Contact Chip Beatty by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the candidate and political committee registration forms to reflect legislative changes under HB 1130. HB 1130 modified the provisions for campaign account inspections during the eight days before an election.

Reasons Supporting Proposal: To comply with statutory revisions to campaign account inspections.

Statutory Authority for Adoption: RCW 42.17.370.

Statute Being Implemented: RCW 42.17.370.

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: The rule amendments are designed to update candidate and political committee registration forms to reflect current law.

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments impacts candidates and political committees, not small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The public disclosure commission (PDC) is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to this rule adoption.

January 30, 2006

Vicki Rippie

Executive Director

AMENDATORY SECTION (Amending WSR 05-06-070, filed 3/1/05, effective 4/1/05)

WAC 390-16-011 Forms—Registration statement for political committees. The official form for providing the statement of organization by political committees for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting is designated "C-1pc," revised (~~2/05~~) 3/06. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

((STRICKEN GRAPHIC



Political Committee Registration

C1PC (2/05)

Committee Name (Show entire official name.) Acronym: Telephone: () Mailing Address Fax: () City County Zip + 4 E-mail:

NEW OR AMENDED REGISTRATION? COMMITTEE STATUS

1. What is the purpose or description of the committee? Bona Fide Political Party Committee - official state or county central committee or legislative district committee.

Ballot Committee - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: Ballot Number FOR AGAINST

Other Political Committee - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name:

For single election-year only committees (not continuing committees): Is the committee supporting or opposing (a) one or more candidates? (b) the entire ticket of a political party?

2. Related or affiliated committees. List name, address and relationship. Continued on attached sheet

3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.) If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.

4. Campaign Manager's or Media Contact's Name and Address Telephone Number: ()

5. Treasurer's Name and Address (List deputy treasurers on attached sheet.) Continued on attached sheet Daytime Telephone Number: ()

6. Committee Officers. List name, title, and address. Continue on attached sheet if necessary. See reverse for definition of "officer." Continued on attached sheet

7. Campaign Bank or Depository Branch City

8. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday - two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address. Street Address, Room Number, City Hours [Two consecutive hours; see 8(a)] In order to make an appointment, contact the campaign at (telephone, fax, e-mail): ()

9. Eligibility to Give to State Office Candidates: During the 180 days prior to making a contribution to a state office candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State. 10. Signature and Certification. I certify that this statement is true, complete and correct to the best of my knowledge. Committee Treasurer's Signature Date

SEE INSTRUCTIONS ON REVERSE (STRICKEN GRAPHIC))


~~((STRICKEN GRAPHIC~~

Please consult PDC instruction manuals when completing this report.
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

Who Must File	Persons, committees, organizations or groups that receive contributions or make expenditures in support of or opposition to: candidates in jurisdictions of 5,000 or more registered voters as of the last general election; statewide ballot issues; or local ballot issues in jurisdictions with 1,000 or more registered voters as of the last general election.
When To File	<p><u>Within 2 weeks of organizing a committee or first expecting to receive contributions or make expenditures, whichever occurs first. (Committees that organize within three weeks of an election must file within three business days of forming or of expecting to receive contributions or make expenditures.)</u></p> <p>File an amended C-1pc form within 10 calendar days of any material change to the registration information furnished previously. <u>For single election-year only committees, a material change includes providing or modifying the list of candidates the committee is supporting or opposing.</u></p> <p>Continuing political committees using Mini Reporting must also file a C-1pc annually in January. Reports are considered filed as of the postmark date or date hand-delivered to PDC.</p>
Where To File	Send the original to PDC at the above address. Send a copy to County Auditor (county elections office) of the county in which the committee headquarters is located. If there is no headquarters, send to the County Auditor of the county in which the treasurer resides. Keep a copy as part of the committee's records.
“Officer” of a Political Committee – Definition	<p>Officer of a political committee includes the following persons:</p> <ul style="list-style-type: none"> • the treasurer, • any person designated as an officer on the C-1pc registration statement, and • any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)

For Instruction Manuals and Reporting Forms or look under the “Filer Assistance” menu category on PDC’s Web Site: www.pdc.wa.gov

~~STRICKEN GRAPHIC))~~

 <p>PUBLIC DISCLOSURE COMMISSION 711 CAPITOL WAY RM 206 PO BOX 46908 OLYMPIA WA 98504-0908 (360) 783-1111 Toll Free 1-877-801-2828</p>	<h2 style="margin:0;">Political Committee Registration</h2>	<h1 style="margin:0;">C1PC</h1> <p style="font-size: small;">(306)</p>	
Committee Name (Show entire official name.)		Acronym: _____	
Mailing Address		Telephone: () _____	
City _____ County _____ Zip + 4 _____		Fax: () _____	
E-mail: _____			
NEW OR AMENDED REGISTRATION? <input type="checkbox"/> NEW. Complete entire form. <input type="checkbox"/> AMENDS previous report. Complete entire form.		COMMITTEE STATUS <input type="checkbox"/> Continuing (On-going; not established in anticipation of any particular campaign election.) <input type="checkbox"/> _____ election year only. Date of general or special election: _____ (Year)	
1. What is the purpose or description of the committee? <input type="checkbox"/> Bona Fide Political Party Committee - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list or specify here the names of the candidates you support			
<input type="checkbox"/> Ballot Committee - initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: _____		Ballot Number _____ FOR <input type="checkbox"/> AGAINST <input type="checkbox"/>	
<input type="checkbox"/> Other Political Committee - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name: _____			
For single election-year only committees (not continuing committees): Is the committee supporting or opposing (a) one or more candidates? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, attach a list of each candidate's name, office sought and political party affiliation. (b) the entire ticket of a political party? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, identify the party: _____			
2. Related or affiliated committees. List name, address and relationship. <input type="checkbox"/> Continued on attached sheet			
3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.) If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options. <input type="checkbox"/> MINI REPORTING Mini Reporting is selected. No more than \$3,500 will be raised or spent and no more than \$300 in the aggregate will be accepted from any one contributor.			
		<input type="checkbox"/> FULL REPORTING Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.	
4. Campaign Manager's or Media Contact's Name and Address		Telephone Number: _____	
		() _____	
5. Treasurer's Name and Address (List deputy treasurers on attached sheet.) <input type="checkbox"/> Continued on attached sheet		Daytime Telephone Number: _____	
		() _____	
6. Committee Officers. List name, title, and address. Continue on attached sheet if necessary. See reverse for definition of "officer." <input type="checkbox"/> Continued on attached sheet			
7. Campaign Bank or Depository		Branch	City
8. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address. Street Address, Room Number, City where campaign books will be available for inspection In order to make an appointment, contact the campaign at (telephone, fax, e-mail): () _____			
9. Eligibility to Give to State Office Candidates: During the 180 days prior to making a contribution to a state office candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State. <input type="checkbox"/> A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to state office candidates (legislative and statewide executive candidates).		10. Signature and Certification. I certify that this statement is true, complete and correct to the best of my knowledge. Committee Treasurer's Signature _____ Date _____	

SEE INSTRUCTIONS ON REVERSE



Please consult PDC instruction manuals when completing this report.
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

Who Must File	Persons, committees, organizations or groups that receive contributions or make expenditures in support of or opposition to: candidates in jurisdictions of 5,000 or more registered voters as of the last general election; statewide ballot issues; or local ballot issues in jurisdictions with 1,000 or more registered voters as of the last general election.
When To File	<p><u>Within 2 weeks of organizing a committee</u> or first expecting to receive contributions or make expenditures, whichever occurs first. (Committees that organize within three weeks of an election must file within three business days of forming or of expecting to receive contributions or make expenditures.)</p> <p>File an amended C-1pc form within 10 calendar days of any material change to the registration information furnished previously. <u>For single election-year only committees, a material change includes providing or modifying the list of candidates the committee is supporting or opposing.</u></p> <p>Continuing political committees using Mini Reporting must also file a C-1pc annually in January. Reports are considered filed as of the postmark date or date hand-delivered to PDC.</p>
Where To File	Send the original to PDC at the above address. Send a copy to County Auditor (county elections office) of the county in which the committee headquarters is located. If there is no headquarters, send to the County Auditor of the county in which the treasurer resides. Keep a copy as part of the committee's records.
“Officer” of a Political Committee – Definition	<p>Officer of a political committee includes the following persons:</p> <ul style="list-style-type: none"> • the treasurer, • any person designated as an officer on the C-1pc registration statement, and • any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)

For Instruction Manuals and Reporting Forms or look under the “Filer Assistance” menu category on PDC’s Web Site: www.pdc.wa.gov

AMENDATORY SECTION (Amending WSR 05-06-070, filed 3/1/05, effective 4/1/05)

WAC 390-16-012 Forms—Registration statement for candidates. The official form for providing the statement of organization by candidates and candidate's committees, for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting is designated "C-1," revised ((2/05)) 3/06. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington, 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

((STRICKEN GRAPHIC _____))



Candidate Registration

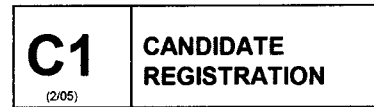
C1 (2/05)

Candidate's Name (Give candidate's full name.)		Telephone Numbers ()
Candidate's Committee Name (Do not abbreviate.)		()
Mailing Address		Fax Number ()
City	County	Zip + 4
E-Mail Address		
1. What office are you running for?	Legislative District, County or City	Position No. Do you now hold this office? Yes <input type="checkbox"/> No <input type="checkbox"/>
2. Political party (if partisan office)	3. Date of general or special election	
4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option II, Full Reporting. See instruction manuals for information about reports required and changing reporting options.		
<input type="checkbox"/> Option I MINI REPORTING: In addition to my filing fee of \$ _____, I will raise and spend no more than \$3,500, including any charges for inclusion in state and local voters pamphlets. I will not accept more than \$300 in the aggregate from any contributor except myself.		
<input type="checkbox"/> Option II FULL REPORTING: I will use the Full Reporting system. I will file the frequent, detailed campaign reports required by law.		
5. Treasurer's Name and Address. Candidate may be treasurer. List deputy treasurers on attached sheet. <input type="checkbox"/> Continued on attached sheet		Daytime Telephone Number ()
6. Committee Officers. List name, title and address. Continue on attached sheet if necessary. See reverse for definition of "officer."		<input type="checkbox"/> Continued on attached sheet
7. Campaign Bank or Depository	Branch	City
8. Related or Affiliated Political Committees. List name, address and relationship.		
9. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday – two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays, by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address. <input type="checkbox"/> Continued on attached sheet		
Street Address, Room Number, City		Hours [Two consecutive hours; see 9(a)]
In order to make an appointment, contact the campaign at (telephone, fax, e-mail): ()		
10. CERTIFICATION: I certify that this report is true, complete and correct to the best of my knowledge.		
Candidate's Signature		Date

SEE INSTRUCTIONS ON REVERSE

(STRICKEN GRAPHIC))

((STRICKEN GRAPHIC _____



Please consult PDC instruction manuals when completing this report.
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

- Who Must File** Candidates who seek
 - state office (legislative or statewide executive),
 - a state supreme court or state court of appeals position,
 - local office in jurisdictions having 5,000 or more registered voters as of the last general election or in jurisdictions covering an entire county.

- When To File** Within 2 weeks of becoming a candidate. A person becomes a candidate for PDC purposes when he or she **first** does any of the following:
 - receives contributions, makes expenditures, or reserves space or facilities with intent to promote his or her candidacy;
 - purchases commercial advertising space or broadcast time to promote his or her candidacy;
 - authorizes another person to take one of these above actions on his or her behalf;
 - announces publicly that he or she is seeking office; or
 - files a declaration of candidacy with the appropriate elections official.


File an amended registration within 10 days of a material change to information provided on previously filed C-1. Reports are considered filed as of the postmark date or date hand-delivered to PDC.

- Where To File** Send the **original to PDC** at the above address. Send a **copy to County Auditor** (county elections office) of the county in which the candidate resides. Candidates for city offices are advised to contact their City Clerk to learn if local filing is required by local ordinance. Keep a copy as part of the campaign's records.

- “Officer” of a Candidate’s Committee – Definition** Officer of a candidate's authorized committee or officer of a candidate's committee includes the following persons:
 - the treasurer,
 - any person designated as an officer on the C-1 registration statement, and
 - any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)

For Instruction Manuals and Reporting Forms look under the “Filer Assistance” menu category on PDC’s Web Site: www.pdc.wa.gov

_____ STRICKEN GRAPHIC))

PUBLIC DISCLOSURE COMMISSION  711 CAPITOL WAY RM 206 PO BOX 40905 OLYMPIA WA 98504-0908 (360) 753-1111 Toll Free 1-877-801-2828		Candidate Registration	C1 (3/06)
Candidate's Name (Give candidate's full name.)		Telephone Number ()	
Candidate's Committee Name (Do not abbreviate.)		Fax Number ()	
Mailing Address		Candidate's E-Mail Address	
City	County	Zip + 4	Campaign E-Mail Address
1. What office are you running for?	Legislative District, County or City	Position No.	Do you now hold this office? Yes <input type="checkbox"/> No <input type="checkbox"/>
2. Political party (if partisan office)	3. Date of general or special election		
4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option II, Full Reporting. See instruction manuals for information about reports required and changing reporting options.			
<input type="checkbox"/> Option I MINI REPORTING: In addition to my filing fee of \$_____, I will raise and spend no more than \$3,500, including any charges for inclusion in state and local voters pamphlets. I will not accept more than \$300 in the aggregate from any contributor except myself.			
<input type="checkbox"/> Option II FULL REPORTING: I will use the Full Reporting system. I will file the frequent, detailed campaign reports required by law.			
5. Treasurer's Name and Address. Candidate may be treasurer. List deputy treasurers on attached sheet. <input type="checkbox"/> Continued on attached sheet			Daytime Telephone Number ()
6. Committee Officers. List name, title and address. Continue on attached sheet if necessary. See reverse for definition of "officer."			<input type="checkbox"/> Continued on attached sheet
7. Campaign Bank or Depository	Branch	City	
8. Related or Affiliated Political Committees. List name, address and relationship. <input type="checkbox"/> Continued on attached sheet			
9. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address. Street Address, Room Number, City where campaign books will be available for inspection In order to make an appointment, contact the campaign at (telephone, fax, e-mail): ()			
10. CERTIFICATION: I certify that this report is true, complete and correct to the best of my knowledge. Candidate's Signature _____ Date _____			

SEE INSTRUCTIONS ON REVERSE



Please consult PDC instruction manuals when completing this report.
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

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 - any person designated as an officer on the C-1 registration statement, and
 - any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)

For Instruction Manuals and Reporting Forms look under the “Filer Assistance” menu category on PDC’s Web Site: www.pdc.wa.gov

WSR 06-04-087
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed January 31, 2006, 4:17 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: The department is proposing the amendment of WAC 388-112-0110 and 388-112-0250, Residential long-term care services—Training.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 7, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 8, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 7, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant by March 3, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The change in WAC 388-112-0110 is to correct errors in referenced WAC.

The change in WAC 388-112-0250 is to add language in [to] replace a WAC reference that no longer exists.

Reasons Supporting Proposal: The proposed amendments will clarify these rules.

Statutory Authority for Adoption: RCW 18.20.090, 70.128.040, 70.128.230.

Statute Being Implemented: RCW 18.20.090, 70.128.-040, 70.128.230.

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: The proposed rules correct errors and clarify the rules without changing their effect. A preproposal statement of inquiry is not required per RCW 34.05.310 (4)(d).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Barbara Hanneman, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2540.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that no new costs will be imposed on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules correct errors and clarify the

rules without changing their effect, and so are exempt under RCW 34.05.328 (5)(b)(iv).

January 27, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0110 What is specialty training? (1) Specialty or "special needs" training, including caregiver specialty training, provides instruction in caregiving skills that meet the special needs of people living with mental illness, dementia, or developmental disabilities. Specialty trainings are different for each population served and are not interchangeable. Specialty training may be integrated with basic training if the complete content of each training is included. DSHS must approve specialty training curricula for managers and caregivers, except for adult family home caregiver specialty training.

(2) Manager specialty training for boarding home administrators (or designees), adult family home providers and resident managers:

(a) Developmental disabilities specialty training, under WAC 388-112-0120, is the required training on that specialty for adult family home providers and resident managers, and for boarding home administrators (or designees.)

(b) Dementia specialty training, under WAC (~~(388-112-0135)~~) 388-112-0125, and mental health specialty training, under WAC (~~(388-112-0140)~~) 388-112-0135, are the required trainings on those specialties for adult family home providers and resident managers, and for boarding home administrators (or designees).

(3) Caregiver specialty training for boarding homes:

(a) Developmental disabilities specialty training, under WAC 388-112-0120, is the required training on that specialty for boarding home caregivers.

(b) Caregiver dementia training, under WAC (~~(388-112-0135)~~) 388-112-0130, and caregiver mental health training, under WAC 388-112-0140, are the required trainings on those specialties for boarding home caregivers.

(4) Caregiver specialty training for adult family homes:

The provider or resident manager who has successfully completed the manager specialty training, or a person knowledgeable about the specialty area, trains adult family home caregivers in the specialty needs of the individual residents in the adult family home, and there is no required curriculum.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0250 What is CPR training? Cardiopulmonary resuscitation (CPR) training is training (~~(that meets the content requirements in WAC 296-800-15010)~~) provided by an authorized CPR instructor.

WSR 06-04-094
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed February 1, 2006, 10:04 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-58-550 May an employer temporarily layoff a WMS employee?, 357-58-551 Are there any limits to temporary layoff?, 357-58-552 Under the provisions of temporary layoff, what happens if an employer has less than 20 hours per week of work for a WMS employee to perform?, 357-58-553 What is the notice requirement to temporarily layoff a WMS employee?, 357-58-554 What is a WMS employee's status during temporary layoff?, and 357-58-555 At the conclusion of a temporary layoff, does a WMS employee have the right to return to the position he/she held immediately prior to being temporarily laid off?

Hearing Location(s): Department of Personnel, Joan Darin Conference Room, 521 Capitol Way South, Olympia, WA, on March 9, 2006, at 10:00 a.m.

Date of Intended Adoption: March 9, 2006.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by March 3, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by March 3, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These new rules address temporary layoff for Washington management service (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: These new rules are necessary to address temporary layoff for Washington management service employees.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; 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, 2006

Eva N. Santos

Director

NEW SECTION

WAC 357-58-550 May an employer temporarily layoff a WMS employee? For any of the reasons specified in

WAC 357-58-445, an employer may temporarily layoff a WMS employee by:

- (1) Reducing the number of hours an employee is scheduled to work; or
- (2) Furloughing the employee.

NEW SECTION

WAC 357-58-551 Are there any limits to temporary layoff? Under the provisions of WAC 357-58-550, an employer may not:

- (1) Furlough a WMS employee for more than thirty calendar days in a calendar year; or
- (2) Temporarily reduce a WMS employee's regular work schedule to less than twenty hours a week for more than sixty calendar days in a calendar year.

NEW SECTION

WAC 357-58-552 Under the provisions of temporary layoff, what happens if an employer has less than 20 hours per week of work for a WMS employee to perform?

If an employer has less than twenty (20) hours per week of work for a WMS employee to perform during a period of temporary layoff, the employer must notify the WMS employee that he/she is being furloughed. The employer may then offer the available work hours to the WMS employee as an acting appointment under the provisions of WAC 357-58-265.

NEW SECTION

WAC 357-58-553 What is the notice requirement to temporarily layoff a WMS employee?

An employer must provide the WMS employee seven (7) calendar days' notice of temporary layoff. The temporary layoff notice must inform the WMS employee of his/her status during temporary layoff and the expected duration of the temporary layoff.

NEW SECTION

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) Hours not worked due to temporary layoff are not treated as leave without pay, therefore:

(a) A WMS employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff; and

(b) A WMS employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for his/her vacation leave balance; and

(c) Use of his/her accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

NEW SECTION

WAC 357-58-555 At the conclusion of a temporary layoff, does a WMS employee have the right to return to the position he/she held immediately prior to being temporarily laid off? At the conclusion of the temporary layoff, the WMS employee has the right to resume the position he/she held immediately prior to being temporarily laid off. The employee returns with the same status and percentage of appointment he/she held prior to the layoff.

WSR 06-04-095
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed February 1, 2006, 10:05 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-52-221 What is the timeline for a party to file a motion for reconsideration of a board's final order?, 357-52-222 On what grounds may a party file a motion for reconsideration of a board's final order?, 357-52-223 How is a motion for reconsideration responded to by the board?, and 357-52-224 Is a board order on a motion for reconsideration subject to further review?

Hearing Location(s): Department of Personnel, Joan Darin Conference Room, 521 Capitol Way South, Olympia, WA, on March 9, 2006, at 10:00 a.m.

Date of Intended Adoption: March 9, 2006.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by March 3, 2006. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by March 3, 2006, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These new rules address timelines for filing motions for reconsideration, what grounds may a party file a motion for reconsideration on, how a motion for reconsideration is responded to, and further review of a board order on a motion for reconsideration.

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: These new rules are necessary to address motions for reconsideration of a board order.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; 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, 2006

Eva N. Santos

Director

NEW SECTION

WAC 357-52-221 What is the timeline for a party to file a motion for reconsideration of a board's final order?

After issuance of a final board order, any party may file a motion for reconsideration. Such motions must be filed with the board and the opposing party within 14 calendar days of service of the board's order. Within 7 calendar days of the date on which the motion was filed, a party may file an answer to the motion with the board and the opposing party.

NEW SECTION

WAC 357-52-222 On what grounds may a party file a motion for reconsideration of a board's final order? A motion for reconsideration must be based on at least one of the following grounds:

- (1) Errors of procedure material to the party seeking reconsideration;
- (2) Misinterpretation of fact or law material to the party seeking reconsideration;
- (3) Irregularity in the hearing before the board by which the party seeking reconsideration was prevented from having a fair hearing; or
- (4) Clerical mistakes in the final decision and order.

NEW SECTION

WAC 357-52-223 How is a motion for reconsideration responded to by the board? In response to a motion for reconsideration, the board may deny the motion, modify its decision or reopen the hearing. The motion is deemed denied unless the board takes action within thirty calendar days of the date on which the motion was filed.

NEW SECTION

WAC 357-52-224 Is a board order on a motion for reconsideration subject to further review? A board order on a motion for reconsideration is not subject to further review.