

WSR 06-16-035
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed July 25, 2006, 2:07 p.m., effective August 25, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The aging and disability services administration will be offering new freedom consumer directed services (NFCDS). Rules on this program are needed to provide a description of the program, eligibility criteria, types of services, the enrollment/disenrollment process, and additional information.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010, 388-106-0015, 388-106-0040, 388-106-0055, and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.030.

Adopted under notice filed as WSR 06-11-018 on May 4, 2006.

A final cost-benefit analysis is available by contacting Tiffany Sevruck, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2538, fax (360) 407-7582, e-mail sevruta@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 16, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 16, Amended 5, Repealed 0.

Date Adopted: July 25, 2006.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet.)

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of informal support available if the need is partially met. The department determines the amount of the assistance available using one of four categories:

- (a) Less than one-fourth of the time;
- (b) One-fourth to one-half of the time;
- (c) Over one-half of the time to three-fourths of the time;

or

- (d) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

"Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

"Department" means the state department of social and health services, aging and disability services administration or its designee.

"Designee" means area agency on aging.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

- (a) No difficulty in performing the activity;
- (b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or
- (c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of Medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under Medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved Medicaid waiver program.

"Income" means income as defined under WAC 388-500-0005.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Disability" is described under WAC 388-511-1105.

"Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older.

"Institution" means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

"Medicaid" is defined under WAC 388-500-0005.

"Medically necessary" is defined under WAC 388-500-0005.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom Consumer Directed Services (NFCDS)" means a mix of services and supports to meet needs identified in the participant's assessment and identified in a New Freedom Spending Plan, within the limits of the individual budget, that provide participants with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

"New Freedom Consumer Directed Services (NFCDS) Participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom Spending Plan (NFSP)" means the plan developed by the participant, within the limits of an individual budget, that details the participant's choices to purchase specific NFCDS and provides required federal Medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your func-

tional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 388-500-0005.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Residential facility" means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other non-weight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"SSI-related" is defined under WAC 388-475-0050.

"Status" means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

"Supplemental Security Income (SSI)" means the federal program as described under WAC 388-500-0005.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a Medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPES)** is a Medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may

receive personal care in their own home or in a residential facility.

(3) **Medically needy residential waiver (MNRW)** is a Medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.

(4) **Medically needy in-home waiver (MNIW)** is a Medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.

(5) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(6) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(7) **Program of all-inclusive care for the elderly (PACE)** is a Medicaid/Medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(8) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(9) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(10) **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(11) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

(12) **Private duty nursing** is a Medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(13) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(14) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(15) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-853 WAC.

(16) **Nursing facility.**

(17) **Medicare/Medicaid Integration Project (MMIP)** is a DSHS prepaid managed care program, authorized under 42 CFR Part 438, that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare (Parts A and B) and Medicaid.

(18) **New Freedom Consumer Directed Services (NFCDS)** is a Medicaid waiver program authorized under RCW 74.39A.030.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0040 Who can provide long-term care services? The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05909.

(2) Home care agencies, who provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-336 WAC and contracted with area agency on aging.

(3) Residential providers, which include licensed adult family homes and boarding homes, who contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

(5) In the case of New Freedom Consumer Directed Services (NFCDS), providers meeting NFCDS HCBS waiver requirements contracting with a department approved provider of fiscal management services.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

(1) Determine eligibility for long-term care programs;
 (2) Identify your strengths, limitations, and preferences;
 (3) Evaluate your living situation and environment;
 (4) Evaluate your physical health, functional and cognitive abilities;

(5) Determine availability of informal supports and other nondepartment paid resources;

(6) Determine need for intervention;

(7) Determine need for case management activities;

(8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;

(9) Determine need for referrals; and

(10) Develop a plan of care, as defined in WAC 388-106-0010.

(11) In the case of New Freedom Consumer Directed Services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom Spending Plan, as defined in WAC 388-106-0010.

NEW SECTION WSR 06-05-022, filed 2/6/06, effective 3/9/06

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for your informal supports, as defined in WAC 388-106-0010, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by

the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self Performance	Status	Assistance Available	Value Percentage
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			
Unscheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			
Scheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
1/2 to 3/4 time	.35			
>3/4 time	.15			
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Meal preparation, Ordinary housework, Essential shopping*	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
1/2 to 3/4 time	.1			
>3/4 time	.05			
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			

Key:

> means greater than

< means less than

*Results in 5% deduction for each IADL from the base hours. Remaining hours may be used for completion of household and personal care tasks.

(b) To determine the amount of reduction for informal support, the value percentage is divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is base in-home care hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours for the following shared living circumstances:

(a) If there is more than one client living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(b) If you and your paid provider live in the same household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(c) When there is more than one client living in the same household and your paid provider lives in your household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(4) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	Unmet	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time		2	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
>3/4 time		2	

(5) In the case of New Freedom Consumer Directed Services (NFCDS), the department determines hours as described in WAC 388-106-1450.

(6) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs. In the case of New Freedom Consumer Directed Services (NFCDS), a New Freedom Spending Plan (NFSP) is developed in place of a plan of care.

~~((6))~~ (7) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

- (a) Personal care services from a home care agency provider and/or an individual provider.
- (b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).
- (c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).
- (d) A home health aide if you are eligible per WAC 388-106-0300 or WAC 388-106-0500.
- (e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and WAC 388-71-0915 or WAC 388-

551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom Consumer Directed Services (NFCDS).

NEW SECTION

WAC 388-106-1400 What services may I receive under New Freedom consumer directed services (NFCDS)? You may use your individual budget to purchase services that address an identified need in the CARE assessment. Service categories are:

(1) **Personal Assistance Services**, defined as supports involving the labor of another person to help participants carry out activities they are unable to perform independently as identified in the CARE assessment. Services may be provided in the participant's home or in the community and may include:

(a) Direct personal care services defined as activities of daily living, as defined in WAC 388-106-0010;

(b) Delegated health related tasks, per WAC 388-71-05805 through 388-71-05830. Providers of direct personal care services may be asked to do nurse delegated tasks under supervision of a nurse;

(c) Homemaking, or assistance with instrumental activities of daily living (essential shopping, housework and meal preparation);

(d) Other tasks or assistance with activities that support independent functioning, and are necessary due to functional disability;

(e) Personal assistance with transportation.

(2) **Treatment and Health Maintenance** activities that:

(a) Are beyond the scope of the Medicaid State Plan that are necessary to promote the participant's health and ability to live and participate in the community;

(b) Are provided for the purpose of preventing further deterioration, or improving or maintaining the participant's current level of functioning; and

(c) Are performed or provided by people with specialized skill, registration, certification or licenses as required by state law.

(3) **Individual Directed Goods, Services and Supports**, defined as services, equipment or supplies not otherwise provided through this waiver or through the Medicaid State Plan, and address an identified need in the CARE assessment; and

(a) Will allow the participant to function more independently; or

(b) Increase safety and welfare; or

(c) Allow the person to perceive, control, or communicate with their environment.

(4) **Environmental or vehicle modifications**, defined as:

(a) Alterations to a participant's residence or vehicle that:

(i) Are necessary to accommodate the participant's disability and promote functional independence, health, safety and welfare; and

(ii) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(b) Vehicles subject to modification must be owned by the participant or participant's family who reside with the participant; and

(i) Must be in good working condition, licensed, and insured according to Washington state law; and

(ii) Modifications demonstrate cost effectiveness when compared to available alternative transportation.

(5) **Training and educational supports**, which are supports beyond the scope of Medicaid State Plan services that are necessary to promote the participant's health and ability to live and participate in the community and maintains, slows decline, or improves functioning and adaptive skills. Examples include:

(a) Training or education on participant health issues, or personal skill development;

(b) Training/education to paid or unpaid caregivers related to the needs of the participant.

NEW SECTION

WAC 388-106-1410 Am I eligible for New Freedom consumer directed services (NFCDS)-funded services? You are eligible for NFCDS-funded services if you reside in your own home and meet all of the following criteria. The department must assess your needs using CARE and determine that:

(1) You are in NFCDS HCBS waiver specified target groups of:

(a) Eighteen or older and blind or have a physical disability; or

(b) Sixty-five or older; and

(2) You meet financial eligibility requirements. This means the department will assess your finances, determine if your income and resources fall within the limits, and determine the amount you may be required to contribute, if any, toward the cost of your care as described in WAC 388-515-1505; and

(3) You:

(a) Are not eligible for Medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide; and

(4) Your CARE assessment shows you need the level of care provided in a nursing facility as defined in WAC 388-106-0355; and

(5) You live in your own home, or will be living in your own home by the time NFCDS start.

NEW SECTION

WAC 388-106-1415 When do New Freedom consumer directed services (NFCDS) start? Your eligibility for NFCDS begins the date the department authorizes services.

NEW SECTION

WAC 388-106-1420 How do I remain eligible for New Freedom consumer directed services (NFCDS)? (1) In order to remain eligible for NFCDS, you must be in need

of services in accordance with WAC 388-106-1410, as determined through a CARE assessment. The CARE assessment must be performed at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for NFCDS change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your NFCDS services.

NEW SECTION

WAC 388-106-1425 How do I pay for New Freedom consumer directed services (NFCDS)? Depending on your income and resources, you may be required to pay participation toward the cost of your care, as described in WAC 388-515-1505. If you have nonexempt income that exceeds the cost of NFCDS services, you may keep the difference. Since you are receiving services in your own home, you are allowed to keep some of your income for a maintenance allowance.

NEW SECTION

WAC 388-106-1430 Can I be employed and receive New Freedom consumer directed services (NFCDS)? You can be employed and receive NFCDS, per WAC 388-515-1505.

NEW SECTION

WAC 388-106-1435 Who can direct New Freedom consumer directed services (NFCDS)? The NFCDS participant directs services. The participant can also designate a representative to assist them.

NEW SECTION

WAC 388-106-1440 What is an individual budget? An individual budget means the maximum amount of funding authorized by the department and allocated to the participant for the purchase of New Freedom Consumer Directed services.

NEW SECTION

WAC 388-106-1445 How is the amount of the individual budget determined? The department will calculate the individual budget amount after the NFCDS participant is assigned a classification resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on:

(a) The published hourly rate for individual provider personal care paid by the department multiplied by the number of hours generated by the assessment, multiplied by a factor of .95, plus an amount equal to the average per participant expenditures for non-personal care supports purchased in the COPES waiver. The average will be re-calculated in July of each year.

(b) If the participant selects a home care agency, an adjustment will be made for each hour of personal care identified in the NFSP for an amount equal to the difference between the published individual provider rate and home care agency rate.

NEW SECTION

WAC 388-106-1450 Is the individual budget intended to fully meet all of my needs? The program provides funds in an amount proportionate to the amount of resources you would receive through COPES, and gives you flexibility to self-direct the purchase of goods and services to meet your long-term care needs. The degree to which the budget meets your needs depends on the supports you identify and prioritize in your spending plan. Depending on your decisions, after your budget is exhausted, some of your needs may be unmet, or you may find other resources to address them.

NEW SECTION

WAC 388-106-1455 What happens to unused funds from my individual budget? Unused funds, up to three thousand dollars, may be held in reserve for future purchases documented in the NFSP. Reserves in excess of three thousand dollars may be maintained for planned purchases with approval from the department.

NEW SECTION

WAC 388-106-1460 When can my New Freedom spending plan (NFSP) be denied? Your NFSP may be denied when the plan you develop does not:

- (a) Include services in the New Freedom definition;
- (b) Address your needs as it relates to performance of Activities of Daily Living and Instrumental Activities of Daily Living;
- (c) Include strategies and steps to address known critical risks;
- (d) Identify the payment rate; or
- (e) Adequately describe the service.

NEW SECTION

WAC 388-106-1465 Who can deny my New Freedom spending plan (NFSP)? Your plan can be denied by your New Freedom Consultant, who assists NFCDS participants to develop and use a New Freedom Spending Plan to:

- (a) Meet identified needs;
- (b) Address health and safety needs;
- (c) Develop options to meet those needs;
- (d) Make informed decisions about their individual budget; and
- (e) Obtain identified supports and services.

NEW SECTION

WAC 388-106-1470 Are there waiting lists for New Freedom consumer directed services (NFCDS)? The department will create a waiting list for NFCDS in accor-

dance with caseload limits determined by legislative funding. Participants on the waiting list will gain access in the following order:

- (1) Nursing home residents who are returning home and are assessed for NFCDS waiver services will be ranked first on the waiting list by date of application for services;
- (2) Individuals living in the community with a higher level of need, as determined by the CARE assessment, will be ranked higher on the wait list over participants with a lower level of need; and
- (3) When two or more individuals on the waiting list have equal need levels, the individual with the earlier application for NFCDS will have priority over later applications for services.

NEW SECTION

WAC 388-106-1475 How do I end enrollment in New Freedom consumer directed services (NFCDS)? (1) You may choose to voluntarily end your enrollment from NFCDS without cause at any time. To do so, you must give notice to the department. If you give notice:

- (a) Before the fifteenth of the month, the department will end your enrollment at the end of the month; or
 - (b) After the fifteenth, the department will end your enrollment the end of the following month.
- (2) Your enrollment may also end involuntarily if you:
- (a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless you have documented the purpose of the longer absence in the NFSP; or
 - (b) Do not meet the terms for consumer direction of services outlined in the NFCDS enrollment agreement when:
 - (i) Even with help from a representative, you are unable to develop a NFSP or self-direct services or manage your individual budget or NFSP;
 - (ii) Any one factor or several factors of such a magnitude jeopardize the health, welfare, and safety of you and others, requiring termination of services under WAC 388-106-0047;
 - (iii) You become financially ineligible for Medicaid services; or
 - (iv) You no longer meet the nursing facility level of care requirement as defined in WAC 388-106-0355.

NEW SECTION

WAC 388-106-1480 What are my hearing rights to appeal New Freedom consumer directed services (NFCDS) actions? You have a right to a hearing under WAC 388-106-1300 through 388-106-1310, and under chapter 388-02 WAC.

WSR 06-16-053
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket A-050802, General Order R-536—Filed July 27, 2006, 9:54 a.m., effective August 27, 2006]

In the matter of amending and adopting chapter 480-07 WAC, the commission's procedural rules.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 06-08-058, filed with the code reviser on March 31, 2006. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date that this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, a description of the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments reflecting the commission's consideration of them.

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends the following sections of the Washington Administrative Code: WAC 480-07-110, 480-07-125, 480-07-140, 480-07-141, 480-07-143, 480-07-145, 480-07-150, 480-07-160, 480-07-220, 480-07-340, 480-07-360, 480-07-380, 480-07-395, 480-07-400, 480-07-405, 480-07-423, 480-07-460, 480-07-470, 480-07-510, 480-07-520, 480-07-620, 480-07-650, 480-07-700, 480-07-710, 480-07-730, 480-07-750, 480-07-883, 480-07-900, 480-07-910, and 480-07-930.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission repealed and replaced its former procedural rules, chapter 480-09 WAC, on January 1, 2004, and adopted new chapter 480-07 WAC, Procedural rules, to be effective on that same date. After the new rules became effective, commission staff and persons who conduct business before the commission periodically identified and suggested discrete changes to certain rules and the possible need for new rules that could ease compliance and promote efficiency in conducting business before the commission. The commission filed a preproposal statement of inquiry (CR-101) on July 15, 2005, at WSR 05-15-091.

8 The commission's statement of inquiry advised that its review of chapter 480-07 WAC would examine the need to reorganize, revise, repeal, and/or adopt rules governing the conduct of business before the commission, including rules governing formal proceedings. The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by providing notice to all regulated companies and the commission's lists of regulatory attorneys. The commission posted the relevant rule-making information on its internet web site at <http://www.wutc.wa.gov>.

9 The commission provided to the regulated community formal and informal opportunities for written and oral comments over a period of approximately eight months. The commission received written comments, held rule-making workshops, and met informally with groups of counsel and other representatives who appear regularly before the commission to discuss issues related to process and procedure. A diverse group of regulated companies and consumer advocacy organizations attended one or more of the workshops and informal meetings, and/or filed written comments.

10 WRITTEN COMMENTS; MEETINGS OR WORKSHOPS; ORAL COMMENTS: The commission received written comments during the inquiry phase, principally on August 26, 2005, from the public counsel section of the attorney general's office (public counsel), Puget Sound Energy, Inc. (PSE), Industrial Customers of Northwest Utilities (ICNU), Qwest Corporation (Qwest), PacifiCorp, Northwest Industrial Gas Users (NWIGU), and Washington Electronic Business and Telecommunications Coalition (WeBTEC). Summaries of the written comments and commission responses are contained in Appendix A, following, and made part of, this order.

The commission held a rule-making workshop on November 10, 2005. In addition, staff met informally to discuss issues related to process and procedure before the commission with groups of counsel and others who appear regularly before the commission. Representatives of a diverse group of regulated companies and several consumer advocacy organizations attended one or more of the workshops and informal meetings.

12 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on March 31, 2006, at WSR 06-08-058. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 06-08-058 at 1:30 p.m., Thursday, May 18, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission by May 4, 2006.

13 On May 11, 2006, the commission filed a supplemental CR-102 at WSR 06-11-047 and gave notice of an opportunity to submit written comments on the supplemental proposal by June 19, 2006. The commission also gave notice at WSR 06-11-047 cancelling the previously noticed adoption hearing and setting a rescheduled adoption hearing for

Wednesday, June 28, 2006, at 1:30 p.m., in the location previously indicated.

14 COMMENTERS (WRITTEN COMMENTS): The commission received written comments on the proposed rules from public counsel, Avista Corporation d/b/a Avista Utilities (Avista), PSE, Qwest, ICNU, Northwest Energy Coalition (NVEC), PacifiCorp, NWIGU, WeBTEC, Citizens Utility Alliance of Washington (CUA), BNSF Railway, Union Pacific Railroad Company, Verizon Northwest, Inc. (Verizon), Washington Independent Telephone Association (WITA), XO Communications Services, Inc. (XO), Embarq, and The Energy Project. Summaries of the written comments and commission responses are contained in Appendix A, following, and made part of, this order.

15 RULE-MAKING HEARING: The commission considered the rule proposal for adoption, pursuant to the notice, at a rule-making hearing on June 28, 2006, before Chairman Mark Sidran and Commissioner Patrick J. Oshie. The commission heard oral comments from: Simon ffitich for public counsel, Richard Finnigan on behalf of various unspecified clients, Lisa Anderl for Qwest, Tim O'Connell for Verizon, Kirsten Dodge for PSE, and Glenn Blackmon on behalf of the commission's regulatory staff.

16 The commission continued the rule-making hearing until July 12, 2006, to provide an opportunity for additional comments. The commission received written comments prior to July 12, 2006, from public counsel, WITA, commission staff, PacifiCorp, NVEC, Verizon, The Energy Project, and Qwest. The commission heard oral comments from Simon ffitich for public counsel and Ronald Roseman for The Energy Project.

17 SUGGESTIONS FOR CHANGE ACCEPTED OR REJECTED: Filed comments and oral comments suggested changes to the proposed rules. Each of those suggested changes and the commission's reason for rejecting or accepting the suggested changes are included in Appendix A.

18 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, repeal, and adopt the rules in the CR-102 notice at WSR 06-08-058 and the supplemental CR-102 notice at WSR 06-11-047 with the changes described below.

19 CHANGES FROM PROPOSAL: After reviewing the entire record, the commission adopts the CR-102 proposal with the following changes from the text noticed at WSR 06-08-058 and 06-11-047:

WAC 480-07-125 Physical address; telephone; (~~facsimile~~) fax; web portal; e-mail; internet.

This section was changed by removing a reference to a rule that does not exist, and to clarify the web site for the commission's web portal, which provides an additional means by which the commission can be contacted and documents can be submitted.

WAC 480-07-140 Communicating with the commission.

This section was changed by updating cross-references to another rule and by making minor editorial changes. In response to stakeholder comments the commission further clarified the rule by adding subsection (6)(b)(i), which identifies certain types of documents to which the rule, as pro-

posed, was not meant to apply. The amended language also makes clear that a party may ask the commission for relief when the party cannot submit documents in a preferred electronic file format.

WAC 480-07-160 Confidential information.

This section was modified by making minor editorial changes.

WAC 480-07-405 Discovery—Data requests, record requisitions, and bench requests.

This section was modified by making minor editorial changes.

WAC 480-07-510 General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies.

The commission made minor editorial changes and several clarifying changes, as follows:

- The rule makes clear that parties can request the commission to change the number of copies they are required to file in a proceeding.
- The rule clarifies that all filed materials must be submitted in an electronic format consistent with WAC 480-07-140(6).
- The rule clarifies that those who may be intervenors in any proceeding as a matter of right (i.e., staff and public counsel) will be treated identically insofar as submission and filing requirements are concerned.
- Extending to five days the time available for filing work papers when subsequent rounds of testimony are filed.
- Clarifying that voluminous documents referred to in a filing need not be included in the filing but must be clearly identified and must be provided if requested.

WAC 480-07-620 Emergency adjudicative proceedings. (1) When permitted.

This rule is modified to include the agency's executive director as a person to whom the commission can delegate responsibility for authorizing complaints and by clarifying that the power to authorize complaints under specified circumstances is delegated to all administrative law judges.

WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements.

The commission added a statutory reference to subsection (4)(d) to clarify the legal basis for considering a petition for enforcement as a formal complaint proceeding.

WAC 480-07-700 Alternative dispute resolution.

The first sentence of the proposal in WAC 480-07-700(3) is modified to define rather than describe a "settlement conference." The second sentence of the proposal is modified to clarify that a settlement conference does not include parties inquiring whether another party is willing to negotiate resolution of disputed issue. The commission also added the words "or communications" and replaced the word "define" with "identify" to make the sentence more clear.

The commission removed language from subsection (3)(a) that provided that any party may participate in an initial settlement conference and that no party is required to attend. This language, modified to allow "any party and any person who has filed a petition to intervene" to participate in "any initial or early initial settlement conference" is included after the last sentence in subsection (3). We also include a sen-

tence providing that "[a]n intervenor's participation in a settlement conference is limited to the interests supporting its intervention," unless other parties agree. These changes are intended to provide guidance for participation in both initial and early initial settlement conferences, rather than just initial settlement conferences.

The commission modified language in subsection (3)(b) to more clearly identify the requirements for an early initial settlement conference. The commission modified this subsection to reflect that a party proposing an early initial settlement conference (*i.e.*, a settlement conference after the filing of the docket and before the prehearing conference) must meet certain requirements. The party proposing the conference must provide ten, not fourteen, days notice of the conference to the commission, public counsel, any party, any person filing a petition to intervene, or any person who was a party in the last, most recent, similar proceeding. If notice to customers is required, the party proposing settlement must also indicate in the notice than [that] an early initial settlement conference may be scheduled. The changes more clearly state the requirements for an early initial settlement conference than the supplemental CR-102 proposal.

20 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: In reviewing the entire record, the commission determines that WAC 480-07-110, 480-07-125, 480-07-140, 480-07-141, 480-07-143, 480-07-145, 480-07-150, 480-07-160, 480-07-220, 480-07-340, 480-07-360, 480-07-380, 480-07-395, 480-07-400, 480-07-405, 480-07-423, 480-07-460, 480-07-470, 480-07-510, 480-07-520, 480-07-620, 480-07-650, 480-07-700, 480-07-710, 480-07-730, 480-07-750, 480-07-883, 480-07-900, 480-07-910, and 480-07-930 should be amended to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

APPENDIX A

SUMMARY OF WRITTEN COMMENTS AND COMMISSION RESPONSES

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 30, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Docket A-050802
Procedural Rules Comment Matrix

<i>Rule section</i>	<i>Provision</i>	<i>Commenter</i>	<i>Comment</i>	<i>Response</i>
480-07-140 (6)(b)	Requires electronic copies of documents. Sets standards for electronic document format.	PSE; Qwest supports PSE; Avista	Oppose mandatory standards for electronic document format; prefers current rule stating only a preference. Cites difficulty in obtaining some documents in electronic format. Cites burden of seeking frequent waivers. Cites problems in providing original files when documents are mixed (as with insertion of an Excel file in a Word document).	Accept in part. Some documents should be exempted from the requirement. These include published, copyrighted material and voluminous material not produced by or for the company or a witness when the required copy is unobtainable. Few exceptions should be allowed for material created by or for a witness, a party, or an attorney. Lack of this material can be extremely burdensome on other parties and on the commission in reviewing and deciding issues. Mixed files need not be provided in separate original files, as long as the provided document contains the needed information. As PSE notes, waivers are available.
480-07-145(6)	Filing deadlines; requires paper copy of documents.	Verizon	Asks authority for electronic filing. Opposes "arbitrary" early deadlines for electronic copies when filing date extended.	Reject. The commission is expanding its capability to deal with electronic documents, but to date does not have the infrastructure to manage rate case filings in electronic format. Early filing deadlines allow time for commission staff to print copies of the documents for staff who need them.
480-07-150	Requires a party to designate one person to receive service of representative's and party's documents.	Verizon	Asks multiple recipients of service, to allow staff and others to receive copies of documents.	Reject. This provision relates only to <u>service</u> of documents, the legal requirement, to reduce confusion and cost. It does not relate to the exchange of documents - prehearing orders now collect information permitting easy exchange of electronic documents.
480-07-310	Defines and bars <i>ex parte</i> communication between deciders and others.	Public counsel; WEBTeC [WeBTEC] supports.	Proposes to define and restrict communications between commission staff and other parties about settlement, outside the presence of all parties, as <i>ex parte</i> .	Reject. Such communications do not fall within the customary definition of <i>ex parte</i> . The provisions are not shown to be necessary to support any barrier to settlement talks before a plenary discussion.

<i>Rule section</i>	<i>Provision</i>	<i>Commenter</i>	<i>Comment</i>	<i>Response</i>
480-07-340(1)	Defines parties and other categories of persons that may receive notices or information about pending dockets.	Verizon	Supports proposal as useful.	We appreciate Verizon's comments.
480-07-395	Requires tables of authorities and outline-style tables of contents in briefs.	Verizon	Objects to requirements as unnecessary and burdensome in short documents; need to obtain waivers burdensome. Proposes limitation to briefs over ten pages.	Reject. Tables of contents and authorities are very helpful in all but the smallest briefs, and number of pages does not necessarily define the number of citations or the complexity of the argument. Waiver is available.
480-07-400(3)	Deletes the requirement of certification of discovery requests by counsel for requesting party.	Verizon	Objects to proposed deletion and substitution of language in later subsection. Existing language merely restates provisions of CR 26.	Reject. This change was made to facilitate electronic service of data requests and answers, which all appear to support. Signatures are not feasible yet for electronic documents.
480-07-510	GRC filing requirements.	Public counsel, WeBTEC	Move requirement to serve public counsel to the rule's opening paragraph so parties know to serve the entire filing on public counsel. Move requirement of an electronic copy of the filing from subsection (1) to the opening general paragraph to clarify that the entire filing must be submitted electronically. Clearly identify items not included in the work papers because they are too large. Require the company to provide tariff sheets containing any definitions and any sheets referenced by filed tariffs.	Accept. The rule should be modified to clarify that public counsel should receive a full packet at filing of a general rate case and that an electronic copy is required of all material at the time of a GRC filing. Accept. The company should clearly identify excluded voluminous material and provide copies of related tariff sheets.
480-07-510(3)	Requires work papers to accompany tariff filing and later testimony and exhibits.	Staff, PSE	Staff asks that work papers not be required at filing in later rounds, to allow concentration on filing, but that a grace period be allowed for electronic exchange of work papers. PSE supports a five-day delay after original filing.	Accept. A five-day delay for subsequent filings seems warranted.

<i>Rule section</i>	<i>Provision</i>	<i>Commenter</i>	<i>Comment</i>	<i>Response</i>
480-07-620(2)	Allows one commissioner, the executive secretary or director or any ALJ to sign complaints for emergency adjudications.	Verizon	Defer to delegation rule making.	Reject. The topic could be addressed exclusively in the delegation rule making; the topic is also appropriate in this rule.
480-07-650 (4)(d)	Allows the commission to convert an enforcement petition to a complaint when the scope exceeds limits of petition process.	Verizon	Suggests adding statutory citation for a complaint proceeding, for clarity.	Accept.
480-07-650(1)	Limits time span of notice of pet. for enforcement of ICA.	Verizon	Supports.	We appreciate Verizon's comments.
480-07-700 (supp CR-102 proposal)	Multiparty settlement.	Verizon	Proposes language to require multiparty settlers to offer settlement to nonsettling parties.	Does not seem to be an issue. No cases apparent where settling parties excluded; nonsettlers always may accept someone else's proposal.
480-07-700 (supp CR-102 proposal)	Settlement rule.	NWEC	Supports as a constructive step.	We appreciate NWEC's comments.
480-07-700 (supp CR-102 proposal)		Public counsel	Supports strongly. 1) Amend: Identify rather than define whether a dispute exists. 2) Clarify "parties" for early initial conf. 3) Public counsel, supported by NWEC and the Energy Project, requests the commission revise WAC 480-07-700 (3)(b) to require notice of early initial settlement conferences to all parties to the last rate case, in addition to those who have filed a petition to intervene. Public counsel states parties may only learn of a proceeding because of a notice of prehearing conference. Public counsel asserts that potential parties with legitimate interests at stake may not otherwise become aware of the early initial settlement conference.	1) Amend "identify" rather than define whether dispute exists. 2) Refine language relating to party for purposes of notice (PC and WITA). 3) The language concerning notice of early initial settlement conferences is modified to address this concern.

<i>Rule section</i>	<i>Provision</i>	<i>Commenter</i>	<i>Comment</i>	<i>Response</i>
			4) Mr. ffitch expressed at hearing his concern about the proposed language in WAC 480-07-700 (3)(b) relating to providing notice of early initial settlement conferences. Mr. ffitch stated concerns that persons who may want to be involved in an early initial settlement conference may not have notice of a filing, may not have filed a petition to intervene, and may not file one until just prior to the pre-hearing conference. Mr. ffitch suggested modifying the proposed rule to require the party initiating an early initial settlement conference to also notify persons involved in the last rate case and require these persons to file a petition to intervene prior to the early initial settlement conference. Mr. ffitch stated that even if the prior case was dated, notice to those who participated would be better than no notice at all.	4) The commission agrees it is appropriate to modify the proposed rule to ensure notice to all possible interested persons by providing notice to persons who were parties in the most recent similar proceeding involving the same filing party.
480-07-700 (supp CR-102 proposal)	Settlement rule.	Qwest	Opposes changes proposed via supplemental CR-102, supports PSE comments in opposition. Supports version of rules circulated on July 5, 2006.	The changes proposed in the supplemental CR-102 together with the changes we adopt in this order address valid concerns about notice of and participation in settlement conferences. The language we adopt in this order also addresses concerns Qwest has raised.
480-07-700 (supp CR-102 proposal)	Settlement rule. Settlement conference defined.	PacifiCorp	Opposes changes proposed via supplemental CR-102. Too broadly defined. Goes beyond prior comments (aimed at staff). Little practical effect except at early stages.	The changes proposed in the supplemental CR-102 together with the changes we adopt in this order address valid concerns about notice of and participation in settlement conferences.
480-07-700 (supp CR-102 proposal)		ICNU	1) Supports, with reservations. 2) Concerned about apparent gap between prehearing conference and initial settlement conference. Rule should clearly close the door.	1) We appreciate ICNU's comments. 2) There is no gap - at the pre-hearing conference, parties can set a settlement conference for any time they wish.

<i>Rule section</i>	<i>Provision</i>	<i>Commenter</i>	<i>Comment</i>	<i>Response</i>
480-07-700 (supp CR-102 proposal)		R. Finnigan	<p>1) Fears settlement discussions re small co's will be harmed. No need to involve public counsel because PC does not participate in those cases.</p> <p>2) Prior customer intervenors are a concern - should they be included?</p>	<p>1) Limit notice requirement for public counsel participation. PC merely needs to be invited, not required to participate, and can be excused from notice if they won't appear.</p> <p>2) Prior intervenors should be included in notice, but should be required to seek intervention to participate.</p>
480-07-700 (supp CR-102 proposal)		PSE	<p>1) Generally opposes settlement amendments as unneeded and unwise.</p> <p>2) Limit intervenor participation to issues involving the interests that supported their intervention.</p> <p>3) Exclude discussions between staff auditors and company staff because many small issues get resolved then.</p>	<p>1) The changes proposed in the supplemental CR-102 together with the changes we adopt in this order address valid concerns about notice of and participation in settlement conferences.</p> <p>2) Accepted as a reasonable limitation.</p> <p>3) Rejected as impractical to enforce.</p>
480-07-700 (supp CR-102 proposal)		Commission regulatory staff	<p>1) Expresses support for the July 5 suggested change to include the words "initial or early initial" in subsection (3).</p> <p>2) Staff also suggests language to clarify the time period within which the provisions of subsection (3)(b) apply. While adjudication may not begin until the commission suspends a matter at an open meeting or issues a notice of hearing, we provide for early initial settlement conferences to address concerns raised by stakeholders in this proceeding.</p> <p>3) Staff also suggests we eliminate the customer notice provision, asserting this will have little practical effect. Similar to staff's clarifications to subsection (3), we include the provision to address stakeholder concerns.</p>	<p>1) We appreciate staff's comments.</p> <p>2) Reject. Staff's proposed language as it would eliminate the need to address early initial settlement conferences. The language we adopt in this order to allow early initial settlement conferences addresses valid concerns about notice and participation in settlement conferences.</p> <p>3) Reject. The customer notice provision will have some effect in smaller cases where customers have actually participated.</p>
480-07-700(3) (supp CR-102 proposal)	Early initial conference.	Qwest	Preconference barrier would allow one party to hold others hostage.	There is no barrier. A party wanting to start negotiations with another need merely provide the notice.

<i>Rule section</i>	<i>Provision</i>	<i>Commenter</i>	<i>Comment</i>	<i>Response</i>
480-07-700(3) (supp CR-102 proposal)	Early initial conference.	PacifiCorp	<p>1) Settlement discussions this early are so seldom that there is little use.</p> <p>2) "Discussions" not defined - is it not a conference?</p> <p>3) Fourteen days' notice is burdensome and would exclude some participants.</p> <p>4) PacifiCorp proposes minor edits, including deleting the word "discussions" in the second sentence of subsection (3), and replacing the word "entity" with "party or person" in subsection (3)(b) to be consistent with the language in subsection (3).</p>	<p>1) The language we adopt in this order addresses valid concerns about notice of and participation in settlement conferences.</p> <p>2) Accept. We will amend to use the term "conference."</p> <p>3) Accept. We will revise the language to allow ten days' notice.</p> <p>4) These suggested edits are appropriate and are adopted.</p>
480-07-700(3) (supp CR-102 proposal)	Settlement conference defined: "communications intended to resolve disputes."	WITA	Settlement conference is too broadly defined. Bars finding out whether a subject is negotiable.	The proposed topic seems proper - it is not a communication that is intended to resolve a dispute, but only to determine whether the subject should be addressed. Clarifications appropriate.
480-07-700(3) (supp CR-102 proposal)	Requires notice of initial settlement agreement.	Verizon NW	Opposes. (3) as overly formulaic and would prevent inquiries.	Reject in part. The language should not prevent inquiries. Clarification appropriate.
480-07-700 (3)(b) (supp CR-102 proposal)	Early initial settlement conference.	Verizon NW	<p>Opposes. Requires too many participants, too much notice, too much precision.</p> <p>In addition to editorial proposals, WITA recommends the rule provide that an early initial settlement conference may be rescheduled on less than ten days' notice.</p>	<p>Reject in part. Only notice is required. Clarified to make clear that participation is voluntary.</p> <p>The additional language is not necessary. The process for an early initial settlement conference applies only to the first such conference.</p>
480-07-700 (3)(b) (supp CR-102 proposal)	Early initial settlement conference.	The Energy Project	Mr. Roseman raised similar concerns to those raised by Mr. ffitch. Mr. Roseman asserted that large national organizations such as the consumer groups he represents rarely make a decision to intervene in a pending case until just prior to the prehearing conference. Mr. Roseman expressed concern that an early initial settlement conference might preclude full participation at the earliest possible time when all issues could	Accept. The commission agrees it is appropriate to modify the proposed rule to ensure notice to all possible interested persons by providing notice to persons who were parties in the most recent similar proceeding involving the same filing party.

Rule section	Provision	Commenter	Comment	Response
			be addressed. Mr. Roseman asserted that without effective notice of an early initial settlement conference his clients would be denied an opportunity to participate.	
480-07-883	Provides that acceptance of a noncompliant compliance filing does not validate the noncompliant provisions.	Verizon	Suggests that later rejection should be prospective only. 116 Wn.App. 761, 774; 152 Wn.2d 195.	Reject. Treat on a case-by-case basis. The cases say what they say, and will guide commission actions.

**APPENDIX B
REVISED CHAPTER 48-07 [480-07] WAC
ORDER**

21 THE COMMISSION ORDERS: WAC 480-07-110, 480-07-125, 480-07-140, 480-07-141, 480-07-143, 480-07-145, 480-07-150, 480-07-160, 480-07-220, 480-07-340, 480-07-360, 480-07-380, 480-07-395, 480-07-400, 480-07-405, 480-07-423, 480-07-460, 480-07-470, 480-07-510, 480-07-520, 480-07-620, 480-07-650, 480-07-700, 480-07-710, 480-07-730, 480-07-750, 480-07-883, 480-07-900, 480-07-910, and 480-07-930 are amended to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

22 This order and the rules set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED and effective at Olympia, Washington on July 26, 2006.

Washington utilities and transportation commission
Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-110 ((Exceptions)) Exemptions from and modifications to ((the rules in this chapter)) commission rules; ((special)) conflicts involving rules. (1) **Exemptions and modifications.** The commission may grant an exemption from or modify the application of ((these)) its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes. The commission may modify the application of procedural rules in this chapter during a particular adjudication consistent with other adjudicative decisions, without following the process identified in subsection (2) of this section.

(2) Process.

(a) How to request an exemption to or modification of a rule. To request a rule exemption or modification, a person must file with the commission a written petition identifying

the rule for which an exemption is sought, and provide a full explanation of the reason for requesting the exemption.

(b) Commission process. The commission will assign the petition a docket number, if it does not arise in an existing docket, and will schedule the petition for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the open meeting or hearing when the commission will consider the petition.

(c) Standard for consideration. The commission may consider whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

(d) Disposition. The commission will enter an order granting or denying the petition, or setting it for hearing.

~~((2) Special))~~ **(3) Conflicts involving rules.** ~~((When))~~ In the event of conflict between these rules and statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, ((apply)) applicable to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings, those statutes or special rules govern ((if they conflict with the rules in this chapter)).

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-125 Physical address; telephone; ((facsimiles)) fax; web portal; e-mail; internet. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the commission's internet site, in person at the commission offices, or by a telephone call to the commission's main public number.

((Physical address; address for U.S. mail or hand delivery	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
---	---

Telephone (general)	360-664-1160
Telephone (commission records center)	360-664-1234
Telefacsimile (commission records center)	360-586-1150
Electronic mail (commission records center)	records@wute.wa.gov
Internet	www.wute.wa.gov))

Location and mailing address:	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone:	
Public number	360-664-1160
Records center number	360-586-1234
Consumer inquiries, comments and informal complaints	1-800-562-6150
Fax:	
Public and records center	360-586-1150
Web portal	www.wutc.wa.gov/e-filing
Records center e-mail	records@wutc.wa.gov
Internet web site	www.wutc.wa.gov

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-140 Communicating with the commission. (1) **Scope of rule.** This rule includes general requirements for effective communication with the commission. ((Communications that concern rule-making proceedings, adjudicative proceedings, or public records requests must also conform to specific requirements as follows:

(a) ~~In rule-making proceedings, WAC 480-07-143 and Part II of this chapter.~~

(b) ~~In adjudicative proceedings, WAC 480-07-145 and Part III of this chapter.~~

(c) ~~For public records requests, chapter 42.17 RCW and chapter 480-04 WAC.~~)

The commission encourages use of the commission's records center web portal for filing and submitting documents with the commission. Customers of regulated companies who have a complaint about their service provider are encouraged to contact the commission as described in WAC 480-07-910. Anyone wishing to comment on a matter before the commission may submit comments by telephone, letter, fax, e-mail or by using the comment form available on the commission's web site.

(a) **Electronic filing, limitations.** You may *file* documents electronically using the commission's records center web portal (see WAC 480-07-125) if you are submitting documents that are not part of an adjudicative proceeding. Examples include registration applications, tariffs, contracts,

price lists, rule-making comments, and comments on open meeting items. Electronic filing means the commission accepts the electronic version of the document as the official filing and does not require a paper copy of the documents.

(b) **Electronic submission, adjudications.** You may *submit* documents electronically using the commission's records center web portal (see WAC 480-07-125) or e-mail if you are submitting documents in an adjudicative proceeding. Electronic submission means the commission allows submission of electronic versions of documents, but requires a paper copy of the document as the official filing.

(c) **Electronic filing of public records requests.** You may file requests for public records electronically using the commission's records center web portal (see WAC 480-07-125). You do not have to file a paper copy of the public records request if it is filed electronically.

(d) **Use of e-mail for electronic filing or submission.** The commission encourages you to use its records center web portal for filing or submitting electronic documents, because it is more reliable and secure than e-mail. If you are unable to use the records center web portal to file or submit documents, the commission will accept a filing or submission received via e-mail addressed to the records center.

(e) You must also comply with other requirements when submitting certain documents, as shown below.

Submissions in these dockets or filings:	Must comply with these rules:
Rule-making dockets	This rule, WAC 480-07-143, and Part II of this chapter
Adjudicative dockets	This rule, WAC 480-07-145, and Part III of this chapter, <i>plus</i> any requirements in the specific adjudication
Utility tariffs and telecommunications price lists and contracts	This rule, chapter 480-80 WAC, and WAC 480-07-14X
Transportation tariffs and time schedules	This rule, WAC 480-07-14X; and
(i) For auto transportation companies	Chapters 480-30 and 480-149 WAC;
(ii) For commercial ferry companies	Chapters 480-51 and 480-149 WAC;
(iii) For solid waste collection companies	Chapter 480-70 WAC
For public records requests	Chapter 42.17 RCW and chapter 480-04 WAC

(2) **Content of letters and ((electronic mail)) e-mail messages to the commission.** Letters and ((electronic mail)) e-mail messages to the commission should include only one subject.

(3) **Where to send letters and ((electronic mail)) e-mail messages.** WAC 480-07-125 includes the commission's mailing address and other contact information current at the time of rule publication. Persons who communicate

with the commission are encouraged to do so by ~~((electronic mail))~~ e-mail to the commission's records center. The commission's internet site includes current and additional contact information.

(4) **Cover letters.** Persons submitting or filing documents with the commission must include a cover letter with the filing, unless the letter or document is one page and includes the information identified in subsection (5) of this section.

(5) **Identification of sender; identification of permit, license, or certificate; identification of proceeding.** The following requirements will make sure your message to the commission is delivered promptly to the person or persons who need to receive it, and to allow a prompt response. If you do not include the necessary information, we may not be able to promptly handle your message or provide a prompt response.

(a) **Identification of sender.** All persons who communicate with the commission must provide their full name and are asked to provide a mailing address, ~~((and are asked to provide))~~ telephone, ~~((facsimile, and electronic mail))~~ fax, and e-mail address to assist the commission in responding. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, and the name of the entity on whose behalf the communication is sent, in addition to the contact information described above.

(b) **Identification of permit, license, or certificate held by sender.** Any person or entity that holds a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) **Identification of proceeding.** Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding, if known.

~~((5))~~ (6) **Electronic file format requirements.** The commission requires electronic versions of all documents filed with the commission, including confidential versions of documents that include confidential information.

(a) **Acceptable media.** ~~((Electronic submissions may be provided by electronic mail -))~~ You may submit documents electronically through the commission's records center web portal, by e-mail ~~((-))~~ file attachment addressed to the commission's records center, or submitted to the records center on a 3 1/2 inch IBM formatted high-density disk or compact disc (CD) ~~((- The submission must be))~~ labeled with the docket number of the proceeding, if a number has been assigned, the name of the ~~((party))~~ entity and the name of the individual submitting the document, and a description of the contents (e.g., "direct evidence," "motion to dismiss," etc.) ~~((and the date filed))~~.

(b) **Acceptable format.** ~~((The commission prefers to receive))~~ Electronic versions of all documents ~~((in Word or WordPerfect file format supplemented by a copy in Adobe Acrobat (i.e., pdf) file format created directly from the word processing software used for the original document)), includ-~~

ing confidential versions of documents that include confidential information, must be filed in .pdf (Adobe Acrobat) format, supplemented by a separate file in .doc (MS Word), .wpd (WordPerfect), .xls (Excel), or .ppt (Power Point) format, so that spreadsheets displaying results of calculations based on formulas include all formulas, and do not include locked, password protected or hidden cells.

(i) The following documents are exempt from the requirement in (b) of this subsection for formatting other than .pdf (Adobe Acrobat):

(A) Documents not created by, for, or on behalf of a party to or a witness in the proceeding for which no version in the required formatting is available; and

(B) Published, copyrighted material and voluminous material not originally prepared in the required format.

(ii) Any person who requests a document to be provided in a format other than .pdf (Adobe Acrobat), whose request is denied, may request relief from the commission.

(iii) Redacted versions of electronic documents that mask confidential information should be filed exclusively in .pdf format. Parties ~~((that))~~ who cannot create Adobe Acrobat files directly ~~((are requested to))~~ must provide a copy of the document converted to Adobe Acrobat via scanning or other available technology.

(c) **File naming conventions.** Electronic files must be named in a way that describes the file contents. Parties should use the format identified in the following examples, identifying the docket number, the nature of the document, and the party submitting it:

Testimony	UE-010101 Smith direct (name of party) (date) UT-020202 Jones rebuttal attachment 1 (name of party) (date)
Motions	UG-030303 motion to dismiss (name of party) (date) UW-040404 answer to motion to dismiss (name of party) (date)
Correspondence	TG-010203 (name of party) request for continuance (date)

(d) **Acceptable organization.** Each party must submit all files to meet a single deadline at the same time and in the same message or diskette. When a party submits two or more files at the same time, the files must be organized into folders, and the party must provide a printed index. The index may be included in a cover letter or provided as an attachment to a cover letter. The index also must be provided in the form of an electronic file.

Example:

Folder and diskette name	I. U-020304 (name of party) direct evidence (date)
Subfolders	A. U-020304 (name of party) (name of witness) direct (date) B. U-020304 (name of party) (name of witness) direct (date)

- Files
1. U-020304 (name of witness) direct (name of party) (date)
 2. U-020304 (name of witness) direct att 1 (name of party) (date)

NEW SECTION

WAC 480-07-141 Receiving and filing a document is not acceptance. The commission assigns docket numbers to a filing or proceeding and receives documents under docket numbers for administrative purposes and not to denote legal acceptance. Receipt of a document for filing in a docket, or the assignment of a docket number to a document, does not mean that the commission has accepted the document, or waived any deficiencies that would allow the commission to reject the document. After a receiving a document, the commission may address any deficiencies in the document, may require the document to be resubmitted with deficiencies corrected, or may reject the document.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-143 Submitting documents in rule-making proceedings. (1) **Scope of rule.** This section governs communications to the commission in rule-making proceedings ~~((including letters, electronic mail messages, comments, and other documents))~~. These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

(2) **Submitting comments.** All written comments submitted in a rule making must be addressed to the commission secretary.

(3) **Methods for delivering comments and other communications.** The commission encourages communication through the records center web portal rather than e-mail or fax.

(a) **Through the web portal.** A person may submit comments in rule-making proceedings by sending them to the commission through the records center web portal, without providing a paper copy.

(i) **How to use the web portal.** Persons using the web portal to submit filings should first view the following web page: www.wutc.wa.gov/e-filing.

(ii) **When deemed received.** A document submitted through the web portal is deemed received only when the sender receives notification from the commission that the document has been received. Documents received electronically through the commission's records center web portal after 5:00 p.m. are not considered officially received or filed until the next business day.

~~((a))~~ (b) **By ~~((electronic mail)) e-mail message or ((telefacsimile)) fax.~~** A person may submit comments in rule-making proceedings by ~~((electronic mail message))~~e-mail~~((s))~~, e-mail file attachment, or ~~((telefacsimile)) fax~~ transmission without ~~((supplementation by))~~ providing a paper copy.

(i) **Where to send electronic documents.** All ~~((electronic mail)) e-mail~~ and ~~((telefacsimile)) fax~~ transmissions made under this rule should be directed to the commission's records

center as noted in WAC 480-07-125. Courtesy or informational copies may be sent to other ~~((electronic mail)) e-mail~~ addresses or ~~((telefacsimile)) fax~~ numbers for individual commission staff members. When a person files a document by e-mail or ~~((telefacsimile)) fax~~, the document should not be sent more than once except to cure transmission or receiving errors.

(ii) *When deemed received.* A document submitted by ~~((electronic mail or telefacsimile)) e-mail or fax~~ is deemed received only when the entire ~~((electronically mailed)) document sent via e-mail~~ successfully reaches the commission's records center electronic mailbox or ~~((telefacsimile)) fax~~ machine. Documents wholly or partly received ~~((electronically)) via fax or e-mail~~ in the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

~~((b))~~ (c) **By mail or hand delivery (e.g., courier delivery service).** A person may submit comments or otherwise communicate with the commission concerning rule-making proceedings by mail or by hand delivery (e.g., courier delivery service).

(i) *When deemed received/ filed.* A document submitted in a rule-making proceeding by mail or hand delivery is deemed received or filed when physically received by the commission records center and stamped with the date and time. Documents delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(ii) *Electronic file supplement.* The commission encourages parties who submit written comments in rule-making proceedings to supplement any paper filing delivered by mail or courier with an electronic version, as specified in WAC 480-07-140(5).

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-145 Filing documents in adjudicative proceedings. (1) **Scope of rule.** This section governs communications to the commission by parties in adjudicative proceedings ~~((including letters and electronic mail messages, pleadings, and other documents))~~. These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140 and any requirements in a specific adjudication.

(2) **Mail or hand delivery service is required for all documents.** Parties to adjudicative proceedings before the commission must file original, signed documents and paper copies by mail or hand delivery (e.g., courier delivery service) as provided in this rule to satisfy official filing requirements and meet the commission's administrative needs. The commission may provide for the expedited exchange of documents among parties and the commission by ~~((electronic mail)) e-mail~~ and ~~((telefacsimile)) fax~~ transmission when necessary for process requirements in individual adjudicative proceedings.

(a) **When deemed received/ filed.** A document submitted in an adjudicative proceeding is officially received for filing

only when the original document, including the required certificate of service under subsection (6) of this section, and the required number of copies, are physically received at the commission's records center by mail or in-hand delivery and stamped with the date and time. The date-stamped time will determine whether a document meets any deadline that applies and will determine the timing of any later deadlines based on filing. Documents that are delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(b) **Exception for documents offered and received at hearing.** When authorized by the presiding officer in an adjudicative proceeding before the commission, a document may be officially received for purposes of the proceeding when the presiding officer receives the document for the record at hearing. The presiding officer may also require that a copy be filed in the commission records center.

(c) **Where to mail/deliver.** All written communications mailed or hand-delivered to the commission must be addressed to the commission's secretary at the address specified in WAC 480-07-125.

(d) **Filings must be supplemented by an electronic version of the document.** Parties filing pleadings, motions, pre-filed testimony and exhibits, and briefs must supplement their filing by submitting the document in electronic form, as specified in WAC 480-07-140(5), unless excused from the obligation by the presiding officer.

(3) **Number of copies; failure to file sufficient number of copies.**

(a) **Number of copies.** Unless the commission specifies a different number of copies, every pleading, motion, response, and brief submitted to the commission by mail or courier must be filed with twelve copies. A party for whom providing the required number of copies would be a hardship may describe the hardship and request permission to file fewer copies.

(b) **Failure to file sufficient number of copies.** If a person files fewer than the required number of copies of a document, the commission may reject the filing or the commission may make the additional copies for distribution and processing within the commission. If the commission makes copies to meet the total number required, the commission will bill the filing person at a rate of thirty cents per page, plus sales tax. This rate compensates for the loss of the worker's attention to assigned duties, the unscheduled use of equipment, and the cost of materials.

(4) **Filing and service are separate requirements.** Filing documents with the commission under this rule and service of the documents to parties under WAC 480-07-150 are both required in all adjudicative proceedings. Filing a document with the commission does not constitute service upon the assistant attorney general or any other party. Likewise, service upon the assistant attorney general does not constitute a filing with the commission.

(5) **Service and certificate of service are required.** Filing a pleading, motion, response, or brief with the commission in an adjudicative proceeding is not complete unless service has been made upon all parties to the proceeding pursuant to WAC 480-07-150. Service must be confirmed by

submitting with the filing a valid certificate of service, or its equivalent, as provided in WAC 480-07-150(9).

(6) ~~((Electronic mail or telefacsimile))~~ **Web portal, e-mail or fax transmission may be used to expedite the filing process, when authorized.**

(a) ~~When permitted; paper copy ((supplementation is)) required.~~ The presiding officer may, ~~((when necessary because of the demands of schedule or other sufficient reason))~~ at a prehearing conference or by notice or order, provide a one-day extension of the paper filing requirement by authorizing ~~((electronic mail))~~ submission through the web portal, e-mail or ((telefacsimile)) fax for delivery of documents on the date established for paper filing under the procedural schedule in an adjudicative proceeding, subject to the following conditions:

(i) **Timing.** Electronic submissions must be completed by 3:00 p.m. on the date established for filing. The commission encourages the use of the web portal rather than via e-mail or fax.

(ii) ~~Paper copy ((supplementation is)) required.~~ The commission must physically receive the original and required number of copies by 12:00 noon on the first business day following the filing deadline established under the procedural schedule.

~~((ii))~~ (iii) **Exact copy is required.** The original and paper copies of the document delivered to the commission on the day following the filing deadline must conform exactly in form and content to the electronic version or the document will not be considered to have been timely filed and may be rejected on that basis.

~~((iii))~~ (iv) **Authorization for electronic submission must be indicated.** ~~((A))~~ If you submit electronic documents ~~((submitted))~~ to the commission through the commission's records center web portal, by ~~((electronic mail))~~ e-mail message or ~~((facsimile))~~ by fax transmission on a filing deadline date without providing the original document by that date, you must ~~((be accompanied by))~~ include an electronic message or ~~((facsimile))~~ fax cover sheet that states the ~~((basis for))~~ authority to ~~((effect timely filing and service))~~ submit the document electronically through the web portal, by ~~((electronic mail))~~ e-mail or ~~((telefacsimile))~~ fax transmission without simultaneously filing a paper copy.

~~((iv))~~ (v) **Simultaneous delivery to all parties is required.** All electronic documents submitted to the commission through the web portal, by ~~((electronic mail))~~ e-mail message or ~~((facsimile))~~ fax transmission on a filing deadline date must be simultaneously delivered to all parties by ~~((electronic message))~~ e-mail or ~~((telefacsimile))~~ fax. At the discretion of the presiding officer, you may be required to provide courtesy copies via e-mail to the presiding officer, commission staff, or others. Service by other required means is not excused, subject to the requirements of WAC 480-07-150.

(b) ~~Where to send ((electronic mail)) web portal or e-mail message or ((telefacsimile)) fax transmission.~~ Persons using the commission's records center web portal to submit filings electronically should access the following web page: www.wutc.wa.gov/e-filing. All ((electronic mail)) e-mail and ((telefacsimile)) fax transmissions made under this rule should be directed to the commission's records center. Cour-

tesy or informational copies may be sent to other ~~((electronic mail)) e-mail~~ addresses ~~((or telefacsimile numbers))~~ for ~~the presiding officer or other individual commission ((staff members)) employees~~. When a person ~~((files)) submits~~ a document ~~through the web portal~~, by ~~((telefacsimile or)) e-mail or fax~~, the document should not be sent more than once except to cure transmission or receiving errors.

(c) **When deemed received.** A document submitted through the commission's records center web portal is deemed received only when the sender receives notification from the commission that the document has been received. A document submitted by ((electronic mail or telefacsimile)) e-mail or fax is deemed received when the entire document successfully reaches the commission's records center electronic mailbox or ((telefacsimile)) fax machine. Documents submitted electronically are not considered officially received or filed until the commission receives the original and paper copies the next business day, when they are stamped with the date and time received.

(7) **Additional rules regarding adjudicative proceedings.** Rules relating to general rate proceedings (subpart B of this chapter) and abbreviated adjudicative proceedings (subpart C of this chapter) govern filing requirements in those proceedings.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-150 Service of documents in adjudicative proceedings. (1) **Service defined.** Service means sending or delivering, in accordance with ~~((pertinent law)) RCW 34.05.010(19)~~ and this rule, documents relating to commission adjudications, to parties and any other persons to whom service may be required by statute. Service includes the formal exchange of documents among parties to adjudicative proceedings.

(2) **Designation of person to receive service.**

(a) Each party in an adjudicative proceeding must designate one person to receive service of documents relating to the adjudication.

(b) When any party has appeared by an attorney or other authorized representative in a proceeding before the commission, the party must name the representative, or one of the representatives if there is more than one, to receive service of documents. Service on the representative is valid service upon the party, except as provided by law. When an individual party appears on his or her own behalf, she or he must be the person to receive service.

(c) The commission may order different arrangements for service in individual proceedings.

(3) **Person to receive service of orders.**

~~((a))~~ The commission will serve orders in adjudicative proceedings upon the party's representative and also on the party. Therefore, all parties must provide ~~((their)) the~~ name~~(s)~~ and mailing address~~(es)~~ of a person for purposes of direct service on the party.

~~((b)) In addition, parties that are a partnership, corporation, association, governmental subdivision or other entity other than an individual person must designate one individual~~

~~person within their business, government unit, or organization to receive service of commission orders.~~)

(4) **Contact information.** Each party must supply the following information about every individual that it names to receive service:

- (a) Name.
- (b) Mailing address.
- (c) Telephone number.
- (d) ~~((Facsimile)) Fax~~ number, if any.
- (e) ~~((Electronic mail)) E-mail~~ address, if any.
- (f) Relationship to party (e.g., executive director, etc.).

(5) **Waiver of service by statutory means.**

(a) A party may choose to waive service of process by means of personal delivery, United States mail or parcel delivery service, in whole or in part, and elect to receive service by electronic means.

(b) Waiver must be made in writing, filed with the commission, and must specify alternative methods of communication to effect service. Alternates may include ~~((telefacsimile or electronic mail)) fax or e-mail~~.

(c) Waiver excuses other parties and the commission from the obligation to use methods of service specified in rule or statute.

Neither the commission nor any party is foreclosed from making service by statutory means upon a party ~~((that)) who~~ has waived such service, and timely service by a method specified in the statute will satisfy legal requirements for service when it is used.

(6) **Service by parties.** Parties must serve documents by delivering one copy to each other party by one of the following methods:

- (a) In person.
- (b) By mail, properly addressed with first class postage prepaid.
- (c) By delivering to a commercial parcel delivery company and making or arranging payment of the pertinent fee.
- (d) By ~~((telefacsimile)) fax~~ transmission, if other forms of service are waived.
- (e) By ~~((electronic mail)) e-mail~~, if other forms of service are waived.

(7) **Service by commission.** All notices, complaints, petitions, findings of fact, opinions, and orders required to be served by the commission may be served by one of the following methods:

- (a) In person.
- (b) By mail, properly addressed with first class postage prepaid.
- (c) By commercial parcel delivery company.
- (d) By ~~((telefacsimile)) fax~~ transmission, when a paper copy is simultaneously mailed or tendered to a commercial parcel delivery company.
- (e) By ~~((electronic mail)) e-mail~~ if originals are simultaneously mailed or sent by commercial parcel delivery company.

(8) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, service is complete as follows:

(a) Service by mail is complete when a copy of the document is properly addressed, stamped, and deposited in the United States mail.

(b) Service by commercial parcel delivery is complete when the parcel delivery company accepts a copy of the document for delivery.

(c) Service by ~~((telefacsimile))~~ fax transmission is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by ~~((telefacsimile))~~ fax transmission, and the document being served has been entirely received in the recipient's ~~((telefacsimile))~~ fax machine.

(d) Service by ~~((electronic mail))~~ e-mail is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by ~~((electronic mail))~~ e-mail, and the document being served has been entirely received at the recipient's designated ~~((electronic mail))~~ e-mail address.

(e) Proof of service by electronic means. Parties effecting service by electronic means are encouraged to secure electronic return receipts or otherwise confirm successful delivery.

(9) **Certificate of service.** Each person filing a pleading, motion, response, or brief with the commission must include with or on the original of the document either an acknowledgment of service or the following certificate:

"I hereby certify that I have this day served this document upon all parties of record in this proceeding, by (state the authorized method of service selected under WAC 480-07-150)"

Dated at this day of

(signature of person who served the document)

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-160 Confidential information. The commission will provide special handling and limited access to confidential information submitted in compliance with this rule. This rule applies to any information submitted under a claim of confidentiality. See also, WAC 480-07-420 regarding protective orders in adjudicative proceedings.

(1) **Implementation.**

(a) **Designated official.** The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter 42.17 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

(b) **Provider.** Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule is a "provider," as that term is used in this rule.

(c) **Requester.** Any person who submits a request for public records under the Public Records Act, chapter 42.17 RCW, or a data request in an adjudicative proceeding is a "requester," as that term is used in this rule.

(2) **Confidential information defined.** Confidential information is information that meets any of the following criteria:

(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.17 RCW.

(b) Information protected under the terms of a protective order in an adjudicative proceeding.

(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095.

(3) **How to designate and seek protection of confidential information under this section.** A provider may claim the protection of this rule only by strict compliance with the following requirements. Any failure to comply with these requirements may result in the submission not being accepted as one including confidential information ~~((and its return to the provider for correction and resubmission))~~.

(a) **Contents.** The provider must submit the claim of confidentiality in writing, in the same form (i.e., paper or electronic) and at the same time the information claimed to be confidential is submitted. The provider must state the basis upon which the information is claimed to be confidential under this rule, and must identify any person (other than the provider) that might be directly affected by disclosure of the confidential information.

(b) **Marking.**

(i) **Paper copies.** When the document is in paper format, and there is no protective order in place, the provider must clearly mark each copy with the designation "confidential per WAC 480-07-160." The provider must place this mark on the first page of a multipage document and each specific page where the provider claims there is confidential information.

(ii) **Electronic copies.** When the document is in electronic format, such as an ~~((electronic mail))~~ e-mail message, or a word processing or spreadsheet file, the "confidential per WAC 480-07-160" mark must be inserted in the e-mail message or on the disk or diskette, on the first page in the file and on each page that the provider claims contains confidential information. The provider must follow the requirements in (c) of this subsection and the format requirements in WAC 480-07-140(6) for submitting electronic documents.

(iii) **Protective order, if any, must be cited.** If the provider submits confidential information under the provisions of a protective order, the "confidential" ~~((mark))~~ identification on the disk, diskette, or e-mail, on the first page of the document and each page that includes confidential information must state: "Confidential per protective order in WUTC Docket ~~((No.))~~ [insert docket number]." When the provider submits confidential information in an electronic format, the provider must mark the document as with a paper copy and follow the format requirements in WAC 480-07-140(6) for submitting electronic documents.

(c) **Unredacted version under seal; redacted version.** The provider must submit a complete version of the document as to which confidentiality is claimed ~~((as a complete document))~~ (unredacted version) and a complete version of the document with the information claimed to be confidential masked (redacted version). If the provider submits a document under a claim that the entire document is confidential, the provider may submit only the first page of the redacted

version if the page indicates that the entire document is claimed to contain confidential information.

(i) Sealing and labels. The redacted version must be so labeled and submitted along with a set of any confidential documents. The confidential unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping. ~~((The unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping.))~~ A party submitting multiple confidential documents must collate the documents into sets and, to the extent feasible, must enclose each set of confidential documents in a separate envelope and each set of highly confidential documents for filing in a ~~((single))~~ separate envelope.

(ii) Marking. Each page of the unredacted version that includes information claimed to be confidential must be printed on yellow or canary paper with the confidential information ~~((marked by contrasting highlighter or, if))~~ clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the confidential information in a box or border, or setting the text off with asterisks). Similarly, each page of the unredacted version that contains information designated highly confidential under a protective order, must be printed on light blue paper with the highly confidential information ~~((marked by contrasting highlighter. The redacted version must be submitted in the same manner as a document as to which confidentiality is not claimed))~~ clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the highly confidential information in a box or border, or setting the text off with asterisks). The redacted version will be available for public disclosure if requested. The redacted and unredacted versions must have the same pagination and line numbering.

(iii) Number of copies. The provider must submit an original and *three* redacted copies of each confidential or highly confidential document and an original and *twelve* copies of the unredacted version of each confidential or highly confidential document, unless the commission has required a different number of copies to be filed. If a document includes both confidential and highly confidential information, the provider may submit unredacted copies including both the confidential and highly confidential information in the same document.

(4) **Challenges to claims of confidentiality.** The commission or a party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure under chapter 42.17 RCW, RCW 80.04.095, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

(5) **Requests for "confidential" information.** Subject to subsections (6) and (7) of this section, the commission will release information designated confidential in response to a request properly filed under the following requirements:

(a) The requester must submit a written request to the commission's secretary on a form provided by the commission or in a letter containing equivalent supporting information, including the requester's name and address and the name and address of any organization on whose behalf or for whose benefit the request is being made. The requester must state whether the information sought is to be used for a commercial purpose.

(b) The request must be sufficiently specific to allow the secretary to readily identify the document or other material that contains the requested information. Following receipt of a request for confidential information, the secretary will notify the requester of any deficiency in the request. The requester is required to correct the request and resubmit it pursuant to this rule. The commission will take no action pending resubmission.

(c) If a requester wants copies of any documents identified in response to a request, the requester must make arrangements with the commission's secretary to pay the designated copying fees, if any.

(6) **Informal resolution.** When the secretary and the requester agree that the secretary can satisfy the requester's need for information ~~((can be satisfied))~~ without disclosing confidential information, the secretary will make the information available.

(7) **Notice of request for information designated confidential; release of information designated confidential.** The commission will provide written notice of any request for information designated confidential to the provider and any person identified by the provider as a person who might be directly affected by release of the information. This is to permit any person asserting confidentiality or who might be affected by the release of the information to invoke the statutory procedures for securing a court order to protect the records from disclosure or to take similar steps in compliance with a protective order in an adjudicative proceeding. The commission will issue such notice not more than two days after the requested materials are located and it determines that they contain information claimed to be confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.

If the provider consents in writing to the release of the information, or does not restrain disclosure by way of court order within ten days following notice, the commission will consider the information public, remove the confidential designation from its files, and release the information to the requester.

(8) **Judicial intervention by the commission.** The commission need not assist any person in seeking or resisting judicial intervention, but may participate in any such proceeding.

(9) **Designation or redesignation of confidential information in adjudications.** At the conclusion of an adjudication in which confidentiality was asserted as to documents or portions of the record, the party originally asserting confidentiality must, no later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record, do the following:

(a) Verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and sub-

mit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final and will be changed only if the party asserting confidentiality voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the designation that is least restrictive to public access will be adopted.

(b) File a redacted and unredacted copy of any document as to which confidentiality was asserted during the proceeding but which is not reflected in the record or exhibit list as a document designated confidential.

(c) File an unredacted version of any document designated as confidential during the proceeding, but as to which the party claiming confidentiality wishes to remove the confidential designation, or as to which the confidential designation was terminated by order. In the case of briefs, testimony, and similar documents, the authoring party must file the unredacted version.

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 (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-220 Monitoring rule-making proceedings; lists of interested persons. (1) **Internet.** The commission's internet web site includes information about pending rule-making proceedings.

(2) **Mail or ((electronic mail)) e-mail.** The commission maintains lists of persons interested in potential rule-making proceedings that concern particular regulated industries and other areas of potential interest. The commission sends notice of rule-making proceedings to persons on these lists. Any person may request in writing that the commission's records center include them on the relevant list or lists for the person's area(s) of interest. The commission may establish a fee for this service.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-340 Parties—General. (1) (~~Defined appearance requirement.~~ A "party" is a person (meaning an individual, partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character) that has complied with all requirements for establishing and maintaining party status in any proceeding before the commission.) **Definitions.**

(a) **Person.** As defined in RCW 34.05.010(14), a "person" is any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(b) **Party.** As defined in RCW 34.05.010(12), a "party" is a person to whom the agency action is specifically directed; or a person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(c) **Interested person.** An "interested person" is a person who does not want to participate in a pending docket as a party or is not permitted to do so, but who wants to receive

copies of all documents that the commission serves on parties, simultaneous with service, as well as documents served on the commission and other parties. The commission may charge for this service.

(d) **Docket monitor.** A "docket monitor" is a person who would like to receive orders entered by the commission in a docket.

(2) **Appearance requirement.** The commission will not grant party status to a person who fails to appear at the earliest prehearing conference, if one is held, or hearing session, if there is no prehearing conference, unless the party is excused from appearing by the presiding officer or shows good cause for failing to timely appear. The commission staff and the public counsel section of the attorney general's office become parties to an adjudicative proceeding for all purposes upon entering an appearance. When the commission's regulatory staff appears as a party it will be called "commission staff" or "staff." When the public counsel section of the office of the Washington attorney general appears as a party, it will be called "public counsel."

((2)) (3) **Classification of parties.** Parties to proceedings before the commission will be called applicants, complainants, petitioners, respondents, intervenors, or protestants, according to the nature of the proceeding and the relationship of the parties, as follows:

(a) **Applicants.** Persons applying for any right or authority that the commission has jurisdiction to grant are "applicants."

(b) **Complainants.** Persons who file a formal complaint with the commission are "complainants." When the commission commences an adjudicative proceeding on its own complaint seeking to impose a penalty or other sanction based upon alleged acts or omissions of the respondent, the commission is the "complainant."

(c) **Petitioners.** Persons petitioning for relief other than by complaint are "petitioners."

(d) **Movants.** Persons filing a motion for relief are "movants" or "moving parties."

(e) **Respondents.** Persons against whom any formal complaint, petition, or motion is filed are "respondents." In general rate proceedings that are set for hearing on the commission's motion or complaint, the party seeking to increase rates is a "respondent," but bears the burden of proof in the proceeding pursuant to RCW 80.04.130 or 81.04.130.

(f) **Intervenors.** Persons, other than the original parties, that are permitted to appear and participate as parties are "intervenors."

(g) **Protestants.** Persons that file a protest to oppose an application are "protestants."

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-360 Parties—Master service list. The commission will maintain a master service list for each adjudicative proceeding ~~((, which)).~~ It will be available upon request and ~~((which to the extent))~~ if feasible ~~((will be available))~~, on the commission's web site. The list will contain the name, mailing address, e-mail address, telephone number, and ~~((telex))~~ fax number of each party to the proceed-

ing and of each party's representative. The commission will provide a courtesy copy to the parties of contact information provided by each party at the initial prehearing conference. ~~((Each party must also designate one person to receive service of all documents that are required to be served and may request that additional representatives receive courtesy service. Parties that are individuals will be individually served with all commission orders entered in the proceeding. Parties that are a partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character, must designate an individual within their organization for purposes of service of commission orders.))~~ Parties must designate persons to receive service in accordance with WAC 480-07-150.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-380 Motions that are dispositive— Motion to dismiss; motion for summary determination; motion to withdraw. (1) Motion to dismiss.

(a) **General.** A party may move to dismiss another party's claim or case on the asserted basis that the opposing party's pleading fails to state a claim on which the commission may grant relief. The commission will consider the standards applicable to a motion made under CR 12 (b)(6) and 12(c) of the Washington superior court's civil rules in ruling on a motion made under this subsection. If a party presents an affidavit or other material in support of its motion to dismiss, and the material is not excluded by the commission, the commission will treat the motion as one for summary determination as provided in subsections (2) and (3) of this section.

(b) **Time for filing motion to dismiss.** A party that opposes a pleading must file any motion directed to the pleading no later than the time the responsive pleading is due, or within twenty days after the pleading is served, whichever time is less, unless the party shows good cause for delay. Filing a motion to dismiss a pleading, or seeking a similar remedy, does not extend the time for answering the pleading.

(c) **Response.** A party who opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as may be set by the commission or the presiding officer. The commission may allow oral argument.

(2) Motion for summary determination.

(a) **General.** A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

(b) **Time for filing motion for summary determination.** A party must file any motion for summary determination at least thirty days before the next applicable hearing session, unless the commission establishes by order a different specific date for any such motion to be filed.

(c) **Response.** A party ~~((that))~~ who answers a motion for summary determination must file its answer and any cross-motion for summary determination within twenty days after the motion is served, unless the commission establishes ~~((by order))~~ a different specific date for a response to be filed.

(d) **Continuance not automatic.** Filing a motion for summary determination will not automatically stay any scheduled procedures. The commission may order a continuance of any procedure and may order that an oral or written response to a motion for summary determination be made at a time that is consistent with any established hearing schedule in the proceeding.

(3) **Motion to withdraw.** A party may withdraw from a proceeding only upon permission granted by the commission in response to a written motion if:

(a) In the case of a matter initiated by a tariff filing, the commission has entered a complaint and order suspending the filing; or

(b) In all other cases, the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW.

The commission will grant a party's motion to withdraw from a proceeding when the party's withdrawal is in the public interest.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-395 Pleadings, motions, and briefs— Format requirements; citation to record and authorities; verification; errors; construction; amendment. (1) Format. All pleadings, motions, and briefs must meet the following format requirements:

(a) **Paper size; legibility; margins.** All pleadings, motions, and briefs must be:

- Submitted on three-hole punched (oversize holes are preferred) 8 1/2 x 11 inch paper.

- Presented in double-spaced, 12-point ~~((type)),~~ palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type.

- Presented with paragraphs numbered.

- Printed with margins at least one inch from each edge of the page.

Documents that are electronically filed must meet these requirements when printed.

(b) **Length.** Pleadings, motions, and briefs must not exceed sixty pages (exclusive of exhibits, appended authorities, supporting affidavits and other documents). The presiding officer may alter the page limit, either shortening or lengthening the number of pages allowed, considering the number and complexity of the issues.

(c) **Organization.** Every pleading, motion, and brief must be organized as follows:

(i) **Caption.** At the top of the first page must appear the phrase, "before the Washington utilities and transportation commission." On the left side of the page, the caption of the proceeding must be set out or, if no caption exists, the following: "In the matter of the (complaint, petition, motion, etc.) of (name of the pleading party) for (identify relief sought)." On the right side of the page, opposite the caption, the plead-

ing party must include the docket number if one has been assigned, identify the name of the document (e.g., petition, motion, answer, reply, etc., of (role of party: E.g., petitioner, respondent, protestant, etc., and name of the party if more than one party has the same role in the proceeding)). The caption also must briefly state the relief sought (e.g., "petition for an accounting order"; "motion for continuance").

(ii) *Body of pleading.* The body of the pleading must be set out in numbered paragraphs. The first paragraph must state the pleading party's name and address and if it is the party's initial pleading, the name and address of its representative, if any. The second paragraph must state all rules or statutes that the pleading puts in issue. Succeeding paragraphs must set out the statement of facts relied upon in a form similar to complaints in civil actions before the superior courts of this state. The concluding paragraphs must state the relief the pleading party requests.

(iii) *Body of motion.* A motion must include the following information:

(A) *Relief requested.* A statement of the specific relief the commission is requested to grant or deny.

(B) *Statement of facts.* A succinct statement of the facts that the moving party contends are material to the requested remedy.

(C) *Statement of issues.* A concise statement of the legal issue or issues upon which the commission is requested to rule.

(D) *Evidence relied upon.* Any evidence on which the motion or opposition is based must be specified. Any affidavits, depositions or portions of affidavits or depositions relied upon must be specified. If a party relies on affidavits, deposition transcripts, or documentary evidence, the party must quote the cited material verbatim or attach a photocopy of relevant pages to an affidavit that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence upon which they place substantial reliance.

(iv) *Body of brief.* ~~((The commission may require))~~ Unless excused by the presiding officer, the parties must include in their briefs a table of contents in outline format. The commission may require parties to organize their briefs according to a common outline. The presiding officer, in consultation with the parties, will establish the elements of ~~((the))~~ any common outline taking into account the issues in the proceeding, the parties' preferences, and the commission's needs.

(v) *Citation to record.* Portions of the record relied on or quoted in the body of a brief must be cited using footnotes.

(A) *Transcript.* Transcript references should be as follows: [witness's surname], TR. [page]: [line(s)]~~((, ((witness's surname)))~~). If the transcript reference spans multiple pages, the reference should be as follows: [witness's surname], TR. [page]: [line] - [page]: [line] ~~((, ((witness's surname)))~~). Examples: Smith, TR. 21:5-14; Jones, TR. 356:4-357:21.

(B) *Exhibits.* Exhibit references should be as follows: Exh. No. [insert number assigned at hearing]. In the case of prefiled testimony offered or received as an exhibit, page number(s), line number(s), and the witness's surname should be added following the style specified in this section for tran-

script references. In other exhibits, references to page(s), line(s) for text, row(s) and column(s) for tables, or other specific references may be added to clarify the information cited.

(vi) *Citation to authority.* Parties must use the citation formats specified in the current edition of the style sheet of the Washington supreme court reporter of decisions. The presiding officer may require parties to file copies of ~~((non-Washington))~~ the text of authorities that are cited in parties' briefs and upon which parties place substantial reliance. Unless excused by the presiding officer, parties must include a table of cited authorities, with the full citation of each reference and its location in the brief.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion must be dated and signed by at least one attorney or representative of record in his or her individual name, stating his or her address, or by the party, if the party is not represented. Parties who are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief. Parties who bring certain complaints under RCW 80.04.110 or 81.04.110 that challenge the reasonableness of the rates or charges of jurisdictional utilities must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

(4) **Liberal construction of pleadings and motions.** The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.

(5) **Amendments.** The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results.

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 (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-400 Discovery. (1) General.

(a) **No limitation on commission authority to audit and inspect.** Nothing in this section imposes any limitation on the commission's ability to audit or obtain the books and records of public service companies, or the public service companies' obligation to provide information to the commission, whether or not in the context of an adjudicative proceeding.

(b) **Informal discovery procedures.** Parties in an adjudicative proceeding may agree to informal discovery procedures in addition to, or in place of, the procedures contained in this section.

(c) **Definitions.** For purposes of WAC 480-07-400 through 480-07-425, the following terms have the following meanings:

(i) *Party*. Any party as defined by WAC 480-07-340.

(ii) *Data*. As used in this section, "data" means information of any type, in any form.

(iii) *Data request*. A party's written request that calls for another party to produce data in connection with an adjudicative proceeding is a "data request." Generally, data requests seek documents, an analysis, compilation or summary of documents into a requested format, a narrative response explaining a policy, position, or a document, or the admission of a fact asserted by the requesting party. If a party relies on a cost study, it is expected that the party will, on request, rerun the study based on different assumptions, subject to the standards in subsection (5) of this section. The commission will not order a party to respond to a data request that seeks production of a new cost study unless there is a compelling need for such production.

(iv) *Record requisition*. A request for data made on the record during a conference or hearing session or during a deposition is a "record requisition."

(v) *Bench request*. A request for data made by or on behalf of the presiding officer is a "bench request."

(vi) *Depositions*. Depositions are described in WAC 480-07-410.

(2) When discovery available.

(a) *Subpoenas always available*. ~~((The only discovery procedure available in all adjudicative proceedings before the commission is the subpoena, including a subpoena duces tecum. A commissioner, an administrative law judge, or the attorney of any party to the proceeding may issue a subpoena. Witnesses are required to comply with subpoenas in the manner prescribed in Title 80 or 81 RCW and chapter 34.05 RCW. Witnesses will be paid as provided in RCW 34.05.446 (7). Each subpoena must bear the name of the party requesting or issuing the subpoena and the party responsible for paying witness fees.))~~ Subpoenas are available as a means of discovery as provided in Title 80 or 81 RCW and chapter 34.05 RCW.

(b) *When other discovery methods available*. If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery described in subsections (1)(c)(iii) through (vi) of this section and in WAC 480-07-410 and 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of an electric company, natural gas company, pipeline company, telecommunications company, water company, solid waste company, low-level radioactive waste disposal site, or a segment of the transportation industry;

(ii) Any proceeding that the commission declares to be of a potentially precedential nature;

(iii) Any complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or unreasonable rates, violations of provisions in Titles 80 and 81 RCW; or

(iv) Any proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule.

(3) ~~((Signature on discovery requests. A party, or the party's attorney or other representative, must sign each discovery request or group of requests issued. The signature~~

~~constitutes a certification that the request complies with the standards of CR 26(g) of the Washington superior court civil rules and that no request made substantially duplicates a request previously made by the requesting party to the same party in the same proceeding, unless the duplication is reasonably necessary and the reason for duplication is clearly stated.~~

~~(4))~~ **(4)) Frequency, extent, and scope of discovery.** Data requests must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to a data request on grounds that the information sought will be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to discovery of admissible evidence. Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation. The commission may impose sanctions for abusive discovery practice.

~~((5))~~ **(4) Schedule.** The commission may establish and set forth in a prehearing order a schedule for discovery. Any such schedule will provide deadlines sufficient to allow a timely opportunity for responses and for disputes to be resolved. The presiding officer may impose or modify time limits to the extent necessary to conform to the commission's hearing schedule.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-405 Discovery—Data requests, record requisitions, and bench requests. (1) Grouping and numbering.

(a) **Grouping.** Parties must group their data requests by subject or witness and present data requests in an electronic format agreed upon by the parties whenever possible, unless the parties agree to a different procedure or the presiding officer orders a different procedure. Requests not presented in electronic format must include no more than one request per page. Parties with similar interests are encouraged, and may be required, to coordinate their issuance of data requests to avoid duplication.

(b) **Numbering.** Each party must number sequentially its data requests, as submitted. The presiding officer will ensure that record requisitions and bench requests are adequately described on the record and consecutively numbered.

(2) Service of data requests, records requisitions, and responses to parties.

(a) Written data requests must be sent to the party to whom the request is made, with copies to all other parties.

The commission staff copy must be sent to the assistant attorney general who represents the commission staff. The commission encourages parties to agree to exchange data in electronic format by e-mail, on diskette, or by other mutually acceptable electronic means.

(b) If parties agree to the service of data requests and responses to requests by e-mail, the party serving the data requests or responses must serve copies electronically on all parties, including the assistant attorney general who represents the commission staff.

(c) Except when appropriate for other purposes, parties must not file data requests or responses to data requests with the commission, or provide them to any person who is presiding or advising the presiding officer. Responses that are later offered in evidence must be distributed as required for other proposed exhibits.

~~(3) Motion to compel (to file data requests, objections, and responses. Parties must not file data requests and responses to data requests with the commission or provide them to any presiding officer, except when a party files a motion to compel).~~ A party's motion to compel must include the relevant data request, any objection, and any response.

(4) **Limitation on numbers of data requests.** The presiding officer may limit the number of data requests that a party may submit and may require parties to certify that they have coordinated discovery with other parties of similar interest and that no substantial duplication exists with other parties' submissions.

(5) **Responding party to seek clarification.** If a party to whom a data request is submitted finds the meaning or scope of a request ~~(to be)~~ unclear, the responding party must immediately ~~(initiate a clarification call to)~~ contact the requesting party for clarification. Lack of clarity is not a basis for objection to a data request unless the responding party has made a good faith effort to obtain clarification.

(6) **Objections; consequence of failure to object.**

(a) **Data request.** A party ~~(that)~~ who wishes to object to a data request must present the objection to the requesting party in writing by the time the response is due, or at such other time as may be ordered. A party objecting to a data request must state the objection and explain the basis for the objection. A party ~~(that)~~ who fails to interpose a timely objection to providing a full response to a data request waives any right to object for purposes of discovery and must provide a full response. A party ~~(that)~~ who fails to make an objection when responding to data requests does not lose the opportunity to raise an objection at hearing if another party seeks to introduce as evidence all or part of the party's response to a data request.

(b) **Records requisition.** A party to whom a record requisition is addressed may object to the request at the time it is made or, if it later discovers a reason for objection not reasonably known at the time of the record requisition, within five days ~~(thereafter)~~ after discovering the reason. A party may object to the admission of its response to a records requisition at the time the response is offered into evidence.

(c) Bench request. Any party may object to the issuance of, or response to, a bench request. A party may object at the time the bench request is made, or if made in writing or the party later discovers a reason for an objection not reasonably

known at the time the bench request was made in hearing, within five days after discovery. A party may raise an objection based on the content of a bench request response within five days after distribution of the response. Responses to bench requests will be received in evidence unless a party objects to the bench request or response, or the commission rejects the response.

(7) **Responses.**

(a) **Data requests and record(s) requisitions.** Parties must ~~(send)~~ serve responses to data requests and record requisitions ~~(to)~~ on the requesting party and ~~(to)~~ on any other party who requests a copy, consistent with the terms of any protective order entered in the proceeding. Parties must send the commission staff copy to the assistant attorney general who represents the commission staff unless the attorney requests an alternative method. Parties may agree to serve responses to data requests and record requisitions through e-mail.

(b) **Timing.** A party to whom a data request is directed must provide a full response to the data request within ten business days after the request is received. If the data cannot be supplied within ten business days, the responding party must give written notice to the requesting party no later than two business days before the response is due. The notice must state why the ten-day limit cannot be met. The responding party must also provide a schedule by which it will produce the requested data and must explain why any portion of the data cannot be supplied. The presiding officer may modify these time limits.

(c) **Identification of respondent and witness.** Each data response must state the date the response is produced, the name of the person who prepared the response, and the name of any witness who is knowledgeable about and can respond to questions concerning the response.

(d) **Bench requests.** Parties must file responses to bench requests with the commission and serve all parties within ten business days after the request is made, unless the presiding officer specifies another schedule.

(8) **Supplementation.** Parties must immediately supplement any response to a data request, record requisition, or bench request upon learning that the prior response was incorrect or incomplete when made or upon learning that a response, correct and complete when made, is no longer correct or complete.

(9) **Use of responses to data requests, record requisitions or bench requests.** The commission will not consider or treat as evidence any response to a data request, record requisition, or bench request unless and until it is entered into the record.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-423 Discovery—Protective orders—Submission requirements for documents. (1) General. Protective orders entered in individual proceedings may allow for parties to designate portions of documents exchanged during discovery or submitted during a proceeding (e.g., by filing, or by offering as an exhibit) as "confidential" or "highly confidential." ~~(In general,)~~ Parties must

strictly limit the amount of information they designate as confidential or highly confidential. ((Designation of documents as highly confidential is not permitted under the commission's standard form of protective order, and may only occur if the commission so orders.

~~(4))~~ **(2) Standard for highly confidential designation.**

A party who wishes to designate information as highly confidential may file the documents designated as highly confidential, but must also file a motion for an amendment to the standard protective order, supported by a sworn statement that sets forth the specific factual and/or legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and sworn statement must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions.

(3) Designations.

(a) The "confidential" designation is intended to protect information that might compromise a company's ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in the commission's protective order.

(b) The "highly confidential" designation is reserved for information the dissemination of which, for example, imposes a highly significant risk of competitive harm to the disclosing party without enhanced protections provided in the commission's protective order. ~~((A party that wishes to designate information as highly confidential must first file a motion for an amendment to the standard protective order, supported by a sworn statement that sets forth the specific factual and/or legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and sworn statement must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions.~~

~~(2))~~ **(4) Submission.** Parties must follow the instructions in WAC 480-07-160(3) for properly marking and submitting documents with the commission as confidential or highly confidential in a proceeding governed by a protective order.

~~((a) **Confidential information.** The first page and individual pages of a document determined in good faith to include confidential information must have the legend that reads: "Confidential per protective order in WUTC Docket No. [insert]." Placing a confidential legend on the first page of an exhibit indicates only that one or more pages contain confidential information and will not serve to protect the entire contents of the multipage document. Each page that contains confidential information must be marked separately to indicate where confidential information is redacted. Confidential information must be submitted on yellow or canary paper with contrasting highlighter (e.g., gray or blue) used to mark the confidential portions.~~

~~(b) **Highly confidential information.** The first page and individual pages of a document determined in good faith to include highly confidential information must be marked by a stamp that reads: "Highly confidential per protective order in WUTC Docket No. [insert]." A "highly confidential"~~

~~stamp on the first page of a document indicates only that one or more pages contain highly confidential information and will not serve to protect the entire contents of a multipage document. Each page that contains highly confidential information must be highlighted to indicate where highly confidential information is redacted. The unredacted versions of each page containing highly confidential information, and provided under seal, also must be marked with the "highly confidential. . ." stamp and must be submitted on light blue paper with contrasting highlighter (e.g., gray or yellow) used to mark the highly confidential portions.~~

~~(c) **Redacted version.** A separate version of each document that is designated as confidential or highly confidential must be provided on white paper with all of the confidential or highly confidential information redacted either by blacking out the information or replacing it with brackets and blank space. The first page must be marked as required in subsections (a) and (b) of this section, and additionally must be marked "redacted.")~~

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-460 Hearing—Predistribution of exhibits and prefiled testimony. (1) **Predistribution of evidence.** The commission may require parties to distribute their proposed evidence to other parties before the start of the evidentiary hearing. In general rate proceedings for electric, natural gas, pipeline, and telecommunications companies, the petitioner must prefile its proposed direct testimony and exhibits at the time it files its rate increase request, in accordance with WAC 480-07-510. The commission may convene a prehearing conference shortly before a scheduled hearing and require all parties to predistribute their proposed cross-examination exhibits.

(a) *Number of copies to be filed or submitted; service.* When predistribution of evidence other than proposed exhibits for use in cross-examination is required, each party must file the original plus twelve copies of its evidence with the commission unless the commission specifies a different number. When the commission requires parties to predistribute their proposed exhibits for use in cross-examination, each party must submit six copies to the bench if the commissioners are sitting as presiding officers and three copies if the commissioners are not sitting. The presiding officer may change the number of copies required. All proposed evidence must be served on all other parties to a proceeding whenever predistribution of evidence is required.

(b) *Changes or corrections.*

(i) *Substantive corrections.* Prefiled testimony may be revised to correct mistakes of fact asserted by a witness. Such mistakes may arise from a variety of causes such as scrivener's error, error in calculation, or error of misreported fact. Each party must advise all other parties of substantive corrections to any prefiled evidence as soon as the need for correction is discovered.

(ii) *Substantive changes.* Parties must seek leave from the presiding officer by written motion if they wish to submit testimony that includes substantive changes other than to simply correct errors of fact asserted by a witness. A party

proposing such changes may submit the proposed revisions with its motion.

(iii) *Minor corrections.* Minor revisions to prefiled testimony and exhibits may be made to correct typographical errors, printing errors, and nonsubstantive changes (e.g., a change in a witness's address or employment). Counsel should not ask a witness on the stand to correct obvious typographical errors in the prefiled testimony or to make more than three minor substantive corrections. If more than three minor revisions are required, parties must prepare an errata sheet or a revised exhibit for submission at least one business day prior to the hearing to show such corrections to the prefiled evidence. ~~((Parties that submit revisions to pre-distributed or previously admitted testimony or exhibits must prominently label them "revised" and indicate the date of the revision. The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. This practice must be followed even with minor changes that involve only one page of an exhibit. Counsel must identify partial revisions by page and date when an exhibit is presented for identification, sponsored, or offered into evidence, as appropriate.))~~

(iv) *Format requirements for revisions.* Parties who submit revisions to pre-distributed or previously admitted testimony or exhibits must prominently label them "REVISED" and indicate the date of the revision. The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. This practice must be followed even with minor changes that involve only one page of an exhibit. If one or more pages of multiple page testimony or exhibits are revised, the header or footer of the affected pages must be labeled "REVISED" and indicate the date of the revision. Parties may indicate changes to spreadsheets by providing a description of the change and how the change affects other related spreadsheets. For revisions to spreadsheets, counsel must identify partial revisions by page and date when an exhibit is presented for identification, sponsored, or offered into evidence, as appropriate.

(c) *Distribution at hearing.* When a party offers new exhibits, revised exhibits, or errata sheets at a hearing, the party must provide sufficient copies for all parties and for the commission's distribution requirements. When the commission requires parties to pre-distribute their exhibits, a party may be required to establish good cause for any failure to pre-distribute a proposed exhibit, other than an exhibit offered solely for impeachment of the witness's testimony on the stand, or the exhibit may be excluded.

(2) Prefiled testimony.

(a) *Exhibit numbers—Official record.* The presiding officer will assign exhibit numbers to all prefiled testimony and exhibits at the final prehearing conference prior to hearing, or at hearing. These assigned numbers will be the exhibit numbers for purposes of the official record in the proceeding.

(b) *Parties are required to mark prefiled testimony and exhibits for identification.* Parties must mark all written testimony and exhibits for identification in the upper right-hand corner of the first page prior to submission as follows:

(i) State "Exhibit No.," followed by a blank underline. Then, on the same line, identify the sponsoring witness by including the witness's initials.

(ii) Place a hyphen after the witness's initials and insert a number, beginning with Arabic numeral 1, and sequentially number each subsequent exhibit (including any subsequent written testimony) throughout the proceeding.

(iii) Place the capital letter "C" after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding.

(iv) Place the capital letter "T" after the number if the exhibit is a witness's prefiled testimony.

For example, John Q. Witness's prefiled testimony and accompanying exhibits must be marked as follows:

Testimony or Exhibit	Marked for Identification
John Q. Witness's prefiled direct testimony	Exhibit No. ____ (JQW-1T)
First exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exhibit No. ____ (JQW-2)
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exhibit No. ____ (JQW-3C)
Third exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exhibit No. ____ (JQW-4)
John Q. Witness's prefiled rebuttal testimony (with portions marked confidential)	Exhibit No. ____ (JQW-5CT)
First exhibit to John Q. Witness's prefiled rebuttal testimony (nonconfidential)	Exhibit No. ____ (JQW-6)

Counsel and other party representatives who are unfamiliar with this method of identification may ask the presiding officer for further guidance.

(c) *Summary of testimony.* Each witness must present a short summary of his or her prefiled testimony on the opening page or two of the testimony. Counsel or other party representative will be expected to ask as a foundation question when the witness takes the stand the subjects that will be covered by the witness. This foundation question should request, and the witness's response should include, only a statement of the subject(s) to be covered by the witness (e.g., rate of return on equity, cost of debt, prudence) and not a summary of the witness's positions on the subject(s) identified.

(d) *Form of testimony and exhibits.* All prefiled testimony and exhibits must be paginated. In addition, line numbers must be set out on all prefiled testimony to facilitate transcript or exhibit references. All copies of prefiled testimony and exhibits must be provided on 8 1/2 x 11 inch, three-hole punched paper (oversize holes are preferred), double-spaced, 12-point type, using palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type, with margins of at least one inch

on all sides. Preprinted documents and spreadsheets need not conform to these typeface and type size requirements, but must be legible. Oversized documents may be used at the hearing for illustrative purposes but must be provided on 8 1/2 x 11 inch paper if offered into evidence and reduction to that format is feasible.

(e) **Submission requirements.** All prefiled exhibits, both direct examination and cross-examination exhibits, must be individually separated by blank sheets with tabs.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-470 Hearing guidelines. These guidelines are of a general nature and are provided to assist the presiding officer in regulating the course of the proceeding. The presiding officer may suspend or modify the guidelines or use measures not specified in this rule.

(1) **Starting times.** Starting times will be strictly observed. The proceeding may go forward in the absence of counsel, parties, or witnesses who are late. Counsel may advise the bench by message to the records center when an emergency prevents timely arrival.

(2) **Appearances.** All persons who will be representing a party in a formal proceeding must give their names and addresses in writing to the court reporter immediately before the first hearing session in which they appear. The presiding officer conducting the hearing or prehearing conference will require appearances to be stated orally at the initial prehearing or hearing session, and may also ask for oral appearances at subsequent sessions in the same proceeding, so that all persons attending the hearing will know the identity and interest of all parties present. Oral appearance at hearing does not substitute for the requirement for written notice of appearance in WAC 480-07-345(2).

(3) **Matters to be handled at beginning of session.** Parties must notify the presiding officer no later than the start of the hearing session of any motion that a party anticipates may be presented during the hearing, such as one that may require foundation regarding the admissibility of evidence. The presiding officer will give the parties an appropriate opportunity to state and argue any motions related to evidence or to the procedural course of the hearing.

(4) **Summary by public counsel.** At the beginning of a hearing session during which the commission will hear testimony from members of the public, the commission may provide public counsel an opportunity to inform the public of the major contested issues and to state public counsel's positions on those issues. The commission will give other parties an opportunity to respond.

(5) **Evidence; exhibits; stipulations of fact.** The presiding officer may receive evidence as provided by RCW 34.05.452.

(6) **Order of presentation.** Evidence will ordinarily be received in the following order:

- (a) Party having the burden of proof;
- (b) Parties supporting the party having the burden of proof;
- (c) Parties opposing the party having the burden of proof;

(d) Rebuttal by the party having the burden of proof;

The presiding officer may direct a modified order of presentation considering the needs of the parties, the commission, and the proceeding, and the parties' preferences.

(7) **Testimony under oath.** The presiding officer will administer an oath or affirmation to each witness before the witness testifies in an adjudicative proceeding. When members of the public testify, they will be sworn in the same fashion as other witnesses.

(8) **Addressing the presiding officer or witnesses.** All counsel and other party representatives must address all comments, objections, and statements to the presiding officer and not to other counsel. Questions that concern testimony or exhibits sponsored by a witness must be addressed to the witness and not to counsel or other party representatives.

(9) **Resolving matters off the record.** Counsel or other party representatives who request off-the-record discussions must ask leave to go off the record and state the purpose for the request. Extended colloquies regarding procedural issues may be conducted off the record, but will be summarized for the record by the presiding officer subject to comments from party representatives.

(10) **Witness panels.** The commission may direct or allow two or more witnesses to take the stand simultaneously when doing so allows a benefit such as the integrated response to a line of questions, minimizing referral of questions from one witness to another, or comparing witnesses' positions. The presiding officer will also allow cross-examination of each witness upon matters within the witness's direct evidence.

(11) **Cross-examination.** Counsel and other party representatives should be prepared to provide time estimates for cross-examination of witnesses. The presiding officer will limit cross-examination to one round unless good cause exists for allowing additional questions. Witnesses must not be asked to perform detailed calculations or extract detailed data while on the stand. Any such questions must be provided to the witness at least two business days prior to the date the witness is expected to testify, must ask the witness to provide the answer for the record later in the hearing session, or must provide an answer and ask the witness to accept it "subject to check." Witnesses must not be asked to accept information "subject to check" if the information is included in a prefiled exhibit or testimony, or is already in evidence. When a witness accepts information "subject to check," the witness must perform the "check" as soon as possible. A response given "subject to check" will be considered accurate unless the witness disputes it on the witness stand or by filing an affidavit, stating reasons, within five business days following the ~~((witness's testimony))~~ date of receipt of the hearing transcript.

(12) **Redirect examination.** A party whose witness has been cross-examined may conduct redirect examination of the witness on ~~((those))~~ issues raised during cross-examination.

(13) **Post-hearing planning.** The presiding officer will confer with the parties concerning post-hearing process. The presiding officer will determine whether oral argument, briefs, or both will be required, taking into consideration the needs of the commission and the parties' preferences. The presiding officer may determine a common format or outline

to be used by all parties if briefs are required. Briefs must comply with the requirements of WAC 480-07-395.

(14) **Transcript.** Each party will bear its own costs for transcripts or tape recordings, including charges for expedited service when a party requests it.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-510 General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies. General rate proceeding filings for electric, natural gas, pipeline, and telecommunications companies must include the information described in this section. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section. The company must provide:

(1) **Testimony and exhibits.** ~~((Twelve))~~ Nineteen paper copies of all testimony and exhibits that the company intends to present as its direct case if the filing is suspended and a hearing held, unless the commission preapproves the filing of fewer copies. In addition, the company must provide one electronic copy of ~~((the testimony and exhibits))~~ all filed material in ((#)) the format ((or formats authorized in these rules or by the commission secretary)) identified in WAC 480-07-140(6). Material that the company has not ~~((been))~~ produced under ~~((the company's))~~ its direction and control and that is not reasonably available to it in electronic format, such as generally available copyrighted published material, need not be provided in electronic format. The company must serve a copy of the ((testimony and exhibits)) materials filed under this section ((must be served)) on public counsel at the time of filing with the commission in any proceeding in which public counsel will appear. The utility must provide an exhibit that includes a results-of-operations statement showing test year actual results and the restating and pro forma adjustments in columnar format supporting its general rate request. The utility must also show each restating and pro forma adjustment and its effect on the results of operations. The testimony must include a written description of each proposed restating and pro forma adjustment describing the reason, theory, and calculation of the adjustment.

(2) **Tariff sheets.** ~~((Three copies))~~ A copy of the proposed new or revised tariff sheets in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted, in paper and electronic format, unless already provided as an exhibit under subsection (1) of this section. The company must also provide copies of any tariff sheets that are referred by new or amended tariff sheets.

(3) **Work papers and accounting adjustments.** Three copies of all supporting work papers of each witness in a format as described in (b) of this subsection must be filed with the utility's general rate request. Parties must file work papers within five days after the filing of each subsequent round of testimony filed (e.g., response, rebuttal). If the testimony, exhibits, or work papers refer to a document, including, but not limited to, a report, study, analysis, survey, article or decision, that document must be provided as a work paper

unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided with the filing ~~((but must be made available if requested)),~~ but the company must identify clearly the materials that are omitted and their content. Omitted materials must be made available if requested. The following information ~~((must be included in the company's work papers, if it is not included in the testimony or exhibits))~~ is required for work papers that accompany the company's filing and all parties' testimony and exhibits:

(a) A detailed portrayal of the development of ~~((the company's requested))~~ any capital structure and rate of return proposal and all supporting work papers in the format described in (b) of this subsection.

(b) Parties must file work papers that contain a detailed portrayal of restating actual and pro forma adjustments that the company uses to support ((the)) its filing or that another party uses to support its litigation position, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, ((supporting)) and by all parties in preparing their testimony((s)) and exhibits. All work papers must include support for, and calculations showing, the derivation of each input number used in the detailed portrayal and for each subsequent level of detail. The derivation of all interstate and multiservice allocation factors must be provided in the work papers. Work papers must be plainly identified and well organized, and must include an index and tabs. All work papers must be cross referenced and include a description of the cross referencing methodology. Parties must file all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be submitted using logical file paths, as necessary, by witness, and using identifying file names. If ((the company)) a party proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the company, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not off-

set by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(c) A detailed portrayal of revenue sources during the test year and a parallel portrayal, by source, of changes in revenue produced by the filing, including an explanation of how the changes were derived.

(d) If the public service company has not achieved its authorized rate of return, an explanation of why it has not and what the company is doing to improve its earnings in addition to its request for increased rates.

(e) A representation of the actual rate base and results of operation of the company during the test period, calculated in the manner used by the commission to calculate the company's revenue requirement in the commission's most recent order granting the company a general rate increase.

(f) Supplementation of the annual affiliate and subsidiary transaction reports as provided in rules governing reporting requirements for each industry, as necessary, to include all transactions during the test period. The company is required to identify all transactions that materially affect the proposed rates.

(4) **Summary document.** A summary document that briefly states the following information on an annualized basis, if applicable. In presenting the following information, the company must itemize revenues from any temporary, interim, periodic, or other noncontinuing tariffs. The company must include in its rate change percentage and revenue change calculations any revenues from proposed general rate change tariffs that would supersede revenue from noncontinuing tariffs.

(a) The date and amount of the latest prior general rate increase authorized by the commission, and the revenue realized from that authorized increase in the test period, based on the company's test period units of revenue.

(b) Total revenues at present rates and at requested rates.

(c) Requested revenue change in percentage, in total, and by major customer class.

(d) Requested revenue change in dollars, in total, and by major customer class.

(e) Requested rate change in dollars, per average customer, by customer class, or other representation, if necessary to depict representative effect of the request. Filings must also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.

(f) Most current customer count, by major customer class.

(g) Current authorized overall rate of return and authorized rate of return on common equity.

(h) Requested overall rate of return and requested rate of return on common equity, and the method or methods used to calculate rate of return on common equity.

(i) Requested capital structure.

(j) Requested net operating income.

(k) Requested rate base and method of calculation, or equivalent.

(l) Requested revenue effect of attrition allowance, if any is requested.

(5) Required service of summary document. The company must mail the summary document required in subsec-

tion (4) of this section to the persons designated below on the same date it files the summary document with the commission:

(a) Public counsel;

(b) All intervenors on the commission's master service list for the company's most recent general rate proceeding;

(c) All intervenors on the master service list for any other rate proceeding involving the company during the five years prior to the filing, if the rates established or considered in that proceeding may be affected in the company's proposed general rate filing;

(d) All persons who have informed the company in writing that they wish to be provided with the summary document required under this section. The company must enclose a cover letter stating that the prefiled testimony and exhibits and the accompanying work papers, diskettes, and publications specified in this rule are available from the company on request or stating that they have been provided. This provision does not create a right to notice in persons named to receive the summary.

(6) **Cost studies.** The company must include any cost studies it performed or relied on to prepare its filing, identify all cost studies conducted in the last five years for any of the company's services, and describe the methodology used in such studies.

(7) **Other.** The company must include its most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders; the most recent FERC Form 1 and FERC Form 2, if applicable; and the company's Form 10K's, Form 10Q's, any prospectuses for any issuances of securities, and quarterly reports to stockholders, if any, for the most recent two years prior to the filing date.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-520 General rate proceedings—Solid waste collection companies. General rate increase filings by class A and B haulers as defined in WAC 480-70-041 must include the information described in this rule. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.

(1) **Proposed tariff.** ~~((Two copies of the))~~ The proposed tariff sheets may be filed in electronic form supplemented by one paper copy. The proposed tariff(;) sheets should be in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted. The electronic copy must be submitted in the format identified in WAC 480-07-140(6).

(2) **Local government ordinances and notices.** A copy of every local government ordinance related to the request in compliance with WAC 480-70-326, and a copy of the customer notices issued in compliance with the provisions of WAC ~~((480-149-120))~~ 480-70-271.

(3) **Transmittal letter.** A transmittal letter prepared in compliance with the provisions of WAC ~~((480-149-120 and))~~ 480-70-326.

(4) **Work papers.** One paper and one electronic copy of all supporting work papers for the test period, which is the

most recent or most appropriate consecutive twelve-month period for which financial data are available. The electronic copy must be submitted in the format identified in WAC 480-07-140(6). Work papers must include:

(a) A detailed pro forma income statement separated among solid waste, single family residential recycling, multi-family recycling, and yard waste, with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(b) A calculation of the revenue impact of proposed tariff revisions.

(c) An income statement listing all revenue and expense accounts by month.

(d) If nonregulated revenue represents more than ten percent of total company test period revenue, a detailed separation of all revenue and expenses between regulated and non-regulated operations.

(e) A detailed list of all nonregulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.

(f) Detailed price-out information that reconciles within five percent, without adjustment, to the test period booked revenue, including the test period customer count by tariff item.

(g) A consolidated balance sheet, including the percentage of equity and the percentage of debt, and the cost of that debt by component.

(h) A detailed depreciation schedule listing all used and useful assets held by the company during the test period, including the date of purchase, the cost at purchase, the depreciable life, the salvage value, depreciation expense, and accumulated depreciation expense at the end of the test period.

(i) Computed average investment. Average investment is the net book value of allowable assets at the beginning of the test period plus the net book value of allowable assets at the end of the test period, divided by two. Investor supplied working capital may be included, provided a work sheet is submitted detailing the calculations.

(j) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: A full description of the relationship, terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

(5) **Annual report.** The most recent consolidated annual report to shareholders, if any.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-620 Emergency adjudicative proceedings. (1) **When permitted.** The commission may conduct an emergency adjudicative proceeding pursuant to RCW 34.05.479 to suspend or cancel authority, to require that a dangerous condition be terminated or corrected, or to require immediate action in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate action by the commission. Such situations include, but are not limited to:

(a) Inadequate service by a public service company when the inadequacy involves an immediate danger to the public health, safety, or welfare; and

(b) Violations of law, rule, or order related to public safety, when the violation involves an immediate danger to the public health, safety, or welfare.

(2) **Complaint.** If time permits, the commission or a complainant must prepare a complaint and serve it on the respondent using a method that best provides actual notice of the adjudication. If a majority of the commissioners are not available to authorize a complaint, one commissioner or, if no commissioner is available, the secretary or executive director of the commission or an administrative law judge may authorize a complaint.

(3) **Who presides.** The commissioners will sit as presiding officers, hear the matter, and enter an order, if a majority of the commissioners are available. Any available commissioner will sit as presiding officer, hear the matter, and enter an order, if a majority of the commissioners is not available. The supervisor of the commission's administrative law judge function will assign an administrative law judge to sit as presiding officer, hear the matter, and enter an order, if no commissioner is available.

~~((4))~~ (4) **Record and decision.** The official record will include any written submissions of the parties; oral comments by the parties, if the presiding officer has allowed oral comments; and any documents regarding the matter that were considered or prepared by the commission. The agency's record need not constitute the exclusive basis for action, unless otherwise required by law.

~~((5))~~ (5) **Emergency order.** The presiding officer will enter an emergency order as soon as practicable under the circumstances. The order will include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order is effective when entered. The commission will serve the order pursuant to WAC 480-07-150 (3) and (7).

~~((6))~~ (6) **Post-order process.** After entering an emergency order under this section, the commission will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger to the public health, safety, or welfare, and will enter a final order.

~~((6))~~ (7) **Review or reconsideration of emergency order.** Any party to an emergency adjudicative proceeding may seek immediate review by the full commission in the case of any order entered by a single commissioner or by an administrative law judge. In the case of any order entered by a majority of the commissioners, any party may seek immediate reconsideration. If either review or reconsideration is requested, the commission will establish appropriate process to complete its review or reconsideration within ten days of the date of any petition for review or reconsideration. A party seeking immediate review or reconsideration is not automatically entitled to a stay of the emergency order.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements. The purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.

(1) **Petitions for enforcement.** A telecommunications company that is party to an interconnection agreement with another telecommunications company may petition under this rule for enforcement of the agreement.

(a) **What the petition must contain.** Each petition for enforcement must contain the following elements:

(i) A statement, including specific facts, demonstrating that the petitioner engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue.

(ii) A copy of the provision of the interconnection agreement that the petitioner contends is not being complied with.

(iii) A description of facts demonstrating failure to comply with the agreement. One or more affidavits, declarations, or other sworn statements, made by persons having personal knowledge of the relevant facts must support the description.

(b) **How to serve the petition.** The petitioner must serve the petition for enforcement on the responding party on the same day the petition is filed with the commission. If the petitioner chooses to serve the respondent by mail or parcel delivery service, it must deliver a copy of the petition and all supporting documents by hand delivery, ~~((telefacsimile))~~ fax, or ~~((electronic mail))~~ e-mail (to the e-mail address specified by the recipient for the purpose of receiving a copy of the petition) on the same day as filed with the commission. For purposes of this section, service must be effected on:

(i) The responding party's authorized representative, attorney of record, or designated agent for service of process;

(ii) The responding party's representatives with whom the petitioner conducted the negotiations addressed in (a)(i) of this subsection; and

(iii) All parties designated in the interconnection agreement to receive notices.

(c) **Profiling notice of petition.** The petitioner must give at least ten days' written notice to the respondent that the petitioner intends to file a petition for enforcement. The notice must identify ~~((the contract))~~ each specific provision of the agreement that the petitioner alleges was violated, and the

exact behavior or failure to act that petitioner alleges violates the agreement. The written notice must be served as provided in (b) of this subsection. The petitioner must include a copy of this notice with its petition for enforcement. The written notice shall be valid for thirty days from the date of service. If the petitioner wishes to file a petition for enforcement after the thirty-day period, the petitioner must serve another notice to the respondent at least ten days prior to filing the petition.

(2) **Answering a petition.** The respondent may answer the petition. The respondent waives the opportunity to present any matter that is not raised in the answer, except that the answer may be amended under subsection (3) of this section.

(a) **Contents of the answer.** The answer to a petition for enforcement must respond to each allegation of failure to comply with the terms of the interconnection agreement, stating relevant facts. Any facts relied upon must be supported by affidavits, declarations, or other sworn statements by persons having personal knowledge of the facts.

(b) **Filing and service of the answer.** The respondent must file the answer with the commission and serve it on the petitioner within five business days after service of the petition for enforcement. Service must be accomplished so that a copy of the response to the petition for enforcement and all supporting documents reach the petitioner's attorney, or the person who signed the petition if petitioner has no attorney, on the same day the answer is filed with the commission. If the respondent chooses to serve the petitioner by mail, a copy of the petition for enforcement and all supporting documents must be delivered to the person identified above on the same day as filed with the commission.

(3) **Amendment of petition and answer.** The presiding officer may permit the responding party to amend its answer for good cause shown, and to avoid substantial prejudice to the responding party that is not caused by the fault of the responding party. The presiding officer may permit either party to amend its petition or answer to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, CR 15(b) of the Washington superior court civil rules, when determining whether to permit amendment of the petition or answer to conform to the evidence.

(4) **Prehearing conference.** The commission will conduct a prehearing conference regarding each petition for enforcement of an interconnection agreement.

(a) **Schedule; mandatory attendance.** The presiding officer will issue notice of a prehearing conference within five business days after the petition is filed. Both the petitioner and the respondent must attend the prehearing conference. The prehearing conference may be conducted by telephone.

(b) **Procedural determination.** The presiding officer will determine at the prehearing conference whether the issues raised in the petition can be determined on the pleadings, submissions, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding officer will consider the parties' preferences and the reasons they advance, the need to clarify statements by asking questions, whether the issues are largely factual, largely legal, or involve ques-

tions of fact and law, the apparent complexity of facts and issues, the need for speedy resolution, and the completeness of information presented. The presiding officer may require the parties to submit written briefs on the issues.

(c) **Means of obtaining additional information.** If the presiding officer determines that further proceedings are necessary, the presiding officer will establish a schedule for receiving additional facts or evidence and may schedule an enforcement hearing session to explore the facts and issues raised in the petition and the answer. The party filing the ~~((complaint))~~ petition or answer may file with the ~~((complaint))~~ petition or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue. The presiding officer may allow limited discovery requiring only the disclosure of facts relating directly to matters at issue, and only if discovery is shown to be essential to the requesting party. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

(d) **Consideration as a complaint.** If the matter at issue involves policy, technical or accounting issues that require extensive analysis or discovery, the commission may convert the proceeding to a complaint proceeding under RCW 80.04.110 to allow adequate time and process for the demands of the proceeding.

(5) Powers of the presiding officer; conversion of proceeding; recommended or final decision.

(a) **Conduct of proceeding.** The presiding officer has broad discretion to conduct the proceeding in a manner that best suits the nature of the petition, including, but not limited to, converting the proceeding into a complaint proceeding under RCW 80.04.110. Matters may be appropriate for conversion when their complexity requires that they cannot be completed on the schedule provided in this rule; when the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; when extensive policy argument or legal briefing is required; or when participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written submissions or may schedule an enforcement hearing session. The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) **Recommended decision.** The presiding officer, if other than the commissioners, will serve a recommended decision on the parties within seventy-five days of the date the petition for enforcement was filed, or twenty-one days after the last hearing session or submission, whichever is later. The recommended decision is subject to approval by the commission. If the commissioners preside over the enforcement proceeding, they may enter a final decision within the time requirements applicable to recommended decisions.

(c) **Review of the recommended decision.** Any party may file a petition for administrative review of a recommended decision within seven days after the order is entered. A party opposing review may file an answer within five days after a petition for review is filed. The commission may hear the parties' arguments ~~((or comments))~~ regarding any recommended decision on the written pleadings or during ((a hearing)) oral argument, which may, in the commission's discre-

tion, be scheduled coincident with a regular or special open public meeting. ~~((The parties may file written comments prior to the meeting on a schedule established in the recommended decision.))~~ The commission may request commission staff to make a presentation at the ~~((meeting))~~ argument. The commission will conduct this session within ten days after the date of the recommended decision, or as soon thereafter as the commissioners' schedules permit. If no party files a petition for administrative review, the commission may adopt the recommended decision without material change. If the commission considers making a material change in a recommended order to which no petition for review has been filed, the commission must first seek the views of the parties on the issue.

(6) Commission decision on petition for enforcement.

(a) **Extent of commission discretion.** The commission will serve a final decision on the parties in the form of a commission order resolving the issues. The commission may adopt, modify, or reject all or part of any recommended decision.

(b) **Time of service.** The commission will enter its order on the petition for enforcement no later than ninety days after the date the petition is filed or fifteen days after the meeting at which it reviews the recommended decision, whichever is later. The commission may extend this time for lack of resources or for other good cause.

(c) **Petition for reconsideration.** The parties may petition for reconsideration within ten days after the commission serves its order on the petition for enforcement. If a party petitions for reconsideration, the commission may request that an answer be filed. The commission may request additional comments, briefing, evidence, or argument from the parties. Filing a petition for reconsideration of the order does not stay the effect of the order. A petition for reconsideration is deemed denied unless the commission grants or denies it by written order within ten days after the date on which petition for reconsideration is filed or the date established for filing an answer or additional comments, briefing, evidence, or argument, whichever is later. The commission may alter the time for entering its order on a petition for reconsideration by notice or letter.

(d) **Failure to comply with the order.** Any party who fails to comply with the terms of the commission's final order on a petition for enforcement is subject to penalties under RCW 80.04.380 and any other penalties or sanctions as provided by law. A company against whom a penalty is assessed may challenge the penalty or the facts on which it is based, or seek mitigation of the penalty, pursuant to pertinent law and commission rules.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-700 Alternative dispute resolution. The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest, and subject to approval by commission order. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

(1) **No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission retains and will exercise its authority in every adjudicative proceeding to consider any proposed settlement or agreement for approval.

(2) **Forms of ADR.** Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight. The commission may direct parties to meet or consult as provided in subsection (3) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720. The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties. The commission may assign a settlement judge to assist the parties in appropriate circumstances. The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

(3) **Settlement conference.** ~~((The commission may invite or direct the parties to confer among themselves, or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties. Any resulting settlement or stipulation must be submitted to the commission in writing and is subject to commission approval.))~~ A settlement conference means any discussion or other communication, in person or otherwise, intended to resolve one or more disputed issues (whether actual or anticipated) between two or more parties in an adjudicative proceeding. Settlement conferences do not include requests for information or clarification, or communications to identify whether a dispute exists or whether another party is willing to negotiate resolution of a disputed issue, or in aid of discovery. Settlement conferences must be informal and without prejudice to the rights of the parties. The procedural requirements of this section relating to settlement conferences may be waived if all parties and the commission agree. Any party and any person who has filed a petition to intervene may participate in an initial or early initial settlement conference. An intervenor's participation in a settlement conference is limited to the interests supporting its intervention, except by agreement of other participants in the conference. No party is required to attend.

(a) **Initial settlement conference.** The commission will set in the procedural schedule for each adjudicative proceeding the date for an initial settlement conference. Parties wishing to reschedule the initial settlement conference must seek modification of the schedule by the presiding officer upon notice to all other parties.

(b) **Early initial settlement conference.** Any party that wishes to initiate a settlement conference with any other party between the filing of the docket and the initial prehearing conference must have included in its notice to customers, if otherwise required, a statement indicating that an early initial settlement conference might be scheduled. In addition, the party proposing an early initial settlement conference must provide ten days prior notice of any such conference to the commission, public counsel, any party, any person that has filed a petition to intervene and any person that was a party in the most recent proceeding of the same type, involv-

ing the same filing party and respondent, if any. Such persons may participate in an early initial settlement conference in the docket if they file a petition to intervene prior to the early initial settlement conference.

(4) **ADR guidelines.** In any negotiation, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider the commission's guidelines for negotiations, set out in a policy statement adopted pursuant to RCW 34.05.230, and determine the ground rules governing the negotiation;

(b) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

(c) Parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential, subject to the requirements of RCW 5.60.070; and

(d) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement. Participants must immediately advise the commission if a commission-sanctioned ADR process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that an impasse has been reached or an impasse is declared by any neutral third party who is assisting the participants in the ADR process).

(e) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding, unless all parties consent in writing.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-710 Mediation. (1) **Scope.** This rule applies generally to settlement negotiations in which the commission agrees to assign a qualified mediator to assist the parties. This rule applies specifically to implement the mediation provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Commission participation.** The parties to a negotiation, including a negotiation under 47 U.S.C. §§ 251 and 252, may ask the commission to mediate any differences that arise during the negotiation. A request for mediation must include a brief statement of the nature of the dispute and the names, postal and ~~((electronic mail))~~ e-mail addresses, telephone and fax numbers of the parties and their representatives. Copies of the request must be served on all parties to the negotiation. All parties are required to participate in good faith if the commission agrees to mediate.

(3) **Mediators.** The commission may assign one or more qualified employees to serve as mediator(s). The commission may require the parties to retain the services of a professional mediator acceptable to all parties.

(4) **Process.** Mediators have discretion to regulate the course of the mediation, including scheduling mediation sessions, in consultation with the parties. The following general procedures apply:

(a) The mediator may not impose a settlement but may offer proposals for settlement;

(b) The mediator may meet individually with the parties or attorneys during mediation;

(c) Only the parties to the negotiation and the mediator may attend the mediation session(s), unless all parties and the mediator consent to the presence of others;

(d) Parties must provide the mediator with a brief statement of position and relevant background information prior to the first mediation session;

(e) The mediator may ask for supplemental information;

(f) The mediator (~~(should)~~) may not provide legal advice to the parties, nor are any mediator's (~~(statements)~~) stated opinions as to law or policy binding on the commission, unless later adopted by the commission;

(g) The mediation process is confidential to the extent permitted by law, subject to the requirement for a written agreement or other record indicating an expectation that mediation communications will be privileged against disclosure as required under RCW (~~(5.60.70 [5.60.070])~~) 7.07.020; and

(h) No stenographic or electronic record will be kept.

(5) **Fees and costs.** Each party must bear its own fees and costs. Each party must pay any fees imposed by commission rule or statute.

(6) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-640 (commission approval of interconnection agreements) or WAC 480-07-740, as appropriate. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-640 or 480-07-740.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-730 Settlement. A settlement is an agreement among two or more parties to a proceeding (~~(that is)~~), filed with the commission as a proposed resolution of one or more issues. Parties must (~~(supplement the filing of a written)~~) submit an electronic copy of the settlement agreement (~~(by submitting the document in electronic form as specified)~~) in the format identified in WAC 480-07-140(~~(5))~~(6).

(1) **Full settlement.** An agreement of all parties that would resolve all issues in a proceeding may be presented as a full settlement for commission review. Parties (~~(that)~~) who file a full settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

(2) **Partial settlement.** An agreement of all parties on some issues may be presented as a partial settlement for commission review, and remaining matters may be litigated. Parties (~~(that)~~) who file a partial settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

(3) **Multiparty settlement.** An agreement of some, but not all, parties on one or more issues may be offered as their

position in the proceeding along with the evidence that they believe supports it. Nonsettling parties may offer evidence and argument in opposition.

(4) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-740. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-740.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-750 Commission discretion to accept settlement, impose conditions, or reject a proposed settlement. (1) The commission may decide whether or not to consider a proposed settlement. The commission will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.

(2) If the commission considers a proposed settlement, it may accept the proposed settlement, with or without conditions, or may reject it.

(a) If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement and may take into account the need to address other pending business before the commission.

(b) If the commission accepts a proposed settlement upon conditions not proposed in the settlement, the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions. If a party rejects a proposed condition, the settlement is deemed rejected and (a) of this subsection applies.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-883 Compliance filing—Filing requirements; timing; commission action. A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. If the commission finds that a compliance filing varies from the requirements or conditions of the order authorizing or requiring it, either by falling short of or by exceeding the authorization, conditions, or requirements of the order, the commission may reject the filing unless it has preapproved the variance. If the commission accepts in error a compliance filing that does not comply with the order authorizing the filing, the commission's acceptance does not validate the noncompliant elements of the filing.

(1) **Filing requirements.**

(a) A party who files a compliance filing must make its filing consistent with the filing requirements of the docket authorizing the filing, i.e., file the required number of copies, and serve the filing on all other parties in the docket.

(b) A compliance filing must include the following:

~~((a))~~ (i) A cover letter that identifies the order to which the filing relates;

~~((b))~~ (ii) All required tariff sheets; and

~~((c))~~ (iii) Work papers that clearly demonstrate the derivation of the proposed tariffs.

(2) **Service requirement.** A party who makes a compliance filing must serve it on each party to the proceeding in which the compliance filing is authorized or required. Service must be initiated on the same day as the filing.

(3) **Timing; effective date.**

(a) The commission will state in its final order authorizing or requiring a compliance filing the date by which the compliance filing must be made and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may state the amount of time it will require to examine any proposed compliance tariff sheets between their filing and their proposed effective date.

(b) A compliance filing does not become effective automatically on its stated effective date. Commission action is required before any compliance filing can be effective. The commission may enter an order approving a compliance filing or taking other appropriate action. The commission may delegate to the secretary, by written authorization in individual proceedings, the authority to approve or take other appropriate action with respect to a compliance filing.

(4) **Commission action on compliance filing.**

(a) The commission may enter an order in any proceeding in which a compliance filing is authorized or required that:

(i) Approves the compliance filing; or

(ii) Rejects a compliance filing or any portion of the filing that apparently fails to comply.

(b) If the commission rejects all or part of a compliance filing, the party may refile. The commission may impose conditions on refileing.

(c) If the commission approves a compliance filing, but later discovers that it failed to recognize that the compliance filing was, in fact, incomplete or did not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-900 Open public meetings. (1) **Regular meetings.** The commission will hold regular meetings to conduct business under chapter 42.30 RCW, the Open Public Meetings Act. The commission generally schedules two business meetings ((will begin at 9:30 a.m., on the second, fourth, and fifth Wednesday of each month)) per month, usually on Wednesday at 9:30 a.m. in the commission's office in Olympia, Washington. ((If the regular meeting day is a legal holiday, the regular meeting will be held on the next business day or on an alternate schedule published in the Washington State Register.

~~(2) **Changes to regular meetings.** Regular meetings may be canceled. The commission may change the time and place of regular meetings from the information set out in this~~

~~section. The current times and places are published, as required, in the Washington State Register, on the commission's internet web site, and are available through telephone inquiry.~~

~~(3)) The specific time and place of each business meeting are published, as required, in the *Washington State Register* and on the commission's internet web site. The commission may cancel a meeting or change the time or place of a meeting and will publish a notice of these changes on its web site.~~

(2) **Special meetings.** The commission may convene special meetings under RCW 42.30.080.

(3) **Recessed meetings.** The commission may recess a regular or special meeting and reconvene it at a different time or location.

(4) **Agenda.** The commission ~~((secretary))~~ will distribute an agenda for each ~~((open public))~~ regular business meeting. The commission will make its best effort to compile and publish a complete agenda~~((, but))~~. It may amend its agenda after it is published~~((;))~~ and may take up matters that do not appear on its published agenda. The agenda ~~((is))~~ and any addendum are posted to the commission's internet site ~~((at www.wate.wa.gov. Persons without internet access capability may request the commission records center to))~~. The commission will provide a copy of the agenda via U.S. mail on request.

(a) **"Discussion" agenda.** ~~((In general, the agenda will identify each item scheduled for discussion and action, as relating to utility regulation under Title 80 RCW; as relating to transportation regulation under Title 81 RCW; or "other." The secretary will group similarly identified items together on the agenda.))~~ The discussion agenda includes items that are scheduled for discussion and action by the commissioners. This part of the agenda is further divided into "utilities" and "transportation" sections.

(b) **"No action" agenda.** ~~((Any request, proposal, or other filing that can take effect without commission action may be placed on a "no action required" portion of the agenda.))~~ The no-action agenda includes items that appear to be noncontroversial and, by law, may take effect without action by the commission. Any item on ~~((this portion of the agenda))~~ the no-action agenda will be ~~((discussed))~~ moved to the discussion agenda at the request of any commissioner~~(('s request, and))~~. The commission may take such action on the item as it deems appropriate.

(c) **"Consent" agenda.** The ~~((secretary may place any item that the secretary believes to be noncontroversial on a "consent agenda" portion of the open meeting agenda. The commission will ask at the meeting if any person wants to address any))~~ consent agenda includes items that appear to be noncontroversial and, by law, require action by the commission to take effect. Any item on the consent agenda ~~((item, and an item))~~ will be ~~((removed from the consent agenda for individual discussion and action))~~ moved to the discussion agenda at the request of any commissioner. ~~((Items on the consent agenda may be collectively moved for approval))~~ The commission will act on the items on the consent agenda by a single motion and ((may be collectively approved by)) a single vote of the commission.

(5) Deadlines and schedules.

(a) The commission generally schedules items for consideration at the last regular business meeting before the item would take effect by law. The commission generally schedules items without a stated effective date, such as petitions, for consideration thirty days after filing.

(b) If a company makes a filing and requests action by the commission before the statutory or required notice period is complete, the commission will schedule consideration of the request at its next regular business meeting, if the request is filed and complete at least five business days before the meeting. Items filed less than five business days before a meeting will generally be scheduled for the second business meeting after the filing.

(c) The commission will publish the agenda for each regular business meeting two business days before the meeting.

(d) The commission may publish an addendum to the agenda prior to the beginning of the meeting.

(6) Staff contact. ((A commission)) For each item on the discussion agenda, the commission designates a staff member who is ((ordinarily)) assigned to analyze and ((if appropriate,)) present ((each open meeting item)) a recommendation to the commission at the open meeting. The staff person and a contact number are identified in the ((draft)) agenda. Persons interested in open meeting agenda items may discuss them with staff, subject to time availability. ((Any person interested in an item on the open meeting agenda may address the item during the meeting.

((6)) (7) Public comment. The commission will provide an opportunity at the beginning of each business meeting for members of the public to request that items on the consent or no-action sections of the agenda be moved to the discussion section. The commission will provide an opportunity for public comment on each discussion agenda item before taking action on that item.

(8) Orders. The commission may direct the secretary to enter any order or sign any document necessary to implement an open meeting decision by the commissioners.

((7)) (9) Modifications. The commission may exercise its discretion to modify the procedures in this section when appropriate to the conduct of its business.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-910 Informal complaints. (1) **How to make an informal complaint.** Any person may make an informal complaint to the commission about any business that the commission regulates. A person may make an informal complaint by telephone, correspondence, ((~~facsimile~~)) fax transmission, ((~~or electronic mail~~)) e-mail, or by using the complaint form available on the commission's web site.

(2) **Contents.** An informal complaint must identify the business or person to whom the complaint pertains. An informal complaint should:

(a) Present all facts that are needed for the commission to understand the nature of, and reason(s) for, the complaint;

(b) Describe the acts or omissions that led to the complaint, with all relevant dates;

(c) Cite all relevant statutes or rules, if the person who files the complaint knows them.

(3) **Commission response; result.** Commission employees assigned to assist consumers may discuss an informal complaint with the affected persons, by correspondence or otherwise. ~~((The commission will try to assist the parties to resolve the informal complaint by agreement without the need for a formal complaint, hearing, and order.))~~ The commission will investigate to determine if there are violations of any applicable rule or law and if so, will work with the parties to ensure compliance. The commission encourages the informal resolution of disputes whenever possible. An informal complaint will not result in a hearing or in an order that compels a person to do something or forbids a person from doing something.

(4) ~~((Conversion of))~~ **Uniform Mediation Act not applicable.** The Uniform Mediation Act (chapter 172, Laws of 2005, codified as chapter 7.07 RCW) does not apply to the commission's informal complaint resolution process.

(5) Filing of formal complaint regarding subject of informal complaint ((to formal complaint)). Making an informal complaint does not prevent any party from filing a formal complaint ((, which may constitute an application for an adjudicative proceeding)). The commission may initiate a formal complaint proceeding on its own initiative. The commission will stop processing an informal complaint when a person filing an informal complaint files a formal complaint.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-930 Declaratory orders under RCW 34.05.240. (1) **Petition.** Any interested person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission, as provided by RCW 34.05.240.

(a) **Format.** Petitions for declaratory orders under RCW 34.05.240 must conform in style and substance to the requirements for other forms of adjudicative pleading as specified in Part III, subpart A of this chapter.

(b) **Relationship with adjudications.** The commission will dismiss a petition for declaratory order when issues in the petition are at issue in a pending adjudication. The commission will reject a single pleading that seeks a declaratory order or, in the alternative, an adjudicative order. The filing party must choose which process it deems appropriate.

(2) **Notice.** The commission will give notice of any petition for declaratory order within fifteen days after the commission receives the petition. The notice will be served on all persons who are required by law to be given notice and on any other person to whom the commission deems notice to be desirable.

(3) **Response.** Any person may respond to a petition for declaratory order by filing an answer within twenty days after the petition is filed or at such other time as the commission may establish by notice. The commission will not enter a declaratory order under RCW 34.05.240 if any person asserts in response to a petition for declaratory order filed pursuant to RCW 34.05.240 that their rights might be substantially

prejudiced by entry of a declaratory order, supports such assertion by sworn affidavit demonstrating the potential for substantial prejudice, and does not consent in writing to the determination of the matter by a declaratory order proceeding under RCW 34.05.240.

(4) **Conversion of proceeding.** The commission may convert the form of a declaratory order proceeding as provided under RCW 34.05.070 and conduct the matter as an adjudicative proceeding under Part III, subpart A of this chapter.

(5) **Commission action on petition.** Within thirty days after it receives a petition for declaratory order, the commission will:

(a) Enter a declaratory order;

(b) Notify the petitioner that the commission will not enter a declaratory order under RCW 34.05.240, and state reasons for its action;

(c) Set a specified time, no later than ninety days after the day the petition was filed, by which the commission will enter a declaratory order; or

(d) Set a reasonable time and place for a hearing. If a hearing is held on a petition for declaratory order under RCW 34.05.240, it must be held no more than ninety days after receipt of the petition. If a hearing is held, the commission will give at least seven days' notice to the petitioner, to all persons to whom notice is required by law, and to any other person it deems desirable. The notice will include the time, place, and a statement of the issues involved.

(6) **Extension of time.** The commission may for good cause extend the times specified in subsection (5)(c) and (d) of this section.

(7) **Commission action after hearing.** If a hearing is held as provided in subsection (5)(d) of this section, the commission will within a reasonable time:

(a) Enter a declaratory order; or

(b) Notify the petitioner that the commission will not enter a declaratory order and state the reasons for its action.

(8) **Service.** The commission will serve its order or notice upon all persons who are required to receive notice under subsection (2) of this section.

WSR 06-17-007

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed August 3, 2006, 3:57 p.m., effective September 3, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and under circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

These rules explain the sales and use tax deferral program's eligible area criteria, hiring requirements, reporting and monitoring procedures, and tax repayment requirements. They also explain the application procedure and review pro-

cess, how the deferral certificate is to be used, and the record-keeping requirements of the deferral program.

The department is proposing a revision to these rules to incorporate provisions of chapter 25, Laws of 2004, and chapter 142, Laws of 2006. These provisions:

- Extend the expiration date of the deferral program to July 1, 2010;
- Require a recipient of the deferral to complete an annual survey;
- Revised the definitions of eligible area and eligible investment project; and
- Expanded the definition of manufacturing for purposes of the deferral program to include the conditioning of vegetable seed.

Rule 24001 is being revised to address the deferral program as it applies to persons who file applications after March 31, 2004. Information addressing the deferral program for the period of August 1, 1999, through March 31, 2004, is being moved from Rule 24001 to Rule 24001A.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed after March 31, 2004 and 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed prior to April 1, 2004.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 06-11-185 on May 24, 2006.

Changes Other than Editing from Proposed to Adopted Version: There is only one change from the proposed rule. The adopted version of the rule explicitly explains that processors for hire may qualify for the deferral program as being engaged in manufacturing activities.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 3, 2006.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 04-01-127, filed 12/18/03, effective 1/18/04)

WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in ~~((distressed areas)) rural counties—Applications filed after ((July 31, 1999)) March 31, 2004.~~ (1) **Introduction.** Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and under circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

(a) This deferral program applies to taxes imposed on the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This ~~((rule))~~ section does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

(b) This program was first enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, ~~((and))~~ 1999, and 2004, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This ~~((rule))~~ section sets forth the requirements for applications made after ~~((July 31, 1999))~~ March 31, 2004. For applications made prior to ~~((August 1, 1999))~~ April 1, 2004, see WAC 458-20-24001A.

(c) The employment security department and the department of community, trade, and economic development administer programs for ~~((distressed areas)) rural counties~~ and job training and should be contacted directly for information concerning these programs.

(2) ~~((Definitions. The following definitions apply to applications made after July 31, 1999.~~

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in

effect on the "date of application" will determine the program criteria the applicant must satisfy:

(f) "Department" means the department of revenue.

(g) "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) Community empowerment zone (CEZ). A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development or a county containing a CEZ.

(h) "Eligible investment project" means an investment project in an eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(i) "Industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(j) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" means construction of new structures and expansion or renovation of existing structures

for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. Full time means at least thirty five hours a week, four hundred fifty five hours a quarter, or one thousand eight hundred twenty hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment, manufacturing components such as belts, pulleys, shafts and moving parts, molds, tools and dies, operating structures, and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(t) "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(3) Issuance of deferral certificate. The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(4) Eligible investment amount. There may or may not be a hiring requirement, depending on the location of the project.

(a) No hiring requirements. There are no hiring requirements for qualifying projects located in counties with fewer than one hundred persons per square mile. Monitoring and reporting procedures are explained in subsection (12) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (5) of this rule explains the procedure for apportionment.

(b) Hiring requirements. There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

Number of qualified employment positions to be hired x \$750,000 = amount of investment eligible for deferral

Applicants must make good faith estimates of anticipated hiring. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at <http://www.dor.wa.gov>. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(5) Apportionment of costs between qualifying and nonqualifying investments. The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by one of the following apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas and is primarily used by those industries with specialized building requirements.

(i) The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(ii) If a building is used partly for manufacturing, research and development, or commercial testing and partly for other purposes, the applicable tax deferral shall be determined as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing, research and development, or commercial testing may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing, research and development, or commercial testing may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing, research and development, or commercial testing and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing, research and development, or commercial testing, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$\frac{\text{Square feet devoted to manufacturing, research and development, or commercial testing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}}$	=	Percentage of total cost of construction of common areas eligible for deferral
---	---	--

(b) Qualified machinery and equipment is not subject to apportionment.

(6) ~~Leased equipment.~~ The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(7) ~~Application procedure and review process.~~ An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program.

Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98507-7477

Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

(b) In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) If the construction will not begin within one year of construction, the applicant shows proof that there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s).

(e) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(8) ~~Program termination.~~ No applications for deferral of taxes will be accepted after June 30, 2004.

(9) ~~Eligible area criteria.~~ The office of financial management will determine annually the counties with fewer than one hundred persons per square mile. The department will

update and distribute the list each year. The list will be effective on July 1 of each year.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 1999, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than one hundred persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

~~(10) Use of the certificate.~~ A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

~~(11) Project operationally complete.~~ An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

~~(12) Reporting and monitoring procedure.~~ Requirement to submit annual reports. Each recipient of a tax deferral under chapter 82.60 RCW must submit a report on December 31st of the year in which the investment project is certified by the department as having been operationally completed and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

~~(13) Repayment of deferred taxes.~~ Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

~~(c) Failure of investment project to satisfy general conditions.~~ If, on the basis of the recipient's annual report or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this section is a facility not being used for a manufacturing or research and development operation.

~~(d) Failure of investment project to satisfy required employment positions conditions.~~ If, on the basis of the recipient's annual report or other information, the department

finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

~~(14) Debt not extinguished because of insolvency or sale.~~ Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

~~(15) Disclosure of information.~~ Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100-)) **Who is eligible for the sales and use tax deferral program?** A person engaged in manufacturing or research and development activity is eligible for this deferral program for its eligible investment project.

(a) What does the term "person" mean for purposes of this section? "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW.

(i) The lessor or owner of the qualified building is not eligible for deferral unless:

(A) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(B) All of the following conditions are met:

(I) The lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee;

(II) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070;

(III) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor; and

(IV) Upon request, the lessor must provide the department with written documentation to support the eligibility of the deferral, including any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, economic benefit of the deferral is passed through to the lessee when evidenced by written documentation that the amounts paid to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred, or that the lessee receives more tenant improvements through a credit for tenant improvements or other mechanism in the lease equal to the amount of the sales tax deferred.

(ii) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.60 RCW are met. At the time of application, the lessor must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified research and development or pilot scale manufacturing once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified research and development or pilot scale manufacturing. Otherwise, deferred taxes will be immediately due to the lessor, and interest will be assessed retroactively from the date of deferral.

(b) What is "manufacturing" for purposes of this section? "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, in addition, includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories. Effective July 1, 2006, manufacturing also includes the conditioning of vegetable seeds.

For purposes of this section, both manufacturers and processors for hire may qualify for the deferral program as being engaged in manufacturing activities. Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information on processors for hire.

For purposes of this section, "computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

For purposes of this section, "vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state. "Vegetable seeds" includes, but is not limited to, cabbage seeds, carrot seeds, onion seeds, tomato seeds, and spinach seeds. Vegetable seeds do not include grain seeds, cereal seeds, fruit seeds, flower seeds, tree seeds, and other similar properties.

(c) What is "research and development" for purposes of this section? "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. For purposes of this section, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(3) What is eligible for the sales and use tax deferral program? This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings and acquisition of qualified machinery and equipment.

(a) What is an "eligible investment project" for purposes of this section? "Eligible investment project" means an investment project in an eligible area. Refer to (g) of this subsection for more information on eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(b) What is an "investment project" for purposes of this section? "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(c) What is "qualified buildings" for purposes of this section? "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing or research and development activities.

(i) "Qualified buildings" is limited to structures used for manufacturing and research and development activities. "Qualified buildings" includes plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development.

(A) "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. An office may be located in a separate building from the building used for manufacturing or research and development activities, but the office must be located at the same site as the qualified building in order to qualify. Each individual office may only qualify or disqualify in its entirety.

(B) "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods. A warehouse may be located in a separate building from the building used for manufacturing or research and development activities, but the warehouse must be located at the same site as the qualified building in order to qualify. Warehouse space may be apportioned based upon its qualifying use.

(C) A site is one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(ii) "Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

However, "qualified buildings" includes construction of specialized sewerage pipes connected to a qualified building

that are specifically designed and used exclusively for manufacturing or research and development.

Also, "qualified buildings" includes construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing manufacturing or research and development in the building. Parking lots may be apportioned based upon its qualifying use.

(d) When is apportionment of qualified buildings appropriate? The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing building used in manufacturing or research and development. Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this section, apportionment is necessary.

(e) What are the apportionment methods? The deferral is determined by one of the following two apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas, and it is primarily used by those industries with specialized building requirements.

(i) First method. The applicable tax deferral can be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways, bathrooms, and conference rooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Costs} \times \text{Tax Rate} = \text{Eligible Tax Deferred.}$$

(ii) Second method. If the applicable tax deferral is not determined by the first method, it will be determined by tracking the cost of construction of qualifying/nonqualifying areas as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing or research and development may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing or research and development may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing or research and development and for other purposes, such as hallways, bathrooms, and conference

rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing or research and development, excluding areas used in common, to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing or research and development, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \frac{\text{Percentage of total cost of construction of common areas eligible for deferral}}{\text{Percentage of total cost of construction of common areas eligible for deferral}}$$

(f) What is "qualified machinery and equipment" for purposes of this section? "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

For purposes of this section, "industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(i) Are qualified machinery and equipment subject to apportionment? Qualified machinery and equipment are not subject to apportionment.

(ii) To what extent is leased equipment eligible for the deferral? The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date, the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(g) What is an "eligible area" for purposes of this section? "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) Community empowerment zone (CEZ). A "community empowerment zone" means an area meeting the

requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development, or a county containing a CEZ.

(h) What if an investment project is located in an area that qualifies both as a rural county and as a CEZ? If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 2004, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than one hundred persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements. Refer to subsection (4) of this section for more information on the application process.

(i) Are there any hiring requirements for an investment project? There may or may not be a hiring requirement, depending on the location of the project.

(i) Rural county. There are no hiring requirements for qualifying projects located in rural counties.

(ii) Community empowerment zone (CEZ). There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

$$\text{Number of qualified employment positions to be hired} \times \$750,000 = \text{amount of investment eligible for deferral}$$

Applicants must make good faith estimates of anticipated hiring. Refer to subsection (4) of this section for more information on the application process. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at <http://www.dor.wa.gov>. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. Refer to subsection (7) of this section for more information on certification of an investment project as operationally complete. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(A) What is a "qualified employment position" for purposes of this section? "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full-time" means at least thirty-

five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(B) Who are residents of the CEZ? "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(4) What are the application and review processes? An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) What is "initiation of construction" for purposes of this section? "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(b) What is "acquisition of machinery and equipment" for purposes of this section? "Acquisition of machinery and equipment" means the machinery and equipment is under the dominion and control of the recipient or its agent.

(c) How may a taxpayer obtain an application form? Application forms may be obtained at department of revenue district offices, by downloading from the department's web site (dor.wa.gov), by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax 360-586-2163

Applicants must mail or fax applications to the special programs division at the address or fax number given above. Applications received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. RCW 82.60.100.

For purposes of this section, "applicant" means a person applying for a tax deferral under chapter 82.60 RCW, and "department" means the department of revenue.

(d) Will the department approve the deferral application? In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) The applicant shows proof that, if the construction will not begin within one year of construction, there is a specific and active program to begin construction of the project

within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s). Refer to subsection (6) of this section for more information on the use of tax deferral certificate.

(e) What is the date of application? "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) When will the department notify approval or disapproval of the deferral application? The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(g) May an applicant request a review of department disapproval of the deferral application? The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100 (Appeals). The filing of a petition for review with the department starts a review of departmental action.

(5) What happens after the department approves the deferral application? The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

For purposes of this section, "recipient" means a person receiving a tax deferral under this program.

(6) How should a tax deferral certificate be used? A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this section. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with

whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102 (Resale certificates). The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

For purposes of this section, "certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(7) What are the processes of an investment project that is certified by the department as operationally complete? An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

For purposes of this section, "operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(a) What should a certificate holder do if its investment project reaches the estimated costs but the project is not yet operationally complete? If a certificate holder has an investment project that has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) What should a certificate holder do when its investment project is operationally complete? The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The certificate holder of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(8) Is a recipient of tax deferral required to submit annual surveys? Each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(9) Is a recipient of tax deferral required to repay deferred taxes? Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Is repayment required for machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565?

Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) When is repayment required? The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100 (Appeals). The filing of a petition for review with the department starts a review of departmental action.

(i) Failure of investment project to satisfy general conditions. If, on the basis of the recipient's annual survey or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this section is a facility not being used for a manufacturing or research and development operation. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(ii) Failure of investment project to satisfy required employment positions conditions. If, on the basis of the recipient's annual survey or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions under subsection (3)(i) of this section, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(10) When will the tax deferral program expire? No applications for deferral of taxes will be accepted after June 30, 2010.

(11) Is debt extinguishable because of insolvency or sale? Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes.

(12) Does transfer of ownership terminate tax deferral? Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

AMENDATORY SECTION (Amending WSR 04-01-127, filed 12/18/03, effective 1/18/04)

WAC 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in ~~((distressed areas))~~ rural counties—Applications filed prior to ~~((August 1, 1999))~~ April 1, 2004. Introduction. Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and for those circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

The program applies to sales and use taxes on materials and labor and services rendered in the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

This program was enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, ~~((and))~~ 1999, and 2004, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This rule is written in ~~((three))~~ four parts and covers applications made prior to ~~((July 31, 1999))~~ April 1, 2004. Each part sets forth the requirements on the basis of the period of time in which application is made. Refer to the year during which application was made for information on an individual application. For applications made after ~~((July 31, 1999))~~ March 31, 2004, see WAC 458-20-24001.

The employment security department and the department of community, trade, and economic development administer additional programs for distressed areas and job training and should be contacted directly for information concerning these programs.

PART I

Applications from August 1, 1999, to March 31, 2004

(1) Definitions. The following definitions apply to applications made on and after August 1, 1999, and before April 1, 2004:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) "Department" means the department of revenue.

(g) "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) Community empowerment zone (CEZ). A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development or a county containing a CEZ.

(h) "Eligible investment project" means an investment project in an eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(i) "Industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(j) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for

sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" means construction of new structures and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. Full-time means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipi-

ent. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(t) "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(2) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(3) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in counties with fewer than one hundred persons per square mile. Monitoring and reporting procedures are explained in subsection (10) of this section. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (4) of this section explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

$$\frac{\text{Number of qualified employment positions to be hired}}{\$750,000} = \frac{\text{amount of investment eligible for deferral}}{\$750,000}$$

Applicants must make good faith estimates of anticipated hiring. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at <http://www.dor.wa.gov>. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(4) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only

in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by one of the following apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas and is primarily used by those industries with specialized building requirements.

(i) The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(ii) If a building is used partly for manufacturing, research and development, or commercial testing and partly for other purposes, the applicable tax deferral shall be determined as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing, research and development, or commercial testing may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing, research and development, or commercial testing may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing, research and development, or commercial testing and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing, research and development, or commercial testing, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral.

Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing, research and development, or commercial testing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \frac{\text{Percentage of total cost of construction of common areas eligible for deferral}}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(5) Leased equipment. The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(6) Application procedure and review process. An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98504-7477

Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

(b) In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) If the construction will not begin within one year of application, the applicant shows proof that there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s).

(c) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(7) Eligible area criteria. The office of financial management will determine annually the counties with fewer than one hundred persons per square mile. The department will update and distribute the list each year. The list will be effective on July 1 of each year.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 1999, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than one hundred persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

(8) Use of the certificate. A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in Part I. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period

of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(9) Project operationally complete. An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(10) Reporting and monitoring procedure.

(a) Requirement to submit annual reports. Each recipient of a tax deferral under chapter 82.60 RCW must submit a report on December 31st of the year in which the investment project is certified by the department as having been operationally completed and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) Requirement to submit annual surveys. Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report**. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(11) Repayment of deferred taxes. Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year	Percentage of Deferred Tax Waived
<u>1</u> (Year operationally complete)	<u>0%</u>
<u>2</u>	<u>0%</u>
<u>3</u>	<u>0%</u>
<u>4</u>	<u>10%</u>
<u>5</u>	<u>15%</u>
<u>6</u>	<u>20%</u>
<u>7</u>	<u>25%</u>
<u>8</u>	<u>30%</u>

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(c) Failure of investment project to satisfy general conditions. If, on the basis of the recipient's annual report or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this section is a facility not being used for a manufacturing or research and development operation.

(d) Failure of investment project to satisfy required employment positions conditions. If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(12) Debt not extinguished because of insolvency or sale. Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

(13) Disclosure of information. Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the

amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART ((4)) II

Applications ((after)) from July 1, 1995, to July 31, 1999

((4)) (14) Definitions. For the purposes of this part, the following definitions apply for applications made on and after July 1, 1995, and before August 1, 1999:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Department" means the department of revenue.

(f) "Eligible area" means one of the areas designated according to the following classifications:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. In making this calculation, the department will compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) Median income county. On and after June 6, 1996, a county that has a median household income that is less than seventy-five percent of the state median income for the previous three years;

(iii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iv) CEZ and county containing a CEZ. A designated community empowerment zone (CEZ) approved under RCW 43.63A.700 or a county containing such a community empowerment zone;

(v) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in Part I;

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047; or

(vii) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county.

(g)(i) "Eligible investment project" means:

(A) An investment project in an unemployment county, a median income county, an MSA, a timber impact area town, or a governor's designation county; or

(B) That portion of an investment project in a CEZ, a county containing a CEZ, or a contiguous county, that is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment.

(ii) "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Land clearing prior to excavation of the building site does not commence construction nor does planning commence construction.

(j) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(k) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(l) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(m) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(n) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capac-

ity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(o) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(p) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(q) "Recipient" means a person receiving a tax deferral under this program.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

~~((2))~~ **(15) Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

~~((3))~~ **(16) Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in distressed counties, MSAs, median income counties, governor-designated counties, or timber impact towns. Monitoring and reporting procedures are explained in subsection ~~((4))~~ **(23)** of this ~~((rule))~~ **section**. Buildings that will be used partly for manufacturing or research and development and partly for

other purposes are eligible for a deferral on a proportionate basis. Subsection ~~((4))~~ (17) of this ~~(rule)~~ section explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs, in counties containing CEZs, or in contiguous counties. Total qualifying project costs, including any part of the project that would qualify under RCW 82.08.02565 and 82.12.02565, must be examined to determine the number of positions associated with the project. An applicant who knows at the time of application that he or she will not fill the required qualified employment positions is not eligible for the deferral. Applicants must make good faith estimates of anticipated hiring. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired. The investment must include the sales price of machinery and equipment eligible for the sales and use tax exemption under RCW 82.08.02565 and 82.12.02565. An applicant can amend the number of persons hired until completion of the project. The qualified employment positions filled by December 31 of the year of completion are the benchmark to be used during the next seven years in determining hiring compliance.

(i) Total qualifying project costs are divided by seven hundred fifty thousand, the result being the qualified employment positions.

(ii) In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This reduction requires a reexamination of whether the seventy-five percent hiring requirement (as explained below) is met.

(iii) This number, which is the result of (i) and (ii) of this subsection, is the number of positions used as the benchmark over the life of the deferral. For recipients locating in a CEZ or a county containing a CEZ, seventy-five percent of the new positions must be filled by residents of a CEZ located in the county where the project is located. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at <http://www.dor.wa.gov>. For recipients located in a contiguous county, residents of an adjacent unemployment or governor-designated county must fill seventy-five percent of the new positions.

(iv) The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. If the recipient has failed to create the requisite number of positions, the department will issue an assessment as explained under subsection ~~((4))~~ (24) of this ~~(rule)~~ section.

(v) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years.

(vi) Qualified employment positions do not include those positions filled by persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee, so long as the position is not actually vacant for any period in excess of thirty consecutive days.

~~((4))~~ (17) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing.

(a) Where a building(s) is used partly for manufacturing, research and development, or commercial testing and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing, research and development, or commercial testing purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

~~((5))~~ (18) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

~~((6))~~ (19) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
 Department of Revenue
 Special Programs
 P.O. Box 47477
 Olympia, WA ((98507)) 98504-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

((7)) (20) **Eligible area criteria.** The statewide and county unemployment statistics last published by the department will be used to determine eligible areas based on unemployment. Median income county designation is based on data produced by the office of financial management and made available to the department on November 1 of each year. The timber impact town designation is based on information provided by the department of employment security.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on May 1, 1998, the city of Yakima qualifies as a CEZ, and the entire county of Yakima qualifies as an unemployment county. The CEZ requirements are more restrictive than the unemployment county requirements. The department will assign the project to the distressed area eligible area unless the applicant elected to be bound by the CEZ requirements.

((8)) (21) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in this Part ((4)) II. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller is relieved of the

responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

((9)) (22) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

((10)) (23) **Reporting and monitoring procedure.**

(a) Requirement to submit annual reports. Each recipient of a deferral granted after July 1, 1995, must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

((11)) (b) **Requirement to submit annual surveys.** Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey instead of an annual report. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(24) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection, on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood product

industries, and sales of or charges made for labor and services, of the type which qualified for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action. See subsection ~~((H1))~~ (24)(d) of this ~~((rule))~~ section for repayment and waiver for deferrals with hiring requirements.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facilities are not used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date the application was filed). There is no proration of the amount owed under this subsection. No penalties will be assessed.

(e) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent

of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date the application was filed. Each year the employment requirement is met, twelve and one-half percent of the deferred tax will be waived, if all other program requirements are met. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection.

~~((H2))~~ (25) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

~~((H3))~~ (26) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART ~~((H))~~ III

Applications from July 1, 1994, to June 30, 1995

~~((H4))~~ (27) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1994, and before July 1, 1995.

(a) "Acquisition of equipment or machinery" means the date the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years pre-

ceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iii) CEZ. A designated community empowerment zone approved under RCW 43.63A.700;

(iv) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in this subsection;

(v) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county; or

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, equipping, or renovating an existing facility with costs in excess of twenty-five percent of the true and fair value of the facility prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing facility, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing facility prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing facility which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the buildings or equipment for ad valorem property tax purposes at the time of application.

(ii) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than cogeneration projects that are both an integral part of a manufacturing facility and owned at least fifty percent by the manufacturer,

or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of the new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel his or her own building, but leases from a third party, is eligible for sales and use tax deferral on the machinery and equipment provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours per week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(s) "Recipient" means a person receiving a tax deferral under this program.

~~((15))~~ **(28) Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

~~((16))~~ **(29) Eligible investment amount.**

(a) Projects located in unemployment counties, MSAs, governor-designated counties, or timber impact towns are eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This is the number of positions used as the hiring benchmark. The qualified employment positions must be filled by the end of year three. Monitoring and reporting procedures are set forth in subsection ~~((23))~~ **(36)** of this ~~((rule))~~ section. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection ~~((17))~~ **(30)** of this ~~((rule))~~ section explains the procedure for apportionment.

(b) Projects located in CEZs, counties containing CEZs, or counties contiguous to an eligible county, are eligible for a deferral if the project meets specific hiring requirements. The

recipient is eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark over the life of the deferral. The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. Monitoring and reporting procedures are set forth in subsection ~~((23))~~ **(36)** of this ~~((rule))~~ section. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection ~~((17))~~ **(30)** of this ~~((rule))~~ section explains the procedure for apportionment.

(c) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at <http://www.dor.wa.gov>.

(d) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

~~((17))~~ **(30) Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

~~((18))~~ **(31) Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

~~((19))~~ **(32) Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA (~~98507~~) 98504-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

~~((20))~~ **(33) Eligible area criteria.** The department will use the statewide and county unemployment statistics as last published by the department. Timber impact town designation is based on information provided by the department of employment security. The department will update the list of eligible areas by county, annually.

~~((21))~~ **(34) Use of the certificate.** A tax deferral certificate issued under this program will be for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment

as defined in this Part ~~((H))~~ **III**. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient. The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

~~((22))~~ **(35) Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action within thirty days from the date of the notice of disallowance pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

~~((23))~~ **(36) Reporting and monitoring procedure.**

(a) Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails

to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

~~((24))~~ **(b) Requirement to submit annual surveys.** Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report.** If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(37) Repayment of deferred taxes. Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year. See subsection (c) for repayment and waiver for deferrals with hiring requirements.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(b) Failure of investment project to satisfy general conditions. If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral, other than failure to create the required number of positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facility is not used for manufacturing or research and development operations.

(c) Failure of investment project to satisfy employment positions conditions. If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of

qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date of deferral). No penalties will be assessed.

(d) Failure of investment project to satisfy employee residency requirements. If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with the special hiring requirements of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of deferral. No penalties will be assessed.

(e) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

~~((25))~~ **(38) Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

~~((26))~~ **(39) Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART ~~((H))~~ IV

Applications from July 1, 1992, to June 30, 1994

~~((27))~~ **(40) Definitions.** For the purposes of this part, the following definitions apply for applications made after July 1, 1992, but before July 1, 1994:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and

the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent; or

(iii) CEZ. Beginning July 1, 1993, a designated community empowerment zone approved under RCW 43.63A.700.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, or renovating an existing building with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing plant complex, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing plant complex prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing building which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application; or

(C) Acquires machinery and equipment to be used for either manufacturing or research and development. The lessor/owner of the structure is not eligible for a deferral unless

the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

(ii) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010 or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of this chapter. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecu-

tive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a long- or short-term lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

~~((28))~~ **(41) Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much deferral is taken.

~~((29))~~ **(42) Eligible investment amount.** Recipients are eligible for a deferral on investment used to create employment positions.

(a) Total qualifying project costs must be examined to determine the number of positions associated with the project. Total qualifying project costs are divided by three hundred thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark at the end of year three. The qualified employment positions are reviewed in the third year, following December 31st of the year the project is operationally complete. If the recipient has failed to create the requisite number of positions, the department will issue an assessment under subsection ~~((37))~~ **(50)** of this ~~(rule)~~ **section**. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection ~~((30))~~ **(43)** of this ~~(rule)~~ **section** explains the procedure for apportionment.

(b) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

~~((30))~~ **(43) Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allow-

able only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings directly used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development, or commercial testing and partly for purposes, which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

~~((31))~~ **(44) Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

~~((32))~~ **(45) Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of equipment or machinery. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA ~~((98507))~~ **98504-7477**

(b) The department will verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, the department will

issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements, within thirty days from the date of notice of the department's refusal, or within any extension of such time granted by the department. The filing of a petition for review with the department starts a review of departmental action.

~~((33))~~ **(46) Unemployment criteria.** For purposes of making application for tax deferral and of approving such applications, the statewide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will update the list of eligible areas by county, on an annual basis.

~~((34))~~ **(47) Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this Part ~~((H))~~ **IV**. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales. The deferral certificate is to defer the taxes of the recipient. For example, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

~~((35))~~ **(48) Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the

deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within thirty days from the date of the notice of disallowance.

~~((36))~~ **(49) Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

~~((37))~~ **(50) Repayment of deferred taxes.** The recipient must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed.

(a) The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year	Percentage of Deferred Tax Repaid
1 (Year certified operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

(b) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest will not be charged on any taxes deferred under this part during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW.

(c) Taxes deferred on the sale or use of labor directly applied in the construction of an investment project for which deferral has been granted need not be repaid, provided eligibility for the granted tax deferral has been perfected by meeting all of the eligibility requirements, based upon the recipient

ent's annual December 31 reports and any other information available to the department. The recipient must establish, by clear and convincing evidence, the value of all construction and installation labor for which repayment of sales tax is sought to be excused. Such evidence must include, but is not limited to: A written, signed, and dated itemized billing from construction/installation contractors or independent third party labor providers which states the value of labor charged separately from the value of materials. This information must be maintained in the recipient's permanent records for the department's review and verification. In the absence of such itemized billings in its permanent records, no recipient may be excused from repayment of sales tax on the value of labor in an amount exceeding thirty percent of its gross construction or installation contract charges. The value of labor for which an excuse from repayment of sales or use tax may be received will not exceed the value which is subject to such taxes under the general provisions of chapters 82.08 and 82.12 RCW.

(d) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be the facility is not used for a manufacturing or research and development operation.

(e) **Failure of investment project to satisfy required employment positions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department will assess interest but not penalties, on the deferred taxes for the project. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of the date of deferral. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(g) Any action taken by the department to assess interest or disqualify a recipient for tax deferral will be subject to administrative review pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

~~((38))~~ **(51) Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project will be liable for the

full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

~~((39))~~ **(52) Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

**WSR 06-17-010
PERMANENT RULES
OFFICE OF THE
CODE REVISER**

[Filed August 4, 2006, 11:15 a.m., effective September 4, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending WAC 1-06-090, to clarify current copying fees, electronic distribution costs and faxing policy associated with public records, as defined in WAC 1-06-020.

Citation of Existing Rules Affected by this Order: Amending WAC 1-06-090.

Statutory Authority for Adoption: RCW 42.56.040 and 42.56.120.

Adopted under notice filed as WSR 06-13-090 on June 20, 2006.

Changes Other than Editing from Proposed to Adopted Version: Added the language "Upon request for an identifiable public record" as stated in RCW 42.56.080, to further clarify and to promptly make available any requested public records.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 4, 2006.

K. Kyle Thiessen
Code Reviser

AMENDATORY SECTION (Amending Order 19, filed 7/11/78)

WAC 1-06-090 Copying of public records. No fee shall be charged for the inspection of public records. Upon request for an identifiable public record, the ((agency shall)) office of the code reviser may charge a fee of ((twenty-five)):

• Thirty-five cents per page of copy for providing paper copies of public records ((and for use of the agency's copy

equipment. This charge is)) maintained on paper or electronically;

• Two dollars per CD ROM for copies of electronically maintained public records;

• Two dollars per page and fifteen dollars per hour charge for double column, publication master copies of electronically maintained public records.

The office of the code reviser may fax documents, but there is a ten-page maximum. There is no charge for this service.

These charges are the amounts necessary to reimburse the agency for its actual costs incident to such copying.

WSR 06-17-017

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 4, 2006, 4:25 p.m., effective September 4, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC 388-450-0045 How do we count income from employment and training programs?, to comply with requirements of the Domestic Volunteer Services Act of 1973, Titles I and II, as amended regarding treatment of income for the food stamp program.

Payments under these titles including Volunteers in Service to America (VISTA) and Americorps VISTA must be counted as earned income if the VISTA participant did not receive food stamp benefits at the time they entered the service program. The department will exclude payments under these titles as income if the person already received Washington Basic Food program benefits at the time they join the service program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0045.

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

Adopted under notice filed as WSR 06-13-089 on June 20, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 1, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-03-071, filed 1/15/03, effective 3/1/03)

WAC 388-450-0045 How do we count income from employment and training programs? This section applies to cash assistance, Basic Food, and medical programs for families, children, and pregnant women.

(1) We treat payments issued under the Workforce Investment Act (WIA) as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food:

(i) We exclude OJT earnings for children who are eighteen years of age or younger and under parental control as described in WAC 388-408-0035.

(ii) We count OJT earnings as earned income for people who are:

(A) Age nineteen and older; or

(B) Age eighteen or younger and not under parental control.

(iii) We exclude all other payments.

(2) We exclude **all** payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps (~~and AmeriCorps VISTA~~) program(s).

(3) We treat payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps Vista, university year for action, and urban crime prevention program as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food, we count most payments as earned income. We exclude the payments if you (~~get~~):

(i) Received Basic Food or cash assistance at the time you joined the Title I program; or

(ii) (~~You~~) Were participating in the Title I program and (~~get~~) received an income disregard at the time of conversion to the Food Stamp Act of 1977. We (~~with~~) continue to exclude the payments (~~you get~~) even if you do not get Basic Food every month.

(4) We exclude **all** payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(a) Retired senior volunteer program (RSVP);

(b) Foster grandparents program; and

(c) Senior companion program.

(5) We count training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(6) When GAU clients receive training allowances we allow:

(a) The earned income incentive and work expense deduction specified under WAC 388-450-0175, when applicable; and

(b) The actual cost of uniforms or special clothing required for the course as a deduction, if enrolled in a remedial education or vocational training course.

(7) We exclude support service payments received by or made on behalf of WorkFirst participants.

WSR 06-17-021
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed August 7, 2006, 10:34 a.m., effective September 7, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 139-05-200, the changes mean that law enforcement officers with a tribal or limited law enforcement commission who have attended and successfully completed the basic or equivalency academy, and thereafter have been continuously employed in a law enforcement capacity with their agency, will have that employment recognized by the commission as regular and commissioned law enforcement employment.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 06-10-001 on April 19, 2006.

A final cost-benefit analysis is available by contacting Cheryl A. Price, 19010 1st Avenue South, Burien, WA 98148, phone (206) 835-7358, fax (206) 835-7924, e-mail cprice@cjtc.state.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 14, 2006.

Cheryl A. Price
Accreditation/Performance
Analysis Manager

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-200 Requirement of basic law enforcement training. (1) All fully commissioned law enforcement officers of a city, county, or political subdivision of the state of Washington, except volunteers and reserve officers, whether paid or unpaid, and officers of the Washington state patrol, unless otherwise exempted by the commission must,

as a condition of continued employment, successfully complete a basic law enforcement academy or an equivalent basic academy sponsored or conducted by the commission. Basic law enforcement training must be commenced within the initial six-month period of law enforcement employment, unless otherwise extended by the commission.

(2) Law enforcement personnel exempted from the requirement of subsection (1) of this section include:

(a) Individuals holding the office of sheriff of any county on September 1, 1979; and

(b) Commissioned personnel:

(i) Whose initial date of full-time, regular and commissioned law enforcement employment within the state of Washington precedes January 1, 1978; ~~((¶))~~

(ii) Who have received a certificate of completion in accordance with the requirement of subsection (1) of this section, and thereafter have engaged in regular and commissioned law enforcement employment without break or interruption in excess of twenty-four months duration; or

(iii) Who are employed as tribal police officers in Washington state, natural resource investigators employed by the Washington department of natural resources, special agents employed by the Washington state gambling commission, and liquor enforcement officers employed by the Washington state liquor control board who have received a certificate of successful completion from the basic law enforcement academy or the basic law enforcement equivalency and thereafter engage in regular and commissioned law enforcement employment with that agency without break or interruption in excess of twenty-four months duration.

(3) Each law enforcement agency of the state of Washington, or any political subdivision thereof, must immediately notify the commission by approved form of each instance where a commissioned officer begins continuing and regular employment with that agency.

(4) Failure to comply with any of the above requirements of basic law enforcement training will result in notification of noncompliance by the commission to:

(a) The individual in noncompliance;

(b) The head of his/her agency; and

(c) Any other agency or individual, as determined by the commission.

WSR 06-17-033
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed August 8, 2006, 8:08 a.m., effective September 8, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required to make additions to the rule to include military spouses and dependents with valid licenses to be exempted from the requirement of a current Washington driver's license.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-096.

Statutory Authority for Adoption: RCW 46.16.010.

Adopted under notice filed as WSR 06-12-050 on June 2, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 8, 2006.

Elizabeth A. Luce
Director

AMENDATORY SECTION (Amending WSR 05-23-135, filed 11/22/05, effective 1/3/06)

WAC 308-96A-096 Registration requirements. (1) What is required when registering a vehicle in Washington?

(a) The name of each registered owner, (natural person or business) of the vehicle and, if the vehicle is subject to a lien or other security interest, the name of each secured party;

(b) The registered owner's primary residence street address (at the choice of the registered owner, a mailing address if different from the residence address can also be given); and

(c) The primary secured party's mailing address; and

(d) For natural persons one of the following:

(i) Presentation of an unexpired Washington state driver's license; or

(ii) Certification that he or she is:

(*) (A) A Washington resident who does not operate a motor vehicle on public roads; or

(*) (B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

For purposes of this section, shared or joint ownership includes all registered owners shown on the active vehicle record.

(2) For the purposes of this section, "presents" means:

(a) In person, to bring and display the unexpired Washington state driver's license to the department or its agents and subagents and for each additional registered owner shown on the vehicle record, a photocopy of, or to provide in writing, the license number and expiration date from an unexpired Washington state driver's license.

(b) For internet transactions, to enter the license number and expiration date from an unexpired Washington state driver's license.

(c) By mail, to provide in writing the license number and expiration date from an unexpired Washington state driver's license.

(3) For the purposes of this section, "valid and compelling" reasons include:

(a) Driving privilege has been withdrawn by the department or a court.

(b) A co-owner is not available. Circumstances to include, but not be limited to, being incarcerated or out-of-state due to work assignment or personal need.

(c) A co-owner is deceased.

(d) Persons who are divorced and the registered owner awarded the vehicle presents a divorce decree showing the vehicle was awarded to them.

(e) Active military stationed in a foreign country or otherwise not available to provide the information.

(f) Military personnel who are at least sixteen years of age, including a spouse or dependent, who have in their immediate possession a valid driver's license issued by the jurisdiction designated as their home of record.

(g) Other reasons determined by the director or his or her designee to be valid and compelling.

(4) For the purposes of this section, a "natural person" may be a resident of this state even though that person has or claims residency in another state or intends to leave this state at some future time. A natural person will be presumed a resident if at least two of the following conditions are met:

(a) You maintain a residence in this state for personal use;

(b) You have a Washington state driver's license or a Washington state resident hunting or fishing license;

(c) You use a Washington state address for federal income tax or state tax purposes;

(d) You have previously maintained a residence in this state for personal use and have not established a permanent residence outside the state of Washington (for example, a person who retires and lives in a motor home or vessel which is not permanently attached to any property);

(e) You claim this state as residence for obtaining eligibility to hold a public office or for judicial actions;

(f) You are a custodial parent with a child attending public school in this state;

(g) The department may consider factors other than those listed in this subsection to determine that a person intends to be located in or be a resident of this state. However, the department may not consider those factors alone to presume residency;

(h) A natural person who is a resident of Washington may not form a corporation, trust or other entity in another jurisdiction for the purpose of evading Washington vehicle registration.

(5) When registering a vehicle with joint or shared ownership, you must present the following for each registered owner shown on the active vehicle record:

(a) The license number from an unexpired Washington state driver's license; or

(b) Certification that you or the co-owner is a Washington resident who does not operate a motor vehicle on public roads; or

(c) Certificate that you or the co-owner is exempt from the requirement to obtain a Washington driver's license under RCW 46.20.025.

WSR 06-17-038
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 8, 2006, 10:07 a.m., effective September 8, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To comply with state statutes enacted on June 7, 2006 (E2SHB 3098, sections 308, 322, 325, 501 through 509) that transfers statutory authority from the Washington state board of education (SBE) to the office of superintendent of public instruction (OSPI) to adopt rules governing determination of remote and necessary schools, establishment of secondary programs in nonhigh school districts, or any new grades in grades nine through twelve. Rule changes serve only to indicate transfer of authority from SBE to OSPI and will not change existing requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 180-16-241, 180-16-242, 180-16-243, chapters 180-24, 180-56 WAC.

Statutory Authority for Adoption: RCW 28A.305.130 (5), (10), 28A.315.015 (2)(e), 28A.315.175, 28A.315.195(4), 28A.315.205(3).

Adopted under notice filed as WSR 06-12-106 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 25, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 8, 2006.

Dr. Terry Bergeson
 Superintendent

AMENDATORY SECTION (Amending WSR 05-13-061, filed 6/10/05, effective 6/10/05)

WAC 180-16-241 Remote and necessary small school plants—Purpose and authority. (1) The purpose of WAC ~~((180-24-400 through 180-24-420))~~ 392-349-005 through 392-349-015 is to establish policies and procedures to govern the classification of small school plants as remote and necessary.

(2) The authority for WAC ~~((180-24-400 through 180-24-420))~~ 392-349-005 through 392-349-015 is the state Operating Appropriations Act which allocates funds to school districts for small school plants which have been judged by the ~~((state board of education))~~ superintendent of public instruction to be remote and necessary.

AMENDATORY SECTION (Amending WSR 05-13-061, filed 6/10/05, effective 6/10/05)

WAC 180-16-242 Remote and necessary small school plants—Criteria. (1) Decisions of the ~~((state board of education))~~ superintendent of public instruction on granting remote and necessary status to small school plants within school districts shall be based on a finding that granting remote and necessary status is necessary to assure reasonable provision of a basic education program to students, including related services, equipment, materials and supplies.

(2) In making the finding under subsection (1) of this section, the ~~((state board of education))~~ superintendent of public instruction shall consider, including but not limited to, the factors under (a) through ~~((e))~~ (e) of this subsection. No single factor or combination of factors necessarily warrants granting or denying remote and necessary status. However, it shall be the policy of the ~~((state board of education))~~ superintendent of public instruction to favor those requests which, in the ~~((board's))~~ superintendent of public instruction's judgment, meet the provisions of this section. "Favor" does not mean that the listed factors are necessarily exclusive. Additional factors and considerations may be included in a particular request. If there is a factual situation that falls outside the scope of all or a portion of the listed factors, the ~~((state board))~~ superintendent of public instruction may consider the facts and reasons the additional factors or considerations support the request.

(a) The student population to be served at the small school site, must meet the small school funding formula for remote and necessary school plants as provided in the Operating Appropriations Act. The grade span served at the small school site shall include the same levels for eligible students established by the district for other elementary, middle, or high schools of the district, and meet the educational needs of the population served by that small school plant.

(b) Existence of an intact, permanent community which is defined as a geographically site-specific, nontransient group of people. This factor must be met.

(c) Transportation: Travel time to another school in the district, or school in another district, is not less than sixty minutes one way, or international boundary crossing processing time is unpredictable or lengthy or both.

(d) Transportation: Student safety from a small school site in the school district to another school in the district, or school in another district, may be at risk due to the condition of roads or waterways, seasonal weather conditions, or topography.

(e) Operational efficiency: Nonavailability of age appropriate grade level or cooperative programs in other school facilities in the district, or in the next nearest district or districts, or other educational organizations approved or recognized by the ~~((state board of education or the))~~ superintendent of public instruction.

~~((3))~~ At its discretion, the state board of education may use as guidance the applicable provisions of WAC 180-24-013, 180-24-016, and 180-24-017.

AMENDATORY SECTION (Amending WSR 05-13-061, filed 6/10/05, effective 6/10/05)

WAC 180-16-243 Remote and necessary small school plants—Review committee. (1) There is hereby established by the ~~((state board of education))~~ superintendent of public instruction a remote and necessary review committee comprised of at least the following five members:

(a) One member of the state board of education selected by the president of the board;

(b) Two staff members from the office of the superintendent of public instruction, one who is knowledgeable about finance issues and one who is knowledgeable about curriculum issues, both selected by the state superintendent;

(c) One school director selected by the Washington State School Directors' Association;

(d) One school district administrator selected by the Washington Association of School Administrators;

(2) Vacancies on the review committee shall be filled by the person or organization responsible for appointments.

(3) At the ~~((state board of education's))~~ discretion of the superintendent of public instruction, other members may be added to the review committee.

(4) It is the responsibility of the review committee to receive and review all applications from school districts requesting the ~~((state board of education))~~ superintendent of public instruction to grant remote and necessary status to a small school plant located in the district. Following the review of applications, the review committee shall recommend to the ~~((state board))~~ superintendent of public instruction whether such designation should be granted. Recommendations of the review committee shall be advisory only. The final determination rests solely with the ~~((state board of education))~~ superintendent of public instruction.

(5) Every small school plant with remote and necessary status beginning 1996, shall be reviewed every four years by the review committee and the ~~((state board))~~ superintendent of public instruction. The review committee shall submit its findings and recommendations to the ~~((state board))~~ superintendent of public instruction. The review committee may conduct the review on-site, with the number of members participating determined by the committee, or may conduct the review by other means as determined by the committee. The ~~((state board))~~ superintendent of public instruction shall provide to the fiscal committees of the legislature in January of odd-numbered years a list of remote and necessary small school plants.

(6) A small school plant shall lose its remote and necessary status if the number of students exceeds the enrollment requirements set forth in the state Operating Appropriations Act for three consecutive years. The loss of remote and necessary status shall take effect the immediate ensuing school year. If a small school site should lose its remote and necessary status, the local serving school district may continue to maintain and operate the school site. When the enrollment of such small school plant again meets the requirements of the state Operating Appropriations Act, the school district may apply to the ~~((state board of education))~~ superintendent of public instruction for redesignation as a remote and necessary plant.

(7) A small school plant shall lose its remote and necessary status if a local school district closes the small school plant. If the small school plant is reopened by the district, or a new small school plant is opened, the school district may apply to the ~~((state board of education))~~ superintendent of public instruction for remote and necessary designation for the small school plant. If such designation is granted, the remote and necessary status shall take effect as determined by the ~~((state board of education))~~ superintendent of public instruction.

NEW SECTION

The following chapter of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
180-16-241	392-349-005
180-16-242	392-349-010
180-16-243	392-349-015

AMENDATORY SECTION (Amending WSR 05-19-112, filed 9/20/05, effective 10/21/05)

WAC 180-24-00701 Regional committee decision making criteria. (1) The regional committee shall give consideration to all of the following criteria when reviewing the proposed transfer of territory:

(a) Student educational opportunities (see RCW 28A.315.205 (4)(a) for full text);

(b) Safety and welfare of pupils (see RCW 28A.315.205 (4)(b) for full text);

(c) History and relationship of the property affected to the students and communities affected (see RCW 28A.315.205 (4)(c) for full text). "Communities affected" includes all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens living within the immediate locale/neighborhood of which the proposed territory will become part, and all citizens residing within the school district to which the proposed territory will be transferred;

(d) Geographic accessibility (see RCW 28A.315.205 (4)(d) for full text);

(e) Disparities in per pupil valuation, economies of operation and transportation costs (see RCW 28A.315.205 (4)(e) for full text); and

(f) Other criteria or considerations as may be established in rule by the ~~((state board of education))~~ superintendent of public instruction. (RCW 28A.315.015 (2)(e).)

(2) The boundaries of the school districts affected by a proposed change in school district organization shall be contiguous to one another.

(3) Under RCW 28A.315.205(4), "geographic accessibility" includes, but is not limited to, consideration of the following factors:

(a) Mountains, hills, valleys, wasteland, and related geographic and man-made features, which either enhance or impede travel.

(b) Rivers, lakes, canals, and other natural or man-made waterways and bodies of water, which either enhance or impede travel.

(c) The extent and nature of roads, highways, ferries, and traffic patterns.

(d) Climatic conditions.

(e) Time required to travel to and from school.

(4) In considering student educational opportunities under subsection (1)(a) of this section, the regional committee shall not consider one set of test scores, alone, as a sufficient basis to make a judgment about student educational opportunities. Test scores in the districts affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.

(5) In considering geographic accessibility under subsection (1)(d) of this section, the regional committee shall make one judgment on geographic accessibility, regardless of how many individual components may apply to the particular transfer of territory petition.

(6) Each regional committee shall use the same criterion checklist included in the *Lay ((Persons's) Person's Guide to School District Boundaries* and published on the ((state board of education and)) superintendent of public instruction web site((s)).

(7) If a regional committee needs to continue a public hearing or schedule more than one additional hearing on a proposed transfer of territory, each such hearing is subject to public notice requirements.

(8) Regional committees shall use the decision format (motion) included in the *Lay Person's Guide to School District Boundaries* and published on the ((state board of education and)) superintendent of public instruction web site((s)).

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-105 Election of regional committee members—Applicable provisions. In addition to the provisions of RCW 28A.315.105 through 28A.315.145, the provisions of WAC ((180-24-105 through 180-24-190)) 392-340-105 through 392-340-190 shall apply to the election of regional committee members.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-115 Election of regional committee members—Dissolution—Position numbers—Initial elections—Regular elections—Terms of office. (1) Elections for members of regional committees shall be conducted within the time periods noted in WAC ((180-24-120 through 180-24-190)) 392-340-120 through 392-340-190.

(2) Regional committee member position numbers shall be assigned by the educational service district superintendent for purposes of all elections held pursuant to RCW 28A.315.-125. For the election of a new regional committee following a change in the number of educational service districts or board members, regional committee member positions one, three, five, seven, and nine shall be for a term of two years,

positions two, four, six, and eight shall be for a term of four years.

(3) Regular elections of regional committee members shall be conducted in even-numbered years for four-year terms and until their successors are certified as elected: Provided, That whenever a change in the number of educational service districts or board members occurs, a new regional committee shall be elected for each affected educational service district at the next regular election.

(4) Those regional committee members serving within an educational service district affected by the change shall continue to constitute the regional committee for the educational service district within which they are registered to vote until the majority of a new regional committee has been elected and certified at the next regular election.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-130 Election of regional committee members—Candidates—Eligibility—Filing. (1) Eligibility. A person is eligible to be a candidate for membership on the regional committee if he or she is a registered voter and a resident of the committee member district for which the candidate files. Eligibility is restricted pursuant to RCW 28A.315.115.

(2) Forms for filing. A person who desires to be a candidate shall complete:

(a) The declaration of candidacy and affidavit form provided for in WAC ((180-24-135)) 392-340-135; and

(b) The biographical data form provided for in WAC ((180-24-140)) 392-340-140: Provided, That a declarant may elect not to submit biographical data.

(3) Filing period. The filing period for candidates for a position on a regional committee is from October first through October fifteenth of each even-numbered year. Any declaration of candidacy that is not received by the educational service district superintendent on or before 5:00 p.m. October fifteenth shall not be accepted and such a declarant shall not be a candidate: Provided, That any declaration that is postmarked on or before midnight October fifteenth and received by mail on or before 5:00 p.m. October twentieth shall be accepted: Provided further, That any declaration received pursuant to the United States mail on or before 5:00 p.m. October twentieth that is not postmarked or legibly postmarked shall also be accepted.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-145 Election of regional committee members—Withdrawal of candidacy. (1) Any candidate may withdraw his or her declaration of candidacy by delivering a written, signed and notarized statement of withdrawal to the educational service district superintendent on or before 5:00 p.m. October twentieth. A candidate's failure to withdraw as prescribed above shall result in the inclusion of the candidate's name on the appropriate election ballot.

(2) A regional committee member district position shall be stricken from the ballot if no candidate files for the posi-

tion within the timelines specified in WAC ((180-24-130)) 392-340-130.

(3) Board-member district positions which become vacant after the call of election specified in WAC ((180-24-125)) 392-340-125 shall be filled by appointment by the regional committee pursuant to RCW 28A.315.135 and the appointee shall serve until his or her successor has been elected at the next election called by the educational service district superintendent.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-155 Election of regional committee members—Ballots and envelopes—Mailing to voters. (1) On or before November first ballots shall be mailed to voters together with two envelopes to be used for voting. The outer and larger envelope (i.e., official ballot envelope) shall:

- (a) Be labeled "official ballot";
- (b) Be preaddressed with the educational service district superintendent as addressee;
- (c) Have provision for prepaid postage; and
- (d) Have provision for the identification of the voter, mailing address, his or her school district, and educational service district.

The inner and smaller envelope shall be unlabeled and unmarked.

(2) One ballot and two envelopes to be used for voting purposes and pertinent instructions for voting purposes shall be mailed to each member of a public school district board of directors as certified by the educational service district superintendent pursuant to WAC ((180-24-145)) 392-340-145.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-190 Election of regional committee members—Run-off elections. (1) If no candidate receives a majority of the votes cast, then, not later than the first day of December, the educational service district superintendent shall call a second election to be conducted in the same manner as the first election and at which the candidates shall be the two candidates receiving the highest and next highest number of votes cast. No vote cast at such second election shall be received for counting if postmarked after the sixteenth day of December, or if not postmarked or the postmark is not legible, if received by mail after 5:00 p.m. of the twenty-first day of December. Votes cast at the second election shall be counted in accordance with WAC ((180-24-165 through 180-24-180)) 392-340-165 through 392-340-180 prior to the second Monday of January next following. The candidate receiving a majority of the votes cast at any such second election shall be declared elected.

(2) In the event of a tie in such second election, the candidate elected shall be determined by a chance drawing of a nature established by the educational service district superintendent.

AMENDATORY SECTION (Amending WSR 05-19-112, filed 9/20/05, effective 10/21/05)

WAC 180-24-195 Notification to ((state board of education)) the superintendent of public instruction of regional committee meetings. The secretary of each regional committee—i.e., the educational service district superintendent—shall notify the ((state board of education)) superintendent of public instruction of all meetings of the regional committee.

AMENDATORY SECTION (Amending WSR 05-19-112, filed 9/20/05, effective 10/21/05)

WAC 180-24-207 Transfer of territory—Other district requirements. (1) At least one member of each school board whose district is affected by a proposed transfer of territory must be part of the respective district's negotiating team.

(2)(a) Upon reaching a decision recommendation through the district-to-district negotiation process on a proposed transfer of territory, the negotiating parties shall produce, at a minimum, a written summary of the recommendation, including rationale for the recommendation, and submit to the respective affected school district boards of directors.

(b) Each school board of directors shall adopt at a public meeting of the board a written resolution indicating whether the board approves or disapproves the recommendation on the proposed transfer of territory. The resolution format included in the *Lay Person's Guide to School District Boundaries* and published on the ((state board of education and)) superintendent of public instruction web site(s) shall be used.

AMENDATORY SECTION (Amending WSR 05-19-112, filed 9/20/05, effective 10/21/05)

WAC 180-24-209 Transfer of territory—Sufficiency of written record for appeal to ((state board of education)) the superintendent of public instruction—Referral of case back to regional committee. (1) For purposes of review by the ((state board of education)) superintendent of public instruction, the record of regional committee proceedings must be sufficient to allow the ((state board of education)) superintendent of public instruction to determine what facts the regional committee relied on in applying the required statutory and regulatory criteria. Evidence of facts relied on may be contained in the written findings required in RCW 28A.315.205(2) or in a written verbatim transcript of the proceedings, or elsewhere in the record.

(2) When referring a transfer of territory case back to the originating regional committee, the ((state board of education)) superintendent of public instruction will make every effort to submit the written referral within fourteen days of ((its)) a decision.

AMENDATORY SECTION (Amending WSR 03-23-040, filed 11/12/03, effective 12/13/03)

WAC 180-24-220 Action by ((state board of education)) the superintendent of public instruction—When.

Pursuant to RCW 28A.315.205(5), the ~~((state board of education))~~ superintendent of public instruction shall act on a proposed transfer of territory only when there is an appeal to the ~~(board)~~ superintendent of public instruction of a decision of a regional committee.

AMENDATORY SECTION (Amending WSR 04-04-091, filed 2/3/04, effective 3/5/04)

WAC 180-24-225 Frequency of petitions—Limitation. (1) The authority for this section is RCW 28A.315.195(4) which authorizes the ~~((state board of education))~~ superintendent of public instruction to establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.

(2) An educational service district superintendent may not accept a petition to transfer territory if any portion of such territory was included in a previous petition brought before the regional committee, unless five years have expired since the date of final disposition of the previous petition.

NEW SECTION

The following chapter of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
180-24-003	392-340-003
180-24-007	392-340-007
180-24-00701	392-340-00701
180-24-009	392-340-009
180-24-105	392-340-105
180-24-110	392-340-110
180-24-115	392-340-115
180-24-120	392-340-120
180-24-125	392-340-125
180-24-130	392-340-130
180-24-135	392-340-135
180-24-140	392-340-140
180-24-145	392-340-145
180-24-150	392-340-150
180-24-155	392-340-155
180-24-160	392-340-160
180-24-165	392-340-165
180-24-170	392-340-170
180-24-175	392-340-175
180-24-180	392-340-180
180-24-185	392-340-185
180-24-190	392-340-190
180-24-195	392-340-195
180-24-197	392-340-197
180-24-205	392-340-205
180-24-207	392-340-207

Old WAC Number	New WAC Number
180-24-209	392-340-209
180-24-210	392-340-210
180-24-213	392-340-213
180-24-220	392-340-220
180-24-225	392-340-225
180-24-335	392-340-335

AMENDATORY SECTION (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

WAC 180-56-205 New secondary program or new grades nine through twelve—Regulatory provisions pursuant to RCW 28A.305.130(5). Pursuant to provisions of RCW 28A.305.130(5), the ~~((state board of education))~~ superintendent of public instruction hereby establishes rules and regulations as hereinafter set forth in WAC ~~((180-56-210 through 180-56-270))~~ 392-348-210 through 392-348-270 to govern the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve.

AMENDATORY SECTION (Amending SBE 56-8-51, filed 3/29/65, effective 4/29/65)

WAC 180-56-210 Basic policy. Believing that the welfare of the state and its children require secondary schools which (1) can provide a comprehensive program broad enough to meet the varied needs, abilities and interests of students, (2) are adequately staffed with certified teachers assigned to teach in their fields of competency, (3) are administered by properly certified personnel, (4) can provide adequate pupil-personnel service, (5) can provide school plant facilities suitable to the type of organization and program offered, (6) can give assurance of financial ability and willingness to construct, maintain and operate the facility, and (7) do not duplicate existent educational facilities and/or programs, it shall be the policy of the ~~((state board of education))~~ superintendent of public instruction to approve applications for the establishment in any high school district of any secondary program or any new grades in grades nine through twelve only when there is evidence that the foregoing conditions can be fulfilled.

AMENDATORY SECTION (Amending SBE 56-8-52, filed 3/29/65, effective 4/29/65)

WAC 180-56-215 Procedure. A secondary program or any new grades nine through twelve may not be established in any existing nonhigh school district except upon prior approval by the ~~((state board of education))~~ superintendent of public instruction. Application for approval to establish any such program or any new grades shall be made to the state superintendent of public instruction by the school authorities of the applicant district. The state superintendent of public instruction shall review the application in light of ~~((state board of education))~~ rules and regulations relating thereto and ~~((shall submit his))~~ in consideration of the findings and

recommendations ~~((to the state board))~~ of staff and agents of the superintendent of public instruction.

AMENDATORY SECTION (Amending SBE 56-8-53, filed 3/29/65, effective 4/29/65)

WAC 180-56-220 Regulations—Purpose. In order to assure an educational program and school facilities which will meet the requirements of the basic policy stated in WAC ~~((180-56-210 above))~~ 392-348-210, the specific regulations hereinafter in WAC ~~((180-56-230 through 180-56-270))~~ 392-348-230 through 392-348-270 set forth shall be applied in considering applications from nonhigh school districts.

AMENDATORY SECTION (Amending WSR 00-13-038, filed 6/14/00, effective 7/15/00)

WAC 180-56-230 Program. It is presumed by the ~~((state board of education))~~ superintendent of public instruction that a new secondary program (or new grades nine through twelve) must make provision for a comprehensive program. Minimum course offerings that must be available for student selection during grades nine through twelve shall include those necessary to meet the minimum high school graduation requirements under WAC 180-51-060.

AMENDATORY SECTION (Amending SBE 56-8-533, filed 3/29/65, effective 4/29/65)

WAC 180-56-245 Specialized services. Full-time library and instructional materials services shall be provided by a librarian qualified in accordance with standards adopted by the ~~((state board of education))~~ superintendent of public instruction.

A minimum of one full-time person, or equivalent, shall be provided for counseling and guidance services. Personnel assigned to part-time or full-time counseling and guidance responsibilities shall have a minimum of one year of training beyond the bachelor's degree including course work in each of the following areas: Principles and practices of guidance; techniques of counseling; occupational and educational information; testing, measurement and evaluation; and foundations of psychology, preferably including developmental psychology and learning theory.

Provision shall be made for exceptional children including those with high ability or special talent, those who are slow learners and those who are physically handicapped.

Adequate health services shall be provided by the district or by the district in cooperation with other districts and/or agencies.

AMENDATORY SECTION (Amending SBE 56-8-535, filed 3/29/65, effective 4/29/65)

WAC 180-56-255 Interdistrict relationships. Prior to application to the ~~((state board))~~ superintendent of public instruction for the establishment of a new secondary school, the district or districts presently serving students living in the nonhigh school district shall have been given adequate notice of the intent of the nonhigh school district subsequently to withdraw students.

The board of directors of the nonhigh school district seeking approval of the establishment of a new secondary school shall submit evidence that students living in the nonhigh school district cannot be economically and reasonably served in an existing high school or high schools.

There must be adequate proof that the proposed secondary facilities will not duplicate facilities already constructed with state and/or recommended federal assistance when such assistance was predicated on educational service to the nonhigh school district or districts: Provided, That the nonhigh school district may petition the ~~((state board of education))~~ superintendent of public instruction for a feasibility study of the establishment of a high school when the existing high school district facilities reach designated maximum utilization and new construction is needed.

Evidence shall be submitted that unreasonable duplication of transportation routes and/or facilities will not result from the establishment of the new secondary school.

AMENDATORY SECTION (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

WAC 180-56-260 New secondary program or new grades nine through twelve—School district organization. The proposal for establishment of a new secondary school must be consistent with sound, comprehensive planning for secondary school facilities and services and shall be in agreement with provisions of chapter 28A.315 RCW and any subsequent statutory provisions or policies established by the ~~((state board of education))~~ superintendent of public instruction pertaining thereto.

AMENDATORY SECTION (Amending SBE 56-8-537, filed 3/29/65, effective 4/29/65)

WAC 180-56-265 Establishment of new grade or grades. In the establishment of one or more new grades in grades nine through twelve, the principle set forth in WAC ~~((180-56-205 through 180-56-260))~~ 392-348-205 through 392-348-260 above concerning program, specialized services, staff and corps and size of respective grade or grades as related to potential total enrollment of the proposed secondary school shall apply: Provided, That the school district shall have satisfied all other requirements as herein prescribed. The establishment of each such grade shall be subject to prior approval by the ~~((state board of education))~~ superintendent of public instruction.

AMENDATORY SECTION (Amending § 180-56-270, filed 10/16/67, effective 7/1/68)

WAC 180-56-270 Exceptional cases. In exceptional cases, the ~~((state board of education))~~ superintendent of public instruction will consider for special approval applications from schools with an initial enrollment of less than four hundred students and fewer than sixteen teachers and related personnel if in its judgment the establishment of a new high school may be desirable because of the remoteness of the area and the necessity for a program of secondary education.

NEW SECTION

The following chapter of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
180-56-205	392-348-205
180-56-210	392-348-210
180-56-215	392-348-215
180-56-220	392-348-220
180-56-230	392-348-230
180-56-235	392-348-235
180-56-240	392-348-240
180-56-245	392-348-245
180-56-250	392-348-250
180-56-255	392-348-255
180-56-260	392-348-260
180-56-265	392-348-265
180-56-270	392-348-270

WSR 06-17-041

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed August 8, 2006, 2:44 p.m., effective September 8, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this proposal is to amend the definition of a seed as listed in WAC to be the definition recognized as that of a true seed. This proposal will align the definition in WAC with the definition in the statute.

Citation of Existing Rules Affected by this Order: Amending WAC 16-301-005.

Statutory Authority for Adoption: Chapter 15.49 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 06-12-118 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 8, 2006.

Valoria Loveland
Director

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-301-005 General seed standards—Definitions. Definitions for terms used in this chapter and in chapters 16-302 and 16-303 WAC may be found in chapter 15.49 RCW, seed. For the purposes of these chapters, the following definitions shall apply unless otherwise provided for in law or rule:

"Agricultural seed" as defined in RCW 15.49.011(2) includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combination of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

"AOSA" means the Association of Official Seed Analysts.

"AOSCA" means the Association of Official Seed Certifying Agencies.

"Approved trial grounds" means a specific parcel of land approved by the director for experimental or limited production or increase of bean seed.

"Arbitration committee" means the committee established by the director under RCW 15.49.101 to hear and make determinations in mandatory, nonbinding, arbitration cases.

"Bean" means common beans and adzuki beans.

"Blend" as defined in RCW 15.49.011(3) means seed consisting of more than one variety of a species, each in excess of five percent by weight of the whole.

"Blending" as related to this chapter shall be the process of commingling two or more lots of seed to form one lot of uniform quality.

"Buyer" means a person who purchases seeds.

"Chairperson" means the person selected by the arbitration committee from among their numbers to preside.

"Certifying agency" as defined in RCW 15.49.011(5) means:

(a) An agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

"Common bean" means *Phaseolus vulgaris L.*

"Complete record" means information which relates to the origin, treatment, germination and purity (including variety) of each lot of seed. Records include seed samples and records of declaration, labels, purchases, sales, cleaning, bulking, treatment, handling, storage, analyses, tests and examinations.

"Dealer" as defined in RCW 15.49.011(7) means any person who distributes seeds.

"Department" as defined in RCW 15.49.011(8) means the Washington state department of agriculture or its duly authorized representative.

"Director" as defined in RCW 15.49.011(9) means the director of the department of agriculture.

"Field standards" means the tolerances permitted as determined by established field inspection procedures.

"Fiscal year" means the twelve-month period July 1 through June 30.

"Flower seeds" as defined in RCW 15.49.011(11) include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold as flower seeds in this state.

"Germination" as defined in RCW 15.49.011(13) means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

"Interagency certification" means the participation of two or more official certifying agencies in performing the services required to certify the same lot or lots of seed.

"Isolation standards" means the distance in feet from any contaminating source (i.e., distance from other fields of same species).

"Label" as defined in RCW 15.49.011(18) includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by chapter 15.49 RCW, and may include other information including the requirement for arbitration.

"Land standards" means the number of years that must elapse between the destruction of a stand of a kind, and establishment of a stand of a specified class of a variety of the same kind (i.e., number of years out of production of same crop kind).

"Mixture, mixed or mix" as defined in RCW 15.49.011(22) means seed consisting of more than one species, each in excess of five percent by weight of the whole.

"Nursery" means an area of two acres or less in which grass for seed production is seeded in rows with twenty-four inch minimum spacing to facilitate roguing.

"O.E.C.D." means the Organization for Economic Cooperation and Development certification scheme.

"Off-type" means a plant or seed which deviates in one or more characteristics from that which has been described as being usual for the strain or variety.

"Official certificate" means a document issued by an official testing agency including but not limited to seed certification tags, bulk seed certification certificates, phyto-sanitary certificates, laboratory sanitary certificates, and other letters, tags, stamps, or similar documents certifying seed quality or condition.

"Official sample" as defined in RCW 15.49.011(23) means any sample taken and designated as official by the department.

"Official seed laboratory" means a seed testing laboratory approved by the director, such as, but not limited to, Washington State Seed Laboratory, 21 N 1st Avenue, Yakima, Washington; and Oregon State Seed Laboratory, Oregon State University, Corvallis, Oregon. This definition is to include any laboratory that has an accreditation process in place.

"Origin" means the county within the state of Washington, or the state, territory, or country where a specific seed lot was grown.

"Person" as defined in RCW 15.49.011(26) means an individual, partnership, corporation, company, association, receiver, trustee or agent.

"Proprietary variety" means that crop variety for which a person has exclusive production and/or marketing rights.

"Representative sample" means a sample drawn in accordance with sampling procedures adopted in WAC 16-301-095.

"Seeds" as defined in RCW 15.49.011(33) means agricultural or vegetable seeds, or other seeds as determined by rules adopted by the department. ~~((The word seed or seeds as used in this chapter shall include all propagating materials.))~~

"Seed labeling permit" means a permit issued by the department pursuant to RCW 15.49.400 to a person labeling seed for distribution in this state.

"Seed program advisory committee" means a committee of representatives from the small grains, pea, lentil, bean, vegetable, small seeded legumes, and grass seed industries selected by the program manager in consultation with the industry.

"Seed standards" means the tolerances permitted as determined by established seed inspection procedures.

"Serology" means precipitation, agglutination, immunodiffusion, or labeled antibody test methods (such as ELISA) that use the specificity of antigen-antibody reactions to detect and identify antigenic substances and the organisms such as viruses and bacteria that carry viruses.

"Stock seed" means breeders, prebasic, or like initial generation of seed.

"Sudangrass" means *Sorghum bicolor x drummondii*.

"University" means the Washington State University.

"USDA" means the United States Department of Agriculture.

"Vegetable seeds" as defined in RCW 15.49.011(38) include the seeds of all crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

"WSCIA" means the Washington State Crop Improvement Association.

WSR 06-17-046

PERMANENT RULES HIGHER EDUCATION COORDINATING BOARD

[Filed August 8, 2006, 4:41 p.m., effective September 8, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Add definition of "less-than-halftime" pilot project as authorized in chapter 229, Laws of 2005. Add former foster youth to the definition of eligible student.

Citation of Existing Rules Affected by this Order: Amending WAC 250-20-021.

Statutory Authority for Adoption: Chapter 28B.80 RCW.

Adopted under notice filed as WSR 06-09-088 on April 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 27, 2006.

Julie Japhet
Operations Manager

AMENDATORY SECTION (Amending WSR 99-16-015, filed 7/23/99, effective 8/23/99)

WAC 250-20-011 Student eligibility. For a student to be eligible for a state need grant he or she must:

(1) Be a "needy student" as determined by the higher education coordinating board in accordance with RCW 28B.10.802. These students must also meet the "income cut-off," be a "former foster youth" or be a "disadvantaged student" ((who has completed a board approved program designed to promote early awareness of, and aspiration to, higher education)).

(2) Be a resident of the state of Washington in accordance with RCW 28B.15.012 (2)(a) through (d).

(3) Be enrolled or accepted for enrollment as an undergraduate student at a participating postsecondary institution or be a student under an established program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington.

(a) For purposes of need grant eligibility, the student must be enrolled, at time of disbursement, in a course load of at least six credits per quarter or semester or, in the case of institutions which do not use credit hours, in a program of at least six hundred clock hours requiring at least twelve clock hours of instruction per week.

(b) A student enrolled less than half time may not receive this grant for the term in question (except as specified in WAC 250-20-021 less-than-half-time pilot project), but is eligible for reinstatement or reapplication for a grant upon return to at least a half-time status. Correspondence courses may not comprise more than one-half of the student's minimum credit load for which aid is being considered.

(c) Have a high school diploma or its equivalent. Equivalent standards include a general education development certificate, a certificate of completion of a home study program recognized by the student's home state. For a student without a high school diploma or its equivalent, he or she must pass a

federally recognized ability-to-benefit test as is required for the receipt of federal student aid.

(4) Maintain satisfactory progress as defined in WAC 250-20-021(19).

(5) Not be pursuing a degree in theology.

(6) Not have received a state need grant for more than the equivalent of ten full-time semesters or fifteen full-time quarters or equivalent combination of these two, nor exceed one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. A student shall be deemed to have received an associate degree as a state need grant recipient if the student received state need grant payments in more than three quarters, two semesters, or equivalent clock hours while pursuing an associate((s)) degree. Upon receipt of a bachelor's degree or its foreign equivalent, a student is no longer eligible.

(7) Have ~~((made a bona fide application))~~ submitted the Free Application for Federal Student Aid to receive consideration for a Pell grant.

(8) Certify that he or she does not owe a refund on a state need grant, a Federal Pell Grant or a Federal Supplemental Educational Opportunity Grant, and is not in default on a loan made, insured, or guaranteed under the Federal Family Education Loan Program, the Federal Perkins Loan Program, or the Federal Direct Student Loan Program.

AMENDATORY SECTION (Amending WSR 95-17-045, filed 8/11/95, effective 9/11/95)

WAC 250-20-013 Institutional eligibility. (1) For an otherwise eligible student to receive a state need grant, he or she must be enrolled in an eligible program at a postsecondary institution approved by the higher education coordinating board for participation in the state need grant program (except as specified in WAC 250-20-021 less-than-half-time pilot project). To be eligible to participate, a postsecondary institution must:

(a) Be a public university, college, community college, or vocational-technical institute operated by the state of Washington, or any political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level with full institutional accreditation by an accrediting association recognized by rule of the board.

(b) Participate in the federal Title IV student financial aid programs, including, at a minimum, the Federal Pell Grant program.

(2) In addition, a for-profit institution must:

(a) Be certified for participation in the federal Title IV student financial aid programs. A for-profit institution that is provisionally certified for participation in the federal Title IV student financial aid programs due to its failure to meet the factors of administrative capability or financial responsibility as stated in federal regulations, or whose participation has been limited or suspended, is not eligible to participate in the

state need grant program until its full eligibility has been reinstated.

(b) Demonstrate to the satisfaction of the board that it is capable of properly administering the state need grant program. In making a determination of administrative capability, the board will consider such factors as the adequacy of staffing levels, staff training and experience in administering student financial aid programs, standards of administrative capability specified for purposes of federal Title IV program eligibility, its student withdrawal rate, its federal student loan cohort default rate, and such other factors as are reasonable. In determining the administrative capability of participating institutions, the board will also consider the institution's compliance with state need grant program regulations and guidelines.

(c) Demonstrate to the satisfaction of the board that it has the financial resources to provide the services described in its official publications and statements, provide the administrative resources necessary to comply with program requirements, and that it meets the financial responsibility standards for participation in the federal Title IV programs.

(d) Renew its eligibility each year under these standards.

(3) Nothing in this section shall prevent the board, in the exercise of its sound discretion, from denying eligibility or terminating the participation of an institution which the board determines is unable to properly administer the program or to provide advertised services to its students.

AMENDATORY SECTION (Amending WSR 02-24-041, filed 12/2/02, effective 1/2/03)

WAC 250-20-021 Program definitions. (1) The term "needy student" shall mean a post-high school student of an institution of postsecondary education who demonstrates to the higher education coordinating board the financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter. The determination of need shall be made in accordance with federal needs analysis formulas and provisions as recognized and modified by the board.

(2) The term "disadvantaged student" shall mean a student who by reasons of adverse cultural, educational, environmental, experiential, or familial circumstance is unlikely to aspire to, or enroll in, higher education. Generally, this shall mean a dependent student whose parents have not attained a college education and/or whose family income is substantially below the state's median or has participated in a means tested early awareness program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington.

(3) The term "postsecondary institution" shall mean:

(a) Any public university, college, community college, or vocational-technical institute operated by the state of Washington political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an approved accrediting association.

(b) If such institution agrees to participate in the program in accordance with all applicable rules and regulations.

(c) Any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of an approved accrediting association.

(d) The separate accreditation requirement is waived for branch campuses of out-of-state institutions if the branch campus:

(i) Is eligible to participate in federal student aid programs; and

(ii) Has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington; and

(iii) Has an annual enrollment of at least seven hundred full-time equivalent students.

(4) The term "approved accrediting association" shall mean the following organizations:

(a) Northwest Association of Schools and Colleges;

(b) Middle States Association of Colleges and Schools, Commission on Higher Education;

(c) New England Association of Schools and Colleges;

(d) North Central Association of Colleges and Schools;

(e) Southern Association of Colleges and Schools;

(f) Western Association of Schools and Colleges;

(g) Accrediting Bureau of Health Education Schools;

(h) Accrediting Council for Continuing Education and Training;

(i) Accrediting Commission of Career Schools and Colleges of Technology;

(j) Accrediting Council for Independent Colleges and Schools;

(k) National Accrediting Commission of Cosmetology Arts and Sciences.

(5) "Washington resident" shall be defined as an individual who satisfies the requirements of RCW 28B.15.012 (2)(a) through (d) and board-adopted rules and regulations pertaining to the determination of residency.

(6) "Dependent student" shall mean any post-high school student who does not qualify as an independent student in accordance with WAC 250-20-021(6).

(7) "Independent student" shall mean any student who qualifies as an independent student for the receipt of federal aid. These qualifications include a student who has either:

(a) Reached his or her twenty-fourth birthday before January 1st of the aid year; or(=)

(b) Is a veteran of the U.S. Armed Forces; or(=)

(c) Is an orphan or ward of the court; or(=)

(d) Has legal dependents other than a spouse; or(=)

(e) Is a married student or a graduate/professional student; or(=)

(f) Is determined to be independent for the receipt of federal aid on the basis of the professional judgment of the aid administrator.

(8) Definitions of "undergraduate students" will be in accord with definitions adopted for institutional use by the board.

(9) "Student budgets" (~~shall~~) are determined by institutions and approved by the board. The student budget consists of that amount required to support an individual as a student for nine months and may take into consideration cost factors

for maintaining the student's dependents. This should be the amount used to calculate the student's total need for all state and federal funds.

(10) "State need grant cost-of-attendance" is the standard student cost per sector, as developed by the board.

(a) The costs-of-attendance for each sector are calculated by adding together a standard maintenance allowance for books, room, board, transportation and personal items, for all undergraduate students statewide as developed by the Washington Financial Aid Association, and the sector's regular tuition and fees for full-time, resident, undergraduate students.

(b) In no case may the costs-of-attendance exceed the statutory ceiling established by RCW ((~~28B.10.808~~) 28B.92.060(4)). The ceiling is calculated by adding together the same standard maintenance allowance used in determining the state need grant cost-of-attendance, plus the regular tuition and fees charged for a full-time resident undergraduate student at a research university, plus the current average state appropriation per student for operating expenses in all public institutions.

(c) For example, in the 1992-93 academic year, the value of the statutory ceiling is \$13,783. This value is composed of the Washington Financial Aid Association's maintenance budget of \$6,964, plus the regular tuition and fees charged for a resident undergraduate student at a research university of \$2,274, plus the current average state appropriation per student for operating expenses in all public institutions of \$4,545.

(d) The value of each element used in the construction of the statutory ceiling will be updated annually.

(e) The higher education coordinating board will consult with appropriate advisory committees and the representative association of student financial aid administrators, to annually review and adjust the costs-of-attendance. The costs-of-attendance for each sector will be published concurrent with annual guidelines for program administration.

(11) "Family income" is the student's family income for the calendar year prior to the academic year for which aid is being requested.

(a) Income means adjusted gross income and nontaxable income as reported on the federally prescribed application for federal student aid.

(b) For the dependent student family income means parental income.

(c) For the independent student family income means the income of the student and any other adult, if any, reported as part of the student's family.

(d) The institutional aid administrator may adjust the family's income up or down to more accurately reflect the family's financial situation during the academic year. When such adjustments are made they shall be consistent with guidelines for making changes to determine federal student aid eligibility.

(12) "Income cutoff" means the amount of family income below which a student is determined to be eligible for the state need grant.

(a) The cutoff shall be expressed as a percent of the state's median family income. The exact point of cutoff shall

be determined each year by the board based on available funding.

(b) The board will endeavor to award students, in order, from the lowest income to the highest income, within the limits of available funding.

(c) At the discretion of the institution's aid administrator, a student who is eligible for a state need grant in a given academic year may be deemed eligible for the ensuing academic year if his or her family income increases by no more than three percent, even if the stated median family income cutoff for grant eligibility is lower than that amount.

(13) "Median family income" is the median income for Washington state, adjusted by family size and reported annually in the federal register.

(14) "Base grant" is the state need grant award for each sector before the addition of a dependent care allowance. The base grant per student will be no less than the published base grant in 1998-1999. The base grant may be further adjusted according to the student's family income level and rate of enrollment as described in WAC 250-20-041.

For certain students who have completed board approved early awareness and preparation programs such as ((~~the Washington National Early Intervention Scholarship Program, its successor program~~)), GEAR-UP or a Trio program, the base grant will be an amount fixed annually by the board. Generally the base grant, in these cases, will be no less than the current value of the federal PELL grant program.

(15) "Dependent care allowance" is a flat grant amount, to be determined by the board, which is in addition to the eligible student's base grant.

(a) The allowance is awarded to those students who have dependents in need of care. The dependent must be someone (other than a spouse) living with the student.

(b) Care must be that assistance provided to the dependent by someone outside of the student's household and not paid by another agency.

(c) Eligible grant recipients must document their need for the dependent care allowance.

(16) "State need grant award" is the base grant adjusted according to level of family income, plus a dependent care allowance, if applicable.

(17) "Academic year" is that period of time between July 1 and the following June 30 during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters of instruction.

(18) "Clock hours" means a period of time which is the equivalent of either:

(a) A 50 to 60 minute class, lecture, or recitation((:)); or

(b) A 50 to 60 minute period of faculty-supervised laboratory shop training or internship.

(19) "Gift equity packaging policy" is the institution's policy for assigning gift aid to all needy, eligible students.

(20) "Satisfactory progress" is the student's successful completion of a minimum number of credit or clock hours for each term in which the grant was received. Each school's policy for measuring progress of state need grant recipients must define satisfactory as the student's completion of the minimum number of credit or clock hours for which the aid was disbursed.

(a) The minimum satisfactory progress standard for full-time students is twelve credits per term or 300 clock hours per term. Satisfactory progress for three-quarter time students is nine credits per term or 225 clock hours per term. Satisfactory progress for half-time students is six credits per term or 150 clock hours per term.

(b) Each school's policy must deny further disbursements of the need grant at the conclusion of any term in which he or she fails to complete at least one-half of the minimum number of credits or clock hours for which the aid was disbursed or otherwise fails to fulfill the conditions of the institution's satisfactory progress policy.

(c) The school may make disbursements to a student who is in a probationary status. "Probation" is defined as completion of at least one-half, but less than all of the minimum number of credits for which the aid was calculated and disbursed. The school must have a probation policy, approved by the board, which limits the number of terms in which a student may receive the need grant while in a probationary status.

(d) The school's aid administrator may at any time, using professional judgment exercised on a case-by-case basis, reinstate a student back into a satisfactory progress status, in response to an individual student's extenuating circumstances.

(21) The term "full institutional accreditation" shall mean the status of public recognition that an accrediting agency recognized by the U.S. Department of Education grants to an educational institution that meets the agency's established standards and requirements. Institutional accreditation applies to the entire institution, indicating that each of an institution's parts is contributing to the achievement of the institution's objectives.

(22) The term "eligible program" for a public or private nonprofit educational institution, shall mean an associate or baccalaureate degree program; at least a two-year program that is acceptable for full credit toward a bachelor's degree, or at least a one-year educational program that leads to a degree or certificate and prepares the student for gainful employment in a recognized occupation. The term "eligible program" for a for-profit or a postsecondary vocational institution shall mean a program which provides at least a 15-week undergraduate program of 600 clock hours, 16 semester hours, or 24 quarter hours. The program may admit students without an associate degree or equivalent. The term "eligible program" for a for-profit or a postsecondary vocational institution may also be a program that provides at least a 10-week program of 300 clock hours, 8 semester hours, or 12 quarter hours. A program in this category must be an undergraduate program that admits only students with an associate degree or equivalent. To be an "eligible program," a program must be encompassed within the institution's accreditation and be an eligible program for purposes of the federal Title IV student financial aid programs.

(23) The three "public sectors of higher education" are the research universities, comprehensive universities, and the community and technical colleges.

(24) A "for-profit institution" is a postsecondary educational institution other than a public or private nonprofit insti-

tion which provides training for gainful employment in a recognized profession.

(25) A "postsecondary vocational institution" is a public or private nonprofit institution which provides training for gainful employment in a recognized profession.

(26) The "less-than-half-time pilot project" is defined as follows:

(a) The pilot project is authorized for 2005-2007 in chapter 299, Laws of 2005 and is meant to test the feasibility of providing state need grant awards to students who enroll in four or five credits.

(b) The board shall select up to ten schools to participate in the pilot project.

(c) All rules and guidelines that govern student and school participation in the state need grant program shall apply to pilot project except the following:

(i) The student may enroll for four or five credits per term.

(ii) The grant award is equal to one-quarter of the regular base grant amount.

(iii) Students otherwise enrolled in credit bearing coursework may receive the grant for up to one academic year before being accepted into a program that leads to a degree or certificate.

(27) The term "former foster youth" means a person who is at least eighteen years of age, but no more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen.

WSR 06-17-047

PERMANENT RULES HIGHER EDUCATION COORDINATING BOARD

[Filed August 8, 2006, 4:47 p.m., effective September 8, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose:

- Revision of WAC 250-40-040 (3)(a). That creates placement priority for former foster youth.
- Implement rule changes to match recent legislation.
- Minor technical changes.

Citation of Existing Rules Affected by this Order:
Amending WAC 250-40-040 (3)(a).

Statutory Authority for Adoption: RCW 28B.15.012.

Adopted under notice filed as WSR 06-09-089 on April 19, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 27, 2006.

Elizabeth Gebhardt
Senior Associate Director

AMENDATORY SECTION (Amending WSR 94-14-006, filed 6/23/94, effective 7/24/94)

WAC 250-40-040 Student eligibility and selection. (1) Eligibility criteria. In order to be eligible for employment under this program the student must:

(a) Demonstrate financial need.

(b) Be enrolled or accepted for enrollment as at least a half-time undergraduate, graduate or professional student or be a student under an established program designed to qualify him or her for enrollment as at least a half-time student at an eligible institution of postsecondary education.

(c) Be capable, in the opinion of the institution, of maintaining good standing in a course of study while employed under the program, and demonstrate satisfactory progress toward degree or certificate completion.

(d) Not be pursuing a degree in theology.

(e) Not owe a refund or repayment on a state or federal financial aid grant program and not be in default on a loan made, insured, or guaranteed under federal and state financial aid loan programs.

(2) Criteria for institutional determination of financial need and the making of awards.

(a) Standard budgetary costs will be determined by the institution subject to approval by the higher education coordinating board.

(b) Total applicant resources shall be determined in accordance with the federal methodology system of need analysis. Institutional financial aid officers may make reasonable adjustments to the computed total applicant resources if individual circumstances warrant such adjustments.

Any adjustments must be documented and placed in the student's financial aid records.

(c) The work-study award shall be designed in such a manner that the sum total of financial aid awarded any one student will not exceed the difference between the total applicant's resources and the budgetary cost of education.

(d) Each institution must have a policy relating to the continuance of aid for students who enroll in but do not complete the number of credit or clock hours required to maintain satisfactory progress toward completion of his or her degree or program objective. The institution must submit its policy to the board annually for approval.

(3) Priorities in placing students.

(a) Provide work opportunities for students who are defined to be residents of the state particularly former foster youth as defined in RCW 28B.92.060. Residents of the state are defined in RCW 28B.15.012 and 28B.15.013 except resident students defined in RCW 28B.15.012 (2)(g);

(b) After consideration of (a) of this subsection, then provide job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements wherever appropriate; and

(c) Whenever appropriate, provide opportunities for off-campus community service placements.

(4) Job placements are encouraged in occupations that meet Washington's economic development goals especially those in international trade and international relations.

AMENDATORY SECTION (Amending WSR 94-14-006, filed 6/23/94, effective 7/24/94)

WAC 250-40-050 Restrictions on student placement and compensation. (1) Displacement of employees. Employment of state work-study students may not result in displacement of employed workers or impair existing contracts for services.

(a) State work-study students employed by public institutions of postsecondary education may not fill positions currently or formerly occupied by classified employees.

(b) In cases of governmental employment, state work-study students may fill positions which have been previously occupied but were vacated as a result of implementing previously adopted reduction in force policies in response to employment limitations imposed by federal, state or local governments.

(c) In all other cases, state work-study students may not fill positions which have been occupied by regular employees during the current or prior calendar or fiscal year.

(2) Rate of compensation. All work-study positions shall receive compensation equal to the entry level salary of comparable nonwork-study positions.

Students employed by public postsecondary educational institutions who are filling positions which are comparable to Washington personnel resources board classified positions must be paid entry level Washington personnel resources board wages for the position unless the overall scope and responsibilities of the position indicate a higher level.

Determination of comparability must be made in accordance with state work-study program operational guidelines.

Documentation must be on file at the institution for each position filled by a state work-study student which is deemed by the institution as not comparable to a higher education personnel board position.

(3) Maximum total state work-study compensation. Earnings beyond the student's state work-study eligibility must be reported to the financial aid officer, and resulting adjustments made in the financial aid package in accordance with federal methodology. In the event that a student earns more money from state work-study employment than the institution anticipated when it awarded student financial aid, the excess is to be treated in accordance with the method specified in the state work-study operational guidelines.

(4) State share of student compensation. With the exception of board-approved off campus community service placements, the state share of compensation paid students shall not exceed 80 percent of the student's gross compensation. In the following cases the state share may be established at 80 percent:

(a) When employed by state supported institutions of postsecondary education at which they are enrolled;

(b) When employed as tutors by the state's common school districts;

(c) When employed in tutorial or other support staff positions by nonprofit adult literacy service providers in the state of Washington who meet guideline criteria for participation; and

(d) When employed in an off-campus community service placement. The state share of compensation paid students employed by all other employers shall not exceed 65 percent of the student's gross compensation.

(5) Employer share of student compensation. The employer shall pay a minimum of 20 percent or 35 percent of the student's gross compensation as specified in subsection (4) (~~(above)~~) of this section, plus the costs of any employee benefits including all payments due as an employer's contribution under the state workman's compensation laws, federal Social Security laws, and other applicable laws. The federal work-study program cannot be used to provide employer share of student compensation except when used for placement of students in tutorial or other support staff positions with adult literacy service providers in the state of Washington who meet guideline criteria for participation.

(6) Academic credit for state work-study employment. Students may receive academic credit for experience gained through state work-study employment.

(7) Maximum hours reimbursed. Employment of a student in excess of an average of 19 hours per week, or in the case of on-campus graduate assistants an average of 20 hours per week, over the period of enrollment for which the student has received an award or a maximum of 40 hours per week during vacation periods will not be eligible for reimbursement from state funds.

A student may not be concurrently employed in the same position by the state work-study program and the federal work-study program and exceed the 19 hours per week average.

(8) Types of work prohibited. Work performed by a student under the state work-study program shall not be sectarian related and shall not involve any partisan or nonpartisan political activity.

(9) Relationship to formula staffing percentage. Placement of state work-study students in on-campus positions at public postsecondary educational institutions may not result in a level of employment in any budget program in excess of a formula staffing percentage specifically mandated by the legislature.

AMENDATORY SECTION (Amending WSR 93-20-044, filed 9/29/93, effective 10/30/93)

WAC 250-40-060 Institutional application and allotment procedures. (1) Application. Institutions shall annually apply for and document campus need for student employment funds.

(2) Institutional reserve of funds. The board shall annually develop a reserve of funds for the body of students at each eligible participating institution. Institutions will be notified of funds available for their students by May 1 of the

year prior to the academic year in which awards will be given, or within a reasonable period after the legislative appropriation becomes known, whichever is later. The following steps shall govern the determination and allotment of institutional reserves:

(a) A base funding level, or conditional guarantee, shall be adopted for each institution currently participating in the program. The initial allotment of funds to any one institution shall equal its conditional guarantee. The conditional guarantee will equal the amount of funds initially reserved to the institution for the 1992-93 fiscal year.

(b) Eligible institutions currently not participating in the program shall be continually encouraged to enter the program, and will be funded at a reasonable level.

(c) Each institution shall share proportionally in the event of budget reductions.

(d) Institutions displaying a pattern of fund underutilization shall have their allocations reevaluated and reduced if appropriate.

(e) Funding increases shall be distributed on an objective basis among institutions in a manner which, when combined with federal work-study allocations, furthers a parity of work opportunity among students statewide.

(f) No institution will be awarded funds which, in the institution's judgment or judgment reasonably exercised by the board, will exceed what the institution can adequately administer.

(3) The convening of an advisory committee. The board staff will convene its advisory committee annually in accordance with WAC 250-40-070(~~(5)~~) (4) to review program policies and procedures.

(4) Reallotments. If it is determined that an institution is unable to award all of the funds allotted it, the board will reduce its allotment accordingly and will redistribute unutilized funds to other eligible institutions. Reallotments however, shall not increase or decrease an institution's conditional guarantee.

WSR 06-17-054

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2006-01—Filed August 10, 2006, 9:41 a.m., effective September 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Implement RCW 48.18.547, which was enacted into law when 2SHB 2292 was signed by the governor.

Statutory Authority for Adoption: RCW 48.02.060 and 48.18.547.

Adopted under notice filed as WSR 06-12-076 on June 6, 2006.

Changes Other than Editing from Proposed to Adopted Version: Where feasible, the definitions were reorganized to appear in the sections of the rule to which they apply to improve readability. Other changes:

1. The rule was revised to identify the codified sections of the law.

2. The definition of "rate" was removed because it was unnecessary.

3. The definition of "classification plan" was clarified to explain how risks are grouped.

4. The definition of "significant risk factor" was clarified to provide that substantive underwriting factors are presumed to be significant risk factors.

5. The definition of "substantive underwriting factor" was clarified by adding additional examples.

6. WAC 284-20A-030 was clarified to:

a. Provide that significant risk factors are components of a risk profile;

b. Delete the reference to RCW 48.18.480, which was not needed after the definition of classification plan was clarified;

c. Provide that the insurer must explain how each significant risk factor adversely affects the insured's eligibility for premium credits or ability to buy insurance without the application of premium debits, surcharges or assessments; and

d. Provide that notice is not required in situations where premium increases are automatic, such as step-rating factors.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 0, Repealed 0.

Date Adopted: August 10, 2006.

Mike Kreidler
Insurance Commissioner

Chapter 284-20A WAC

RULES THAT APPLY TO INSURERS THAT UNDERWRITE MEDICAL MALPRACTICE INSURANCE

NEW SECTION

WAC 284-20A-010 Purpose. This chapter describes the underwriting restrictions that apply to medical malpractice insurers under RCW 48.18.290, 48.18.2901 and 48.18.547.

NEW SECTION

WAC 284-20A-020 Definitions that apply to RCW 48.18.290, 48.18.2901, 48.18.547 and this chapter. The definitions in RCW 48.18.547(1) apply to this chapter. In addition, the definitions in this section apply throughout the chapter:

(1) **"Medical malpractice"** has the same meaning as in RCW 48.140.010(9).

(2) **"Provider"** includes both a facility and provider as defined in RCW 48.140.010 (6) and (7).

(3) **"Risk profile"** means characteristics of a provider that increase or decrease the potential for future medical malpractice claims that may fall in the scope of coverage of a medical malpractice insurance policy.

NEW SECTION

WAC 284-20A-030 Information a medical malpractice insurer must provide to the insured if the insurer takes an adverse underwriting action. Significant risk factors are the components of a risk profile that require notice under RCW 48.18.547(3). If a provider has any significant risk factors that affect the provider's risk profile and may increase the potential for future medical malpractice claims, the insurer must explain each significant risk factor to the insured in clear and simple language.

(1) The insurer must explain to the insured how each significant risk factor adversely affects the insured's:

(a) Eligibility for insurance;

(b) Eligibility for premium credits; or

(c) Ability to buy insurance without the application of rating rules that result in premium debits, surcharges, or assessments.

(2) Insurers do not have to provide notice if:

(a) The provider asks for product options that increase premium or reduce coverage, such as:

(i) Deductible or retention changes;

(ii) Increased coverage limits; or

(iii) Coverage options.

(b) The provider changes their business in a way that increases exposure, such as adding staff or types of services performed; or

(c) The classification plan includes rating rules that result in automatic premium increases, such as a claims-made policy step-rating rule that increases premium based on years of practice.

(3) For the purposes of this section:

(a) **"Classification plan"** means a plan to formulate different premiums for the same coverage based on group characteristics. Classification plans group, for rating purposes, risks that have similar insuring, risk and exposure factors.

(b) **"Premium"** has the same meaning as in RCW 48.18.170.

(c) **"Rating rule"** means a factor, formula, rule or procedure used to calculate premium. Rating rules include, but are not limited to:

(i) Experience rating plans;

(ii) Rating factors or tiers;

(iii) Surcharge or discount rules; and

(iv) Schedule rating plans.

(d) **"Significant risk factor"** means a material element of the insured's risk profile that contributes to or results in an adverse underwriting action by a medical malpractice insurer. Substantive underwriting factors, as defined in WAC 284-20A-040 (3)(a) are presumed to be significant risk factors.

NEW SECTION

WAC 284-20A-040 Use of "substantive underwriting factors" when underwriting new or existing medical malpractice insurance policies. (1) The definition of "underwriting" in RCW 48.18.547 (1)(e) is broad, and includes selecting, rejecting and pricing a risk. Underwriting occurs when a provider first applies for insurance and when the insurer evaluates the provider for renewal purposes.

(2) Insurers are prohibited from considering the factors listed in RCW 48.18.547(2) during any underwriting process unless the insurer can demonstrate that other substantive underwriting factors were also considered. Upon request by the commissioner, an insurer must demonstrate that a completed underwriting process complies with RCW 48.18.547 (2). Insurers must retain documentation of each underwriting process for three years.

(3) For the purposes of this section:

(a) **"Substantive underwriting factor"** means a factor that is very important to an underwriting decision. An insurer may use other substantive underwriting factors in an underwriting process if they are comparable in importance to the factors listed in this definition. Examples of substantive underwriting factors include, but are not limited to:

- (i) Criminal acts, including sexual misconduct;
- (ii) Changes in financial condition;
- (iii) Changes in operations that have a reasonable relationship to underwriting, such as changes in:
 - (A) Management or professional staff;
 - (B) Location of business;
 - (C) Business relationships;
 - (D) Medical specialty; or
 - (E) Medical procedures performed;
- (iv) Failure to comply with loss control or loss prevention recommendations within a reasonable period;
- (v) Failure to provide information necessary to underwrite the policy;
- (vi) History of claims, if the insurer can demonstrate they adversely affect the insured's risk profile;
- (vii) Investigations, disciplinary action, restrictions or limitations imposed by or related to a state or federal licensing or administrative agency, law enforcement agency, attorney general, or similar agency or official;
- (viii) Performing procedures outside the scope of an individual's license and/or training;
- (ix) Substance abuse;
- (x) Inadequate facilities, equipment, or maintenance of facilities or equipment;
- (xi) Inadequate staff training program;
- (xii) Peer review or credentialing actions, or changes in staff privileges, such as suspension, restriction, revocation, surrendered privileges, or other termination; or
- (xiii) Unprofessional conduct, as defined in RCW 18.130.180.

(b) **"Underwriting process"** means any series of actions that produce an underwriting decision that affects a provider.

NEW SECTION

WAC 284-20A-050 What constitutes a medical malpractice insurance policy for the purposes of RCW 48.18.290 (1)(b) and 48.18.2901 (1)(a)(ii)? A medical malpractice insurance policy means an insurance policy written with the principal intent to provide medical malpractice insurance. For the purposes of this section, a policy does include medical malpractice insurance written as ancillary coverage to a general liability or package policy if the principal exposure insured is not medical malpractice.

**WSR 06-17-056
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-197—Filed August 10, 2006, 10:52 a.m., effective September 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-019.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-13-086 on June 20, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 4, 2006.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 03-81, filed 4/25/03, effective 5/26/03)

WAC 220-52-019 Geoduck clams—Gear and unlawful acts. (1) It is unlawful to take, fish for or possess geoduck clams taken for commercial purposes from any of the beds of navigable waters of the state of Washington except as provided in RCW 75.24.100 and rules of the director.

(2)(a) Only a manually operated water jet, the nozzle of which shall not exceed 5/8 inch inside diameter may be used to commercially harvest geoduck clams. Use of any other gear requires a permit from the director.

(b) It is unlawful in the commercial harvest of geoducks for through-hull fittings for water discharge hoses connected to the harvest gear to be below the surface of the water. Any through-hull fitting connected to the harvest gear which is above the surface of the water must be visible at all times.

(3) It is unlawful to take or fish for geoduck clams taken for commercial purposes between one-half hour before official sunset or 7:00 p.m. whichever is earlier and 7:00 a.m. No geoduck harvest vessel may be on a geoduck tract or harvest area after 7:30 p.m. or before 6:30 a.m. It is unlawful to take or fish for geoduck clams on Sundays or on state holidays as defined by the office of financial management. It is unlawful to possess geoduck clams taken in violation of this section.

(4) It is unlawful to harvest geoduck clams with any instrument that penetrates the skin, neck or body of the geoduck.

(5) It is unlawful to possess only the siphon or neck portion of a geoduck clam aboard a geoduck harvest vessel, except when a geoduck is incidentally damaged during harvest and must be reported under a department of natural resources harvest agreement.

(6) It is unlawful to retain any food fish or shellfish other than geoduck clams during geoduck harvesting operations, except for horse clams (*Tresus capax* and *Tresus nuttallii*) when horse clam harvest is provided for under a department of natural resources harvest agreement.

(7) It is unlawful for more than two divers from any one geoduck harvest vessel to be in the water at any one time.

(8) The following documents must be on board the geoduck harvesting vessel at all times during geoduck operations:

(a) A copy of the department of natural resources geoduck harvesting agreement for the tract or area where harvesting is occurring;

(b) A map of the geoduck tract or harvest area and complete tract or harvest area boundary identification documents or photographs issued by the department of natural resources for the tract or harvest area;

(c) A geoduck diver license for each diver on board the harvest vessel or in the water; and

(d) A geoduck fishery license as described in WAC 220-52-01901.

(9) It is unlawful to process geoducks on board any harvest vessel.

(10) It is unlawful to take or fish for geoduck clams for commercial purposes outside the tract or harvest area designated in the department of natural resources geoduck harvesting agreement required by subsection (8)(a) of this section. It is unlawful to possess geoduck clams taken in violation of this subsection.

(11) It is unlawful to harvest geoduck clams in areas deeper than seventy feet below ~~((the water surface at any tide height))~~ mean lower low water (0.0 ft.).

(12) Holders of geoduck fishery licenses shall comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. Some of those regulations appear at 29 C.F.R. Part 1910, Subpart T.

WSR 06-17-057
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-199—Filed August 10, 2006, 10:57 a.m., effective September 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-12-060 on June 2, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2006.

J. P. Koenings
Director
by Larry Peck

AMENDATORY SECTION (Amending Order 05-130, filed 6/24/05, effective 7/25/05)

WAC 220-56-255 Halibut—Seasons—Daily and possession limits. (1) It is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) Catch Record Card Area 1: Open May 1 through September 30. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish if the vessel has brought halibut into port or landed halibut.

(b) Catch Record Card Area 2:

(i) Those waters south of the Queets River, north of 47° and east of 124°40'W - Open May 1 through September 30.

(ii) All other waters in Area 2 - Open May 1 through September 30, except closed to fishing for halibut 12:01 a.m. of each Friday through 11:59 p.m. of each Saturday.

(c) Catch Record Card Areas 3 and 4 - Open May 10 through September 30, except closed to fishing for halibut 12:01 a.m. of each Sunday through 11:59 p.m. of each Monday. The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within an eastward facing "C" shaped closed area defined as: Beginning at 48°18'N. lat.;

125°18'W. long., thence to 48°18'N. lat.; 124°59'W. long., thence to 48°11'N. lat.; 124°59'W. long., thence to 48°11'N. lat.; 125°11'W. long., thence to 48°04'N. lat.; 125°11'W. long., thence to 48°04'N. lat.; 124°59'W. long., thence to 48°00'N. lat.; 124°59'W. long., thence to 48°00'N. lat.; 125°18'W. long., thence to the point of origin.

(d) Catch Record Card Area 5 - Open May 26 through July 31, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(e) Catch Record Card Areas 6 through 13 - Open April 14 through June 20, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(2) Daily limit one halibut taken from state and offshore waters, except Canadian waters. See WAC 220-56-156 for limits on Canadian-origin halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit. See WAC 220-56-156 for rules on Canadian-origin halibut possession.

(4) It is unlawful to land halibut outside the catch area in which the halibut were taken, except for Canadian-origin halibut. See WAC 220-56-156 for rules on landing Canadian-origin halibut.

WSR 06-17-058
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-200—Filed August 10, 2006, 10:58 a.m., effective September 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-020 and 220-52-043.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-12-068 on June 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2006.

J. P. Koenings
Director
by Larry Peck

AMENDATORY SECTION (Amending Order 06-08, filed 1/22/06, effective 2/22/06)

WAC 220-52-020 Clams—Commercial harvest. It shall be unlawful to take, dig for or possess clams except razor clams, cockles, borers or mussels taken for commercial purposes from the tidelands of the state of Washington except from registered aquaculture farms or from ~~((state-owned))~~ nonstate tidelands under ~~((contract with or permit from the department))~~ a nonstate lands commercial wild clam, mussel and oyster trial fishery permit.

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

WAC 220-52-043 Commercial crab fishery—Additional gear and license use requirements. (1) **Commercial gear limited to pots and ring nets.** It shall be unlawful to take or fish for crabs for commercial purposes except with shellfish pots and ring nets.

(2) **Commercial gear escape rings and ports defined.** It shall be unlawful to use or operate any shellfish pot gear in the commercial Dungeness crab fishery unless such gear meets the following requirements:

(a) Pot gear must have not less than two escape rings or ports not less than 4-1/4 inches inside diameter.

(b) Escape rings or ports described above must be located in the upper half of the trap.

(3) ~~((Puget Sound))~~ **Commercial** ~~((crab))~~ **crab gear** ~~((buoy tagging))~~ **buoy tag requirements.**

(a) In ~~((coastal waters, each))~~ ~~((Puget Sound, all))~~ coastal waters each crab ~~((pot[s]))~~ pot must have ~~((the department-issued buoy tag [a durable, nonbiodegradable tag permanently and legibly marked with the license owner's name or license number, and telephone number]))~~ the department-issued buoy tag securely attached to the ~~((first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of that buoy, at the end away from the crab pot buoy line.))~~ pot. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with law.)) first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of that buoy, at the end away from the crab pot buoy line.

(b) In Puget Sound~~((,))~~ all crab buoys must have ~~((the))~~ ~~((a))~~ the buoy tag issued to the license owner by the department attached to the outermost end of the buoy line.

~~((e))~~ (c) If more than one buoy is attached to a pot, only one buoy tag is required.

(4) **Puget Sound - Description of lawful buoys.** All buoys attached to commercial crab gear in Puget Sound waters must consist of a durable material and remain floating on the water's surface when five pounds of weight is attached. It is unlawful to use bleach or antifreeze bottles or any other container as a float. All buoys fished under a single license must be marked in a uniform manner using one buoy brand number registered by the license holder with the department and be of identical color or color combinations. No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of thirty percent of the surface of each buoy is also prominently marked with an

additional color or colors other than red or white, as the red and white colors are reserved for personal use crab gear as described in WAC 220-56-320 (1)(c).

(5) **Commercial crab license requirements.** In addition to, and separate from, all requirements in this chapter that govern the time, area, gear, and method for crab fishing, landing, possession, or delivery of crabs, no commercial crab fishing is allowed except when properly licensed. A person may take, fish for, land, or deliver crabs for commercial purposes in Washington or coastal waters only when the person has the license required by statute, or when the person is a properly designated alternative operator to a valid license. For Puget Sound, a person must have a "Dungeness crab - Puget Sound" fishery license provided by RCW 77.65.130. For coastal waters, such person must have a "Dungeness crab - Coastal" fishery license provided by RCW 77.65.130. To use ring nets instead of or in addition to pots, then the licensee must also have the "Crab ring net - Puget Sound" or "Crab ring net - non-Puget Sound" license in RCW 77.65.-130. Qualifications for the limited entry licenses, requirements for designating vessels, and use of alternate operators is provided by and controlled by chapters 77.65 and 77.70 RCW.

(6) **Maximum size for commercial crab pots.** It is unlawful to commercially fish a crab pot greater than thirteen cubic feet in volume used to fish for or take Dungeness crab from state or offshore waters.

(7) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any crab fishing.

WSR 06-17-074

PERMANENT RULES

SPOKANE COUNTY AIR

POLLUTION CONTROL AUTHORITY

[Filed August 14, 2006, 9:03 a.m., effective September 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On July 6, 2006, the SCAPCA board postponed adoption of the proposed addition of Section 2.14 to SCAPCA Regulation I, Article II until additional language was added to clarify why SCAPCA does not implement and enforce the exceptions listed in Section 2.14.

SCAPCA Regulation 1 [I], Article II, Section 2.14 is informative in nature only; therefore, the revisions shown below are nonsubstantive and do not impact either implementation or enforcement of SCAPCA's Regulations.

SCAPCA Regulation 1 [I], Article II, Section 2.14 lists the Washington state regulations, Washington Administrative Codes (WACs) that SCAPCA implements and enforces.

It also lists the sections of chapter 173-400 WAC that SCAPCA does not implement and enforce. In addition, it provides the reasons why SCAPCA excepts these sections. SCAPCA has its own rules and regulations regarding the issues covered in the excepted sections of chapter 173-400 WAC.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I.

Statutory Authority for Adoption: Chapter 70.94 RCW. Adopted under notice filed as WSR 06-16-056 on July 27, 2006.

Changes Other than Editing from Proposed to Adopted Version:

- SCAPCA included additional language, clarifying that SCAPCA has its own regulations that cover the excepted sections to chapter 173-400 WAC.
- In addition, SCAPCA restructured SCAPCA Regulation 1 [I], Article II, Section 2.14 for format consistency with other sections of SCAPCA regulation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 3, 2006.

August 4, 2006

Charles E. Studer

Environmental Engineer

NEW SECTION

SECTION 2.14 WASHINGTON ADMINISTRATIVE CODES (WACS)

A. The Authority implements and enforces the following Washington State WACs:

1. Chapter 173-400 WAC - General regulations for air pollution sources

a. Except for the following sections:

(1) Source Registration

(a) WAC 173-400-100 - Registerable source

(b) WAC 173-400-102 - Scope of registration and reporting requirements

(i) SCAPCA Regulation I, Article IV, replaces the registration requirements in WACs 173-400-100 & 102 for all air pollution sources in Spokane County.

(2) Stationary, portable and temporary source permitting

(a) WAC 173-400-035 - Portable and temporary sources.

(i) SCAPCA Regulation I, Article V, Sections 5.02.A.9, 5.02.I, and 5.08 replace the permitting requirements in WAC 173-400-035 for all portable and temporary sources in Spokane County.

(b) WAC 173-400-110 - New source review.

(i) SCAPCA Regulation I, Article V replaces the permitting requirements in WAC 173-400-110 for all new stationary sources installed or operated in Spokane County.

(3) Fees (SCAPCA has its own fee structure.)

(a) WAC 173-400-045 - Control technology fees.

(i) SCAPCA Regulation I, Article X, Sections 10.08.C replaces the review fees in WAC 173-400-045 for performing a Reasonably Available Control Technology (RACT) determination pursuant to Chapter 173-400-040 WAC and/or RCW 70.94.161 in Spokane County.

(b) WAC 173-400-104 - Registration fees.

(i) SCAPCA Regulation I, Article X, Sections 10.06 replaces registration fees assessed in WAC 173-400-104 for each air pollution source registered with SCAPCA.

(c) WAC 173-400-116 - New source review fees.

(i) SCAPCA Regulation I, Article X, Sections 10.07 replaces the fees assessed in WAC 173-400-116 to each facility that installs or operates a new air pollution source in Spokane County.

(4) Prevention of significant deterioration (PSD) program

(a) WAC 173-400-730 Prevention of significant deterioration application processing procedures.

(b) WAC 173-400-740 PSD permitting public involvement requirements, and

(c) WAC 173-400-750 Revisions to PSD permits.

(i) Ecology administers the Prevention of significant deterioration program (PSD); however, SCAPCA enforces it in Spokane County.

2. Chapter 173-401 WAC - Operating Permit Regulation

3. Chapter 173-425 WAC - Outdoor burning.

4. Chapter 173-430 WAC - Agricultural burning.

5. Chapter 173-433 WAC - Solid fuel burning devices.

6. Chapter 173-434 WAC - Solid waste incinerator facilities

7. Chapter 173-435 WAC - Emergency episode plan.

8. Chapter 173-460 WAC - Controls for new sources of toxic air pollutants

9. Chapter 173-470 WAC - Ambient air quality standards for particulate matter.

10. Chapter 173-474 WAC - Ambient air quality standards for sulfur oxides.

11. Chapter 173-475 WAC - Ambient air quality standards for carbon monoxide, ozone, and nitrogen dioxide.

12. Chapter 173-490 WAC - Emission standards and controls for sources emitting volatile organic compounds (VOC)

13. Chapter 173-491 WAC - Emission standards and controls for sources emitting gasoline vapors

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

WSR 06-17-075

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed August 14, 2006, 9:15 a.m., effective September 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule implements HB 2304 (legislation adopted by 2005 legislature) by giving the department further

authority to: (1) File a lien against the real property of a living resident of a nursing home or other medical institution (known as Tax Equity and Fiscal Responsibility Act, or TEFRA liens) if it determines, after notice and opportunity for a hearing, that the individual cannot reasonably be expected to be discharged from the medical institution and return home; (2) expand the statute of limitations from ten years to twenty years for Medicaid liens placed for collections of debts due the department; (3) broaden the eligibility class of who may be entitled to deferred recovery when the recovery would cause an undue hardship. By broadening the eligible class for the exemption, the department is addressing the issue for all similarly affected citizens of the state and avoiding unintended adverse consequences of recovery; and (4) revise the chapter using "Plain Talk" as directed by the Governor's Executive Order 05-03, dated March 24, 2005.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-527-2792 and 388-527-2795; and amending WAC 388-527-2700, 388-527-2730, 388-527-2737, 388-527-2742, 388-527-2750, and 388-527-2790.

Statutory Authority for Adoption: Chapter 292, Laws of 2005 (SHB 2304).

Other Authority: RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p.

Adopted under notice filed as WSR 06-03-046 on January 10, 2006.

Changes Other than Editing from Proposed to Adopted Version: Changes to the final rule compared to the proposed rule (strikeouts and underlined text indicate deleted or added language since the proposal).

AMENDED SECTIONS

WAC 388-527-2730 Definitions.

"Estate"

(3) For a client who died on or after XXXXX (the effective date of this rule): September 14, 2006.

(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. and any life estate interest held by the recipient immediately before death.~~

"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.~~

"Qualified Individual" - means an heir or an unmarried individual who, immediately prior to the client's death, was eighteen years of age or older, shared the same regular and permanent residence with the client and with whom the client had an exclusive relationship of mutual support, caring, and commitment.

WAC 388-527-2737 Deferring recovery.

(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~~ may place a lien against property to evidence the department's right to recover after the deferral period specified in subsection (1) of this section.

WAC 388-527-2750 Delay of recovery for undue hardship.

The department delays recovery under this section when the department determines that recovery would cause an undue hardship ~~for the heir(s) a qualified individual(s).~~ This 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 the adjustment or recovery is the sole income-producing asset of one or more of the heirs qualified individuals and income is limited; or

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

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the decedent's cost of assistance would merely cause the heir qualified individual inconvenience or restrict his or her lifestyle; or

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

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

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

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

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

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

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

(f) ~~(vi)~~ Fails to establish and continuously maintain adequate fire/casualty insurance in the amount equal to the state's lien interest. The insurance policies must identify the State of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the department with documentation of the coverage status on an annual basis.

(g) ~~(vii)~~ Have a change in any circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or

(h) ~~(viii)~~ Dies.

WAC 388-527-2790 Filing liens.

(4)(b) Whether the decedent had legal title to the property; and

(c) Whether a lien is allowed under the provisions of 42 USC 1396p (a) and (b).

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. The department will not apply a lien against a decedent's life estate interest providing the decedent had not previously transferred an interest in the property while retaining a life estate.

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

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

~~(a)~~ To determine the value of the life estate....

~~(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.~~

WAC 388-527-2820 Liens prior to death.

(1) Subject to the requirements of 42 USC Section 1396p(a)....

(1)(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; and

(c) None of the following are lawfully residing in the client's home:

(i) The client's spouse;

(ii) The client's child who is under age twenty-one, or is blind or permanently and totally disabled as defined in Title 42 USC Section 1382c; or

(iii) A sibling of the client (who has an equity interest in such income and who was residing in the client's home for a period of a least one year immediately before the date of the client's admission to the medical institution).

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 on recoverable estate assets beginning nine months after the earlier of:

A final cost-benefit analysis is available by contacting Bill Ward, DSHS-Office of Financial Recovery (OFR), P.O. Box 45862, Olympia, WA 98504-5862, phone (360) 664-5501, e-mail wardbr@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 6, Repealed 2.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 6, Repealed 2.

Date Adopted: August 14, 2006.

Liz Begert Dunbar
for Robin Arnold-Williams
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-18 issue of the Register.

WSR 06-17-078
PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed August 14, 2006, 1:41 p.m., effective September 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The amendments to the blueberry marketing order were approved in a referendum of affected blueberry producers pursuant to RCW 15.65.170.

Purpose: The Washington blueberry commission petitioned the director to amend the Washington blueberry commission's marketing order, chapter 16-550 WAC. During past legislative sessions, significant amendments were made to the commission's enabling statute, chapter 15.65 RCW. These statutory changes prompted the amendments to chapter 16-550 WAC. The changes achieve consistency with the statute, as well as, improve the readability and clarity of the marketing order.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-550-030; and amending WAC 16-550-010, 16-550-020, 16-550-040, and 16-550-060.

Statutory Authority for Adoption: RCW 15.65.047 and chapter 34.05 RCW.

Adopted under notice filed as WSR 06-05-097 on February 14, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 4, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 4, Repealed 1.

Date Adopted: August 14, 2006.

Mary A. Martin Toohey
for Valoria H. Loveland
Director

NEW SECTION

WAC 16-550-005 Marketing order for Washington blueberries—Policy statement. (1) The marketing of blueberries within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its blueberries be properly promoted by:

(a) Enabling producers of blueberries to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the blueberries they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of blueberries within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the blueberry industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that blueberries be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's blueberries.

(b) Increase the sale and use of Washington state's blueberries in local, domestic, and foreign markets.

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's blueberries.

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's blueberries and products.

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of blueberries produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(4) The Washington state blueberry commodity board exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to blueberries under the provisions of this marketing order.

NEW SECTION

WAC 16-550-006 Marketing order purposes. This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; or increasing production efficiency, ensuring a fair regulatory environment; or increasing per capita consumption of blueberries in Washington state. The Washington state blueberry commodity board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) To carry out the purposes of the order, the board may provide for a program in one or more of the following areas:

(a) Establish plans and conduct programs for marketing, sales, promotion and/or other programs for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for blueber-

ries. Such programs shall be directed toward increasing the sale of blueberries without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of blueberries nor disparage the quality, value, sale or use of any other agricultural commodity. The board may also engage in cooperative efforts in the domestic or foreign marketing of blueberries.

(b) Provide for research in the production, processing, irrigation, transportation, handling, and/or marketing of blueberries and expend the necessary funds for such purposes. Insofar as practicable, research shall be carried on by experiment stations of Washington State University, but, if in the judgment of the board, said experiment stations do not have the facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the board.

(c) Provide by rules for:

(i) Establishing uniform labels and labeling requirements for blueberries or any products thereof, requiring producers, handlers and other persons to conform to standards for the placing of labels, trademarks, insignia or brands on containers or packages: Provided, That all licensed blueberry dealers and brokers are entitled to use on the face of their product any particular trademark, insignia, brand or label that they may now have or will have. That established brands, labels, trademarks or insignias may be properly used in selling or commercially disposing of blueberries and blueberry products or in offering the same for sale, advertising and/or delivering said blueberries or blueberry products;

(ii) Providing for inspection and enforcement to ascertain and effectuate compliance.

(d) The board may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices.

(e) Conduct programs for the purpose of providing information and education including:

(i) Marketing information and services for producers of blueberries for the verification of grades, standards, weights, tests, and sampling of quality and quantity of blueberries purchased by handlers from affected producers.

(ii) Information and services enabling producers to meet their resource conservation objectives.

(iii) Blueberry-related education and training.

(f) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of blueberries produced in Washington state to any elected official or officer or employee of any agency.

(2) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of blueberries.

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of the affected commodity

may be encouraged, expanded, improved, or made more efficient.

AMENDATORY SECTION (Amending Order 2068, filed 12/13/90, effective 1/13/91)

WAC 16-550-010 Definitions of terms. Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agricultural Commodity Boards Act. For the purpose of this marketing order, the following additional definitions shall apply:

(1) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Act" means the Washington State Agricultural ~~((Enabling Act of 1964))~~ Commodity Boards Act or chapter 15.65 RCW.

(4) "Person" means any ~~((person))~~ individual, firm, ((association or)) corporation, limited liability company, trust, association, partnership, society or any other organization of individuals, or any unit or agency of local or state government.

(5) "Affected producer" or "producer" means any person who produces blueberries in commercial quantities in the state of Washington, or who sells or stores blueberries in the state of Washington for fresh market or for processing. "To produce" means to act as a producer. For the purposes of the blueberry marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Commercial quantity" means any blueberries produced, or stored, for a market by a producer in any calendar year.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, or distributing blueberries not produced by him/her. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "Blueberry commodity board" hereinafter referred to as "board" or "commission" means the commodity board formed under the provisions of WAC 16-550-020 of this blueberry order.

(9) "Blueberries" means and includes all kinds, varieties, and hybrids of "vaccinium corym bosum" and "vaccinium australe" grown and marketed in the state of Washington.

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning ~~((with July))~~ January 1 ~~((of any year))~~ and ending ~~((with the last day of June following))~~ December 31, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to blueberries. A producer-handler shall be deemed to be a producer with respect to the blueberries which he/she produces and a handler with respect to the blueberries which he/she handles, including those produced by himself/herself.

(12) "Affected area" means the state of Washington.

(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(14) "Affected unit" means one pound net of blueberries.

AMENDATORY SECTION (Amending WSR 00-10-022, filed 4/24/00, effective 5/25/00)

WAC 16-550-020 Blueberry commodity board. (1) **Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of seven members. Six members shall be affected producers appointed or elected as provided in this ~~((article))~~ section. The director shall appoint one member of the board who is neither an affected producer nor a handler to represent the ~~((department and the public))~~ director. The position representing the director shall be a voting member.

(i) Director-appointed affected producer positions on the board shall be designated as positions two, four and six.

(ii) Elected affected producer positions on the board shall be designated as positions one, three and five.

(iii) The position representing the director who is neither an affected producer nor a handler shall be designated as position seven.

(b) For the purpose of nomination, appointment, and election of producer members of the board, the affected area shall be the entire state of Washington.

(3) **Board membership qualifications.** The ~~((affected))~~ producer members of the board ~~((shall))~~ must be practical producers of blueberries and ~~((shall))~~ each must be a citizen~~((s))~~ and resident~~((s))~~ of ~~((the))~~ this state ~~((of Washington))~~, over the age of ~~((twenty-five))~~ eighteen years, ~~((each of whom is and has))~~ Each producer board member must be and have been actually engaged in producing blueberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his/her income therefrom and ~~((who))~~ is not engaged in business, directly or indirectly, as a handler or other dealer.

(4) **Term of office.**

(a) The term of office for members of the board shall be three years and one-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through six and the member ~~((appointed by))~~ representing the director position seven.

(c) The term of office for the initial board members shall be as follows:

Positions one and two - until June 30, 1970

Positions three and four - until June 30, 1971

Positions five, six and seven - until June 30, 1972

(d) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions two, four and six shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

(5) **Nomination ~~((and election))~~ of elected or director-appointed board members.**

(a) Each year the director shall call ~~((for))~~ a nomination meeting for elected and/or director-appointed producer board members. ~~((Such))~~ The meeting(s) shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of ~~((every such))~~ a nomination meeting shall be published in a newspaper of general circulation within the major production area not less than ten days in advance of the date of ~~((such))~~ the meeting and, in addition, written notice of every ~~((such))~~ meeting shall be given to all affected producers according to the list maintained by the ~~((director pursuant to RCW 15.65.200 of the act))~~ board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person shall not invalidate the proceedings at ~~((such))~~ the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at ~~((such))~~ the nomination meeting(s). Nominations may also be made within five days after ~~((any such))~~ the nomination meeting by written petition filed with the director, signed by not less than five affected producers.

~~((At the inception of this order, nominations may be made at the issuance hearing.))~~ (e) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

(6) **Election or advisory vote of board members.**

(a) ~~((Members of the board shall be elected by secret mail ballot within the month of May))~~ An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of May. Each affected producer shall be entitled to one vote. ~~((Affected producer))~~ Elected members of the board shall be elected by a majority of the votes cast by the affected producers. ~~((Each affected producer shall be entitled to one vote.))~~

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) An advisory vote shall be conducted for producer board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the major production area not less than ten days in advance of the date of ~~((such))~~ the election or advisory vote. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of such affected producers maintained by the ~~((director in accordance with RCW 15.65.200))~~ board pursuant to RCW 15.65.295. Any other

affected producer entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(e) Nonreceipt of a ballot by any affected producer shall not invalidate the election or advisory vote of any board member.

(7) Vacancies (~~(prior to election)~~).

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position became vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary except that each member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt, by resolution, provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from monies collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. Such expenses and costs may be paid by check, draft or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(f) To establish a "blueberry board marketing revolving fund" and ~~((such))~~ the fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys and other financial transactions made and done pursuant to this order. ~~((Such))~~ Records, books and accounts shall be audited at least

every five years subject to procedures and methods lawfully prescribed by the state auditor. ~~((Such))~~ Books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for ~~((such))~~ a bond or bonds shall be paid by the board from assessments collected. ~~((Such))~~ A bond shall not be necessary if any ~~((such))~~ board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. At least thirty days prior to the beginning of its fiscal year, the board shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules ~~((and regulations))~~ of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of blueberries.

(s) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(u) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of blueberries including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(w) To maintain a list of the names and addresses of persons who handle blueberries within the affected area and data on the amount and value of the blueberries handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(x) To maintain a list of names and addresses of all affected persons who produce blueberries and the amount, by unit, of blueberries produced during the past three years pursuant to RCW 15.65.295.

(y) To maintain a list of all persons who handle blueberries and the amount of blueberries handled by each person during the past three years pursuant to RCW 15.65.295.

(z) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(aa) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) Procedures for board.

(a) The board shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by regular wire news services and radio-television press.

(c) The board shall establish by resolution, the time, place and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice to a member of any special meeting may be waived by a waiver thereof ((by each)) from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 01-05-047, filed 2/15/01, effective 3/18/01)

WAC 16-550-040 Assessments and collections. (1) Assessments.

(a) The annual assessment on all varieties of blueberries shall be four-tenths of a cent per affected unit (pound).

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment.

(c) Subsequent to the first sale no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of ~~((the))~~ this order during or with respect to any season or year, may be refunded on a pro rata basis at the close of ~~((such))~~ the season or year or at the close of ~~((such))~~ a longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of ~~((such))~~ this marketing ~~((agreement or))~~ order, to all persons from whom ~~((such))~~ moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate ~~((such))~~ the policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in ~~((such))~~ a specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of ~~((such))~~ the assessment or ~~((such))~~ other sum on or before the date due, the board may, and is hereby authorized, to add to ~~((such))~~ the unpaid assessment or sum an amount not exceeding ten percent of the ~~((same))~~ unpaid assessment to defray the cost of enforcing the collecting of ~~((the same))~~ it. In the event of failure of ~~((such))~~ a person or persons to pay any ~~((such))~~ due and payable assessment or other ~~((such))~~ sum, the board may bring a civil action against ~~((such))~~ the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent ~~((thereon))~~, and ~~((such))~~ the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

AMENDATORY SECTION (Amending Order 1116, filed 5/14/69, effective 6/15/69)

WAC 16-550-060 Termination of the order. ~~((The order shall be terminated if the director finds that fifty one percent by numbers and fifty one percent by volume of production of the affected producers favor or assent such dissolution. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of the affected producers file written application with him for~~

~~such termination. The termination shall not, however, become effective until the expiration of the marketing season.) Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-550-030 Marketing order purposes.

WSR 06-17-085 PERMANENT RULES GAMBLING COMMISSION

[Order 462—Filed August 14, 2006, 1:54 p.m., effective January 1, 2007]

Effective Date of Rule: January 1, 2007.

Purpose: The changes clarify that house-banked card room applicants and licensees must:

- (1) Maintain their accounting system in accordance with generally accepted accounting principles;
- (2) Include all income and expenses for the business entity in their accounting system;
- (3) Have their accounting system in place prior to licensure; and
- (4) Include receipts from all house-banked and non-house-banked card games when determining the type of financial statement they should submit to the commission.

The changes also clarify what documents must be submitted (for example, balance sheet, income statement, and statement of cash flows) by licensees. This will provide consistency of information submitted by house-banked card rooms.

Citation of Existing Rules Affected by this Order: Amending WAC 230-40-821 and 230-40-823.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-13-076 on June 20, 2006, with a published date of July 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 11, 2006.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 424, filed 9/18/03, effective 1/1/04)

~~WAC 230-40-821 ((General accounting records—House banking)) Accounting system—House-banked card rooms.~~ Every licensee authorized to offer house-banked card games shall keep and maintain a complete set of records, which have been approved by commission staff prior to licensure. Such records shall include all ~~((details of activities related to the conduct of the licensed activity))~~ receipts and disbursements of the licensee, including, but not limited to, those related to gambling activities. The following requirements shall apply:

Revenue, costs, and expenses.

(1) Each licensee shall maintain legible, accurate and complete records of all transactions relating to the revenues, and costs, and expenses of the gaming operation. These records shall be maintained in a format to ensure consistency, comparability, and effective disclosure of financial information.

~~((General accounting records))~~ Accounting system.

(2) ~~((General))~~ The accounting ~~((records))~~ system shall be ~~((maintained on))~~ a double entry system of accounting with transactions recorded on an accrual basis and in conformity with generally accepted accounting principles, to include detailed, supporting, subsidiary records, sufficient to meet the requirements below.

Recordkeeping.

(3) The detailed, supporting and subsidiary records shall include, but not necessarily be limited to:

(a) Records of all patrons' checks initially accepted, deposited, and returned as "uncollected," and ultimately written off as "uncollectible";

(b) Statistical game records to reflect drop and win amounts for each table, for each game, and for at least each period for which the drop boxes are removed, which shall be at the minimum, the end of each gaming day;

(c) Records of investments in property, including, but not limited to, equipment used directly in connection with the gaming operation;

(d) Records of amounts payable by the gaming operation;

(e) Records which identify the purchase, receipt, and destruction of all cards and gaming chips used in wagering; and

(f) Records of services provided for the operation of gaming activities.

Copies.

(4) Whenever duplicate or triplicate copies are required of a form, record or document:

(a) The original, duplicate, and triplicate copies shall be color-coded;

(b) If under these standards, forms, records, and documents are required to be inserted in a locked dispenser, the last copy shall remain in a continuous unbroken form in the dispenser; and

(c) If under these standards, forms or serial numbers of forms are required to be accounted for or copies of forms are required to be compared for agreement and exceptions noted, such exceptions shall be reported immediately to the commission for investigation.

Storing documents.

(5) All forms, records, documents and stored data required to be prepared, maintained and controlled shall:

(a) Have the title of the form, record, document, or stored data (such as "fill slip," "request for fill," "credit slip," "request for credit," "reconciliation," etc.), imprinted or pre-printed thereon or therein; and

(b) All records shall be maintained for a period of not less than three years. At least the past six months of gambling records must be available for inspection on premises.

Employee records.

(6) Licensees shall maintain a records system that ensures all applicable employees have met licensing requirements. The system shall be maintained on the premises and include the following:

- (a) Employee names;
- (b) Gambling license numbers;
- (c) Gambling license expiration dates; and
- (d) Photocopies of all current employees' licenses.

Record of employees who have not yet received a license.

(7) If an employee license has not yet been issued, the licensee shall maintain a copy of the following:

- (a) Temporary employment authorization;
- (b) Documentation that the required payment (license or transfer fee) has been made; and
- (c) Proof that the employee has adhered to the ten-day waiting period, if applicable.

Notification - new license not received.

(8) The licensed card room operator shall ensure commission staff is notified if an employee license has not been received within sixty days of employment.

AMENDATORY SECTION (Amending Order 426, filed 3/1/04, effective 4/1/04)

WAC 230-40-823 Financial ~~(audits and reviews)~~ statements required—~~(House banking)~~ House-banked card rooms. Each licensee ~~(operating)~~ authorized to offer house-banked card games shall prepare financial statements covering all financial activities of the licensee's establishment for each business year. The following definitions and requirements shall apply:

(1) The following definitions shall apply to all subsections of this rule:

(a) "Financial statements" shall include at least the following: Balance sheet, statement of income, statement of retained earnings or changes in equity, statement of cash flows, and all required notes or disclosures. All financial statements must be in accordance with the United States generally accepted accounting principles.

(b) "Card room gross receipts" shall include receipts from all house-banked and nonhouse-banked card games offered by the house-banked card room.

(c) "Independent" means there is no relationship that may influence a certified public accountant's impartiality and objectivity in rendering services.

Audited financial statements - gross receipts over three million dollars.

~~((1))~~ (2) Each licensee with ~~(house-banked card game)~~ card room gross receipts in excess of three million dollars for the business year shall engage an independent, certified public ~~(accountant)~~ accounting firm licensed by the Washington state board of accountancy who shall audit the licensee's financial statements in accordance with generally accepted auditing standards.

Reviewed financial statements - gross receipts of one to three million dollars.

~~((2))~~ (3) Each licensee with ~~(house-banked card game)~~ card room gross receipts of one to three million dollars for the business year shall engage an independent, certified public ~~(accountant)~~ accounting firm licensed by the Washington state board of accountancy who shall review the financial statements in accordance with the statements on standards for accounting and review services or audit the financial statements in accordance with generally accepted auditing standards.

Compiled financial statements - gross receipts of less than one million dollars.

~~((3))~~ (4) Each licensee with ~~(house-banked card game)~~ card room gross receipts of less than one million dollars for the business year shall engage an independent, certified public ~~(accountant)~~ accounting firm licensed by the Washington state board of accountancy who shall compile the financial statements in accordance with the statements on standards for accounting and review services in accordance with generally accepted accounting principles, including all required ~~(footnotes)~~ notes or disclosures on an accrual basis of accounting.

Financial statement presentation.

~~((4))~~ (5) The financial statements must be presented in the following manner:

(a) Financial statements shall be submitted on a comparative basis: Provided, That the first year may be submitted for the current business year only; and

(b) Gross revenues from each licensed activity should be reported by activity and separate and apart from all other revenues.

Consolidated financial statements.

~~((5))~~ (6) Consolidated financial statements may be filed by commonly owned or operated establishments. These statements must include consolidated schedules presenting separate financial statements for each licensed card room location.

Change in business year.

~~((6))~~ (7) If a licensee changes its business year, they shall notify the director within thirty days. The licensee shall submit financial statements for the period covering the end of the previous business year to the end of the new business year.

Filing with the commission.

~~((7))~~ (8) A copy of the report and the financial statements shall be submitted to the director within one hundred twenty days following the end of the licensee's business year. The director may authorize a sixty-day extension if a licensee submits a written request explaining the need for the extension.

~~(Effective date.~~

~~(8) This rule will be effective for business years ending on or after July 1, 2004.)~~

WSR 06-17-086
PERMANENT RULES
GAMBLING COMMISSION

[Order 461—Filed August 14, 2006, 1:55 p.m., effective September 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Manufacturers and distributors may now base rental/lease fees for electronic bingo card daubers on the number of player selection games sold to a device.

Citation of Existing Rules Affected by this Order: Amending WAC 230-20-244.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-10-011 on April 21, 2006, with a published date of May 17, 2006.

Changes Other than Editing from Proposed to Adopted Version: After the petition was filed (amendments to WAC 230-12-340 and 230-20-244), the commission voted to repeal WAC 230-12-340 effective August 17, 2006. As such, an amendment to accomplish the petitioner's request is only needed in WAC 230-20-244. The language in WAC 230-20-244 was clarified after the CR-102 was filed to specifically allow lease/rent fees for electronic bingo daubers to be based on the number of player selection games sold to an electronic bingo card dauber.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 11, 2006.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 409, filed 2/22/02, effective 7/1/02)

WAC 230-20-244 Electronic bingo card daubers—Definition—Operating restrictions—Standards. The commission deems that any device, apparatus, or scheme that allows a player in any gambling activity a material advantage over other players is against public policy and restriction of such is in the public's interest. Electronic bingo card marking devices or daubers are deemed to provide a player a material advantage unless operated in accordance with subsection (2) of this section. For purposes of this title, the following definitions, restrictions, and standards apply to such devices:

Definition.

(1) Electronic bingo card daubers are defined as electronic appliances used by players to identify bingo cards that contain numbers or symbols input by a player. These devices electronically store preprinted bingo cards purchased by a player, provide a means for players to input numbers or symbols called by the operator, compare the numbers or symbols input by the player to bingo cards previously stored in an electronic data base, and identify to the player those stored bingo cards that contain the numbers or symbols input by the player: Provided, That player-owned devices, which are not directly interfaced with or connected to equipment used to conduct bingo games or the electronic data base in which electronically generated bingo cards are stored in any manner, are not "electronic bingo card daubers" for purposes of this title;

Operating restrictions.

(2) Electronic bingo card daubers will not be deemed to provide players a material advantage and may be used by players in bingo games when operated in the following manner:

Player responsibilities.

(a) The player must perform at least the following functions:

(i) Input each number or symbol called by the operator into the memory of the dauber unit by use of a separate input function for each number symbol. Automatic or global marking of numbers or symbols is prohibited;

(ii) Notify the operator when a winning pattern or "bingo" occurs by means that do not utilize the dauber unit or the associated system; and

(iii) Identify the winning card and display the card to the operator;

Maximum number of cards to be played during each game.

(b) Each electronic dauber unit shall not allow a player to play more than sixty-six cards at one time.

(c) Each player shall not use more than one electronic dauber at any point in time. Provided, That a player can play an unlimited amount of disposable or hard bingo cards in addition to using one electronic dauber unit.

Reserving electronic bingo card daubers.

(d) Operators shall not reserve electronic daubers for any player. An operator must devise and disclose to players a scheme for assignment of dauber units to players during each session. Such schemes shall allow all players an equal opportunity to utilize the available dauber units. If a drawing is used to assign dauber units to players, the operator shall ensure that each player participating in the drawing has an equal chance to win: Provided, That operators that offer electronic dauber units shall reserve at least one device for players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with definitions set forth in the Americans with Disabilities Act (ADA). If there are no requests for use of this unit prior to fifteen minutes before the scheduled start of the session, it may be made available for use by any players;

Fees.

(e) If operators charge players a fee for use of the electronic daubers, such fees must be a flat fee and shall not be based on the number or dollar value of cards purchased. Rental fees shall be considered bingo receipts for purposes of WAC 230-12-020: Provided, That players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with the ADA shall not be required to pay a rental fee or to comply with minimum purchase requirements imposed on all players utilizing electronic daubers. Such players are required to comply with any minimum purchase requirement imposed on all players by an operator;

Card requirements.

(f) Each player utilizing an electronic dauber must have in their possession cards that meet all requirements of WAC 230-20-240 and 230-20-106. Electronic images of cards or faces stored in such devices are for player convenience only and are not bingo cards for purposes of this title;

Leasing by an operator.

(g) If the electronic daubers are leased to an operator, the lease cannot be based in whole or part on the amount of bingo card sales or rental income derived from such devices. Except that fees may be based on the number of cards sold to the device only for player selection games (WAC 230-20-241); and

Discounts and marketing schemes.

(h) The use of electronic daubers is prohibited when a licensee utilizes any marketing scheme for cards that results in a decrease in the per unit price of each card as the number of cards purchased increases: Provided, That a single discount level is authorized for each type of card sold if:

- (i) The licensee has a minimum purchase requirement;
- (ii) The discount applies to all additional cards purchased; and

- (iii) "All you can play" schemes are prohibited;

Standards.

(3) Electronic bingo card daubers must meet the following standards:

- (a) Be manufactured by licensed manufacturers;
- (b) Be sold, leased, and serviced by licensed distributors or manufacturers: Provided, That operators may perform routine maintenance on devices under their control;
- (c) Not be capable of accessing the electronic computer system in any manner that would allow modification of the program which operates and controls the dauber units or the cards stored in the electronic data base; and
- (d) Be capable of complying with applicable requirements of WAC 230-20-106.

WSR 06-17-087

PERMANENT RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Docket A-060475, General Order No. R-537—Filed August 14, 2006, 2:52 p.m., effective September 14, 2006]

In the matter of amending and adopting several rules in Title 480 WAC, relating to adoption-by-reference date revisions and other minor administrative changes.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission takes this action under Notice No. WSR 06-11-174 for an expedited rule making, filed with the code reviser on May 24, 2006. The commission brings this proceeding pursuant to RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date that this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, a description of the differences between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments reflecting the commission's consideration of them.

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-105 proposal and the adoption order. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends the following sections of the Washington Administrative Code:

Rule Changes			
Action	WAC No.	Rule Title	Changes
Chapter 480-14 WAC, Motor carriers excluding household goods carriers and common brokers.			
Amend	480-14-999	Adoption by reference.	1. Adoption by reference dates changed as follows: North American Standard Out-of-Service Criteria (CVSA) April 1, 2006 - No significant change. Title 49 Code of Federal Regulations, October 1, 2005 - Part 395.
Chapter 480-15 WAC, Household goods carriers.			
Amend	480-15-999	Adoption by reference.	1. Adoption by reference dates changed as follows: North American Standard Out-of-Service Criteria (CVSA) April 1, 2006 - No significant change. Title 49 Code of Federal Regulations, October 1, 2005 - Part 395.
Chapter 480-70 WAC, Solid waste collection companies.			
Amend	480-70-999	Adoption by reference.	1. Adoption by reference dates changed as follows: North American Standard Out-of-Service Criteria (CVSA) April 1, 2006 - No significant change. Title 49 Code of Federal Regulations, October 1, 2005 - Part 395.
Chapter 480-73 WAC, Hazardous liquid pipeline companies.			
Amend	480-73-999	Adoption by reference.	1. Adoption by reference dates changed as follows: Title 18 Code of Federal Regulations April 1, 2006 - No significant change.
Chapter 480-90 WAC, Gas companies—Operations.			
Amend	480-90-999	Adoption by reference.	1. Adoption by reference dates changed as follows: Title 18 Code of Federal Regulations April 1, 2006 - No significant change. NARUC, The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies - as of 1985 - No change to current rule.
Chapter 480-100 WAC, Electric companies.			
Amend	480-100-999	Adoption by reference.	1. Adoption by reference dates changed as follows: Title 18 Code of Federal Regulations April 1, 2006 - No significant change. NARUC, The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies - as of 1985 - No change to current rule. National Electrical Code - as of 2005 ANSI C12.1, Code for Electricity Metering, 2001 - as of 2001 - No change to current rule.
Chapter 480-120 WAC, Telecommunications companies.			
Amend	480-120-999	Adoption by reference.	1. Adoption by reference dates changed as follows: American National Standards for Telecommunications - "Network Performance Parameters for Dedicated Digital Services - Specifications" - (ANSI T1.510-1999) - as of December 29, 1999 and reaffirmed 2004 - No change to current rule.

Rule Changes			
Action	WAC No.	Rule Title	Changes
			<p>The Institute of Electrical and Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics as of March 22, 1984 and reaffirmed October 26, 1999 - No change to current rule.</p> <p>National Electrical Safety Code January 1, 2002 - No change to current rule.</p> <p>Title 47 Code of Federal Regulations, except Sections 64.2003 through 64.2009 October 1, 1998 - No change to current rule.</p> <p>Title 47 Code of Federal Regulations, Sections 64.2003 through 64.2009 October 1, 2004 - No significant change.</p>
Chapter 480-121 WAC, Registration, competitive classification and price lists of telecommunications companies.			
Amend	480-121-063	Regulatory requirements that may be waived for competitively classified telecommunications companies.	1. Corrected WAC references and numbering in subsection (1).
Chapter 480-04 WAC, Public access to information and records.			
Amend	480-04-100	Copying and service charges.	1. Updated reference to administrative policy concerning commission's schedule of charges for copies.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: A preproposal statement of inquiry is not required under RCW 34.05.353, "Expedited rule making."

8 NOTICE OF EXPEDITED RULE MAKING: The commission filed notice of expedited rule making (CR-105) on May 24, 2006, at WSR 06-11-174. The notice informed interested persons that the rules were being proposed under an expedited rule-making process as required by RCW 34.05.353. The commission provided notice of its expedited rule making to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.353, and by sending notice to all companies affected by the adoption-by-reference rule proposal. The notice provided interested persons the opportunity to submit written comments to the commission not later than July 24, 2006. The commission posted the relevant rule-making information on its internet web site at www.wutc.wa.gov.

9 COMMENTERS (WRITTEN COMMENTS): No comments were received on the proposed rules.

10 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as proposed in the CR-105 at WSR 06-11-174.

11 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-14-999, 480-15-999, 480-70-999, 480-73-999, 480-90-999, 480-100-999, 480-120-999, 480-121-063, and 480-04-100 should be amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after filing with the code reviser pursuant to RCW 34.05.380(2).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

ORDER

12 THE COMMISSION ORDERS:

13 The commission amends and adopts WAC 480-14-999, 480-15-999, 480-70-999, 480-73-999, 480-90-999, 480-100-999, 480-120-999, 480-121-063, and 480-04-100 to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the filing with the code reviser pursuant to RCW 34.05.380(2).

14 This order and the rules set out in Appendix A, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, August 10, 2006.

Washington state utilities and transportation commission
 Mark H. Sidran, Chairman
 Patrick J. Oshie, Commissioner

AMENDATORY SECTION (Amending Docket No. A-050271, General Order No. R-521, filed 10/10/05, effective 11/10/05)

WAC 480-14-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2005)) 2006.

(b) This publication is referenced in WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), and WAC 480-14-390 (Hazardous materials regulations).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2004)) 2005.

(b) This publication is referenced in WAC 480-14-040 (Definitions), WAC 480-14-070 (Federal regulations, 49 CFR, Part 390—General applicability and definitions), WAC 480-14-250 (Insurance requirements; cause for suspension or cancellation), ((WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs),)) WAC 480-14-370 (Equipment—Drivers—Safety), WAC 480-14-380 (Hours of service—On duty—Federal safety regulations), WAC 480-14-390 (Hazardous materials regulations), and WAC 480-14-400 (Transportation of radioactive materials—Driving and parking rules).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket No. A-050271, General Order No. R-521, filed 10/10/05, effective 11/10/05)

WAC 480-15-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2005)) 2006.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2004)) 2005.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket No. A-050271, General Order No. R-521, filed 10/10/05, effective 11/10/05)

WAC 480-70-999 Adoption by reference. In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **The North American Standard Out-of-Service Criteria** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2005)) 2006.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 40 Code of Federal Regulations**, cited as 40 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on July 1, ((2005)) 2006.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2004)) 2005.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431 (Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket No. A-050271, General Order No. R-521, filed 10/10/05, effective 11/10/05)

WAC 480-73-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, is published by the United States Government Printing Office.

(2) The commission adopts the version in effect on April 1, ((2005)) 2006.

(3) This publication is referenced in WAC 480-73-130 (Accounting system requirements), WAC 480-73-150 (Retaining and preserving records and reports), and WAC 480-73-160 (Annual reports).

(4) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket No. A-050271, General Order No. R-521, filed 10/10/05, effective 11/10/05)

WAC 480-90-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, ((2005)) 2006.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-90-203 (Accounting system requirements), WAC 480-90-244 (Transferring cash or assuming obligation), WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2), and WAC 480-90-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

AMENDATORY SECTION (Amending Docket No. A-050271, General Order No. R-521, filed 10/10/05, effective 11/10/05)

WAC 480-100-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, ((2005)) 2006.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligation), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC in Washington, D.C.

(3) The **National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in ((2002)) 2005.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA in Quincy, Massachusetts.

(4) The **American National Standard for Electric Meters: Code for Electricity Metering**, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in 2001.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. Copies are available from Global Engineering Documents in Englewood, Colorado.

AMENDATORY SECTION (Amending Docket No. A-050271, General Order No. R-521, filed 10/10/05, effective 11/10/05)

WAC 480-120-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "*Network Performance Parameters for Dedicated Digital Services - Specifications*" (ANSI T1.510-1999) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999, and reaffirmed 2004.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services - Specifications*" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-1984) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect on March 22, 1984, and reaffirmed (~~September 16, 1992~~) October 26, 1999.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the version in effect on January 1, 2002.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 CFR, is published by the United States Government Printing Office, except sections 64.2003 through 64.2009.

(a) The commission adopts the version in effect on October 1, 1998.

(b) This publication is referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports).

(c) Copies of Title 47 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(5) Sections 64.2003 through 64.2009 of **Title 47 of the Code of Federal Regulations**, cited as 47 CFR §§ 64.2003 through 64.2009, are published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, (~~2004~~) 2005.

(b) This publication is referenced in WAC 480-120-202 (Customer Proprietary Network Information).

(c) Copies of Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from third-party vendors.

AMENDATORY SECTION (Amending Docket No. A-021178 and TO-030288, General Order No. R-522, filed 8/5/05, effective 9/5/05)

WAC 480-121-063 Regulatory requirements that may be waived for competitively classified telecommunications companies. (1) The following regulatory requirements are waived for competitively classified companies:

(a) RCW 80.04.300 (Budgets to be filed by companies—Supplementary budgets);

(b) RCW 80.04.310 (Commission's control over expenditures);

(c) RCW 80.04.320 (Budget rules);

(d) RCW 80.04.330 (Effect of unauthorized expenditure—Emergencies);

(e) RCW 80.04.360 (Earnings in excess of reasonable rate—Consideration in fixing rates);

(f) RCW 80.04.460 (Investigation of accidents);

(g) RCW 80.04.520 (Approval of lease of utility facilities);

(h) RCW 80.36.100 (Tariff schedules to be filed and open to public);

(i) RCW 80.36.110 (Tariff changes—Statutory notice—Exception);

(j) Chapter 80.08 RCW (Securities) (except RCW 80.08.140, State not obligated);

(k) Chapter 80.12 RCW (Transfers of property);

(l) Chapter 80.16 RCW (Affiliated interests);

(m) WAC 480-80-101 Tariff requirements through WAC 480-80-143 Special contracts for gas, electric, and water companies;

(n) Chapter 480-140 WAC (Commission general—Budgets);

(o) Chapter 480-143 WAC (Commission general—Transfers of property);

(p) WAC 480-120-102 (Service offered);

(q) WAC 480-120-339 (Streamlined filing requirements for Class B telecommunications company rate increases);

(r) WAC ~~((480-120-311))~~ 480-120-399 (Access charge and universal service reporting);

(s) WAC 480-120-344 (Expenditures for political or legislative activities);

(t) WAC 480-120-352 (Washington Exchange Carrier Association (WECA));

(u) WAC 480-120-369 (Transferring cash or assuming obligation);

(v) WAC 480-120-375 (Affiliated interests—Contracts or arrangements);

(w) ~~((WAC 480-120-395 (Affiliated interest and subsidiary transactions report);~~

~~((x)))~~ WAC 480-120-389 (Securities report); and

~~((y)))~~ (x) WAC 480-120-395 (Affiliated interest and subsidiary transactions report).

This rule supersedes all waivers of regulatory requirements for competitively classified companies granted by the commission at the time of a company's competitive classification. However, subsequent to the adoption of this rule, the commission may revoke the waiver of any regulatory requirement set forth in (a) through ~~((y)))~~ (x) of this subsection or may waive any regulatory requirement not included in (a) through ~~((y)))~~ (x) of this subsection.

(2) The commission may by order revoke waivers of regulatory requirements if it determines that revocation is necessary to protect the public interest.

(3) In addition, the commission may waive regulatory requirements for telecommunications companies that it has classified as competitive if it determines that competition with the regulatory waiver will serve the same purposes as public interest regulation.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-04-100 Copying and service charges. The commission will provide copies of public records upon request.

(1) The commission may charge a published fee for copying public records, if you request copies. The commission may, by order, within the requirements of RCW 42.17-300, establish and change prices and establish the maximum number of various kinds of copies that will be provided without charge.

(2) The commission's schedule of charges for copies, except as provided in WAC 480-07-145 (3)(b), is published in Administrative Policy ~~((1-60e))~~ 5-1c, which is available from the commission's web site or by contacting the commission's records center. Out-of-state customers and governmental agencies are not charged sales tax.

(3) WAC 480-07-145 (3)(b) fixes the charge for copies when a party to an adjudicative proceeding fails to file the

number of copies required to meet the commission's internal distribution needs.

WSR 06-17-095
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-196—Filed August 15, 2006, 11:11 a.m., effective September 15, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC 232-12-134 Report required of licensed trappers, 232-28-285 2006-2007 Pilot cougar hunting seasons with the aid of dogs, 232-28-515 Trapping seasons and regulations, 232-28-354 2006 Elk special permits, and 232-28-337 Deer and elk areas.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-134, 232-28-285, 232-28-515, 232-28-354, and 232-28-337.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-13-103, 06-13-101, 06-13-106 on June 21, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC 232-28-285 Pilot cougar hunting seasons with the aid of dogs.

Changes, if any, from the text of the proposed rule and reasons for difference:

- "Accompany" means the dog handler and permit hunter must be in the physical presence of each other ~~((at the time))~~ when dogs are ~~((released from a leash or unrestrained))~~ in pursuit.
- "Accompany" means the dog handler and permit hunter must be in the physical presence of each other at the time dogs are released from a leash or unrestrained or starting a cougar track.

This change is recommended so the permit hunter and handler must be together when dogs are released on a cougar track, but can be separate when the dogs are in the act of tracking a cougar.

A final cost-benefit analysis is available by contacting Morris Barker, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826, fax (360) 902-2155, e-mail barkemwb@dfw.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 4, 2006.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 06-67, filed 4/11/06, effective 5/12/06)

WAC 232-12-134 Report required of licensed trappers. ~~(It is unlawful for any licensed trapper to fail to submit to the department, a trapper's report of catch postmarked on or before April 10. The report must be submitted regardless of success. Trappers who fail to submit an accurate trapper's report of catch must wait a year before purchasing another trapping license. It is the responsibility of each licensed trapper to obtain and submit a trapper's report of catch.~~

~~Violation of this section is an infraction, punishable under RCW 77.15.160.)~~ All trappers purchasing a trapping license must report their trapping activity, regardless of trapping success or whether they trapped or not.

(1) Trappers must report trapping activity by April 10.

(2) Reports must be made using the department's designated Trapper's Report of Catch form or internet trapper reporting system.

(3) If a trapper chooses to report using the Trapper's Report of Catch form, it is the responsibility of the licensed trapper to obtain a form and ensure the form is received by Washington Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091.

(4) Any trapper not reporting by April 10 will be in non-compliance of reporting requirements.

(5) False reports will be considered the same as noncompliance.

(6) Failure to report trapping activity is an infraction, punishable under RCW 77.15.160.

(7) Noncompliant trappers who have paid their penalty under subsection (6) of this section must report their trapping activity prior to being issued a trapping license.

AMENDATORY SECTION (Amending Order 05-174, filed 8/15/05, effective 9/15/05)

WAC 232-28-285 ~~((2005-2006)) 2006-2007~~ Pilot cougar hunting seasons with the aid of dogs. As used in this section and in the context of pilot cougar hunting seasons, the following definitions apply:

"Accompany" means the dog handler and permit hunter must be in the physical presence of each other at the time dogs are released from a leash or unrestrained or starting a cougar track.

"Pursue" or "pursuit" means dogs ~~((that))~~ are:

- Not on a leash or restrained~~((, are))~~; or
- Starting a cougar track; or
- In the act of tracking a cougar; or
- At a treed cougar.

Transporting dogs in a motorized vehicle or walking a dog on a leash is not ~~((a))~~ pursuit.

"Dog owner" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

"Quota" means the targeted harvest goal. The actual harvest level may exceed the quota.

"Kill permit" allows a hunter to pursue or kill cougar.

"Pursuit permit" allows a hunter to pursue cougar.

(1) The pilot cougar-hunting season will allow use of dogs to hunt cougar. The hunts will consist of pursuit-or-kill seasons and pursuit-only seasons, and are allowed only in Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties.

(2) Pursuit-or-kill seasons:

Cougar may be pursued or killed with the aid of dogs from December 1, ~~((2005)) 2006~~, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ~~((2006)) 2007~~, whichever occurs first; EXCEPT GMUs 101 and 204 where cougar may be pursued or killed from January 1, ~~((2006)) 2007~~, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ~~((2006)) 2007~~, whichever occurs first.

(3) Pursuit-only seasons:

(a) If a zone quota is killed prior to March 31, ~~((2006)) 2007~~, cougar may be pursued with dogs in all or portions of that zone until March 31, ~~((2006)) 2007~~. Hunters may only pursue cougars in designated pursuit only areas identified on their kill or pursuit-only permit. Hunters may not kill cougar during pursuit-only seasons.

(b) Hunters selected for the pursuit-or-kill season (accompanied by up to three of their identified handlers) may participate in a pursuit-only season. Permit hunters that harvest a cougar under a kill permit may continue to pursue cougars until March 31. If a zone quota is killed, the department will also issue pursuit-only permit to hunters drawn at random from the unselected pool of applicants. The director will identify the number of pursuit-only hunters selected.

(4) Hunt areas and kill quotas:

Cougar seasons will be based on a quota system, where permit hunters using dogs may hunt and kill cougar until the allotted numbers of cougar have been killed from each hunt zone or March 31, ~~((2006)) 2007~~, whichever occurs first.

(a) Kill quotas start September 1 and will include all cougar killed during seasons with and without the aid of dogs, including cougar seasons under this section, cougar seasons without the aid of dogs authorized under WAC 232-28-272, depredation permits, landowner kill permits, and WDFW depredation authority.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, landowner kill permits, and WDFW depredation authority even if these kills result in exceeding a zone quota.

CMU	Hunt Choice	Hunt Zone	Area Description	(DRAFT) QUOTA	
				Total	Female
East Cascades North	9001	Okanogan	Those portions of GMUs 203, 209, 215, 218, 233, 224, 231, 239, and 242 within Okanogan County	28	11
	9002	Chelan	Those portions of GMUs 243, 244, 245, 246, 247, 249, 250, and 251 within Chelan County	10	4
Northeastern	9003	Ferry-Okanogan	GMUs 101, 204	26	10
	9004	Stevens-Pend Oreille	Those portions of GMUs 105, 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	38	15

(5) Quota hotline:

Permit hunters participating in a pursuit-or-kill season must call the toll free cougar quota hotline within twenty-four hours prior to each day hunting cougar to determine if the zone quota has been killed and the zone is closed. Hunters who hunt more than one consecutive day must call the quota hotline once daily to determine if the zone quota is killed. Hunters who harvest a cougar with the aid of dogs must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar, with proof of sex naturally attached, must be sealed by an authorized department employee within five days of the notification of kill. Any person who takes a cougar must present the cougar skull in such a manner that teeth and biological samples can be extracted to an authorized department employee at the time of sealing.

(6) Kill or pursuit-only permit eligibility:

(a) To apply for a kill or pursuit-only permit under this section, individuals must sign an affidavit provided by the department, certifying under penalty of false swearing under RCW 9A.72.040 that they are a dog owner. The affidavit must be mailed to WDFW by the date and time identified by the director. Individuals not registered as a dog owner will not be issued a permit.

(b) To apply for a kill or pursuit-only permit under this section, individuals must purchase a cougar permit application and submit the application in compliance with WAC 232-28-291 by a date and time identified by the director.

(c) To be eligible for a permit, the participant must be a Washington resident who at the time of application for a permit possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar hunt under this section.

(d) A permit will not be issued to any person who has been convicted of unlawful use of dogs under RCW 77.15.-245 within the five-year period prior to December 1, 2004. Any person issued a permit and who is subsequently convicted of any wildlife offense while participating in a pursuit-or-kill or pursuit-only season, or who violates any condition of the permit, will have the permit revoked and will be ineligible to participate in the remainder of the three-year pilot program.

(7) Permit issuance procedure:

(a) The number of kill permits for a pursuit-or-kill season with the aid of dogs may be established by the director, but will not exceed two times the total cougar quota for each hunt zone.

(b) The department will issue kill or pursuit-only permits to the persons whose applications are drawn at random. Individuals selected will be notified by telephone or mail. Individuals selected must return the signed affidavit to the department's wildlife program in Olympia within fifteen days of being notified. Failure to return the completed affidavit to the department will result in forfeit of the permit. Kill and pursuit-only permits may not be sold or reassigned.

(c) If a female zone quota or total zone quota is not killed in a hunt zone by January 15 (or sooner as identified by the director), then the department will issue kill permits to additional hunters. Hunters will be drawn at random from the unselected pool of applicants and must be a resident of one of the five counties.

(8) Qualifications for participation and requirements:

In addition to the provisions applicable to all cougar hunters:

(a) Successful applicants must complete a training program prior to participating in a pursuit-or-kill season or pursuit-only season with the aid of dogs.

(b) Participants must have their permit issued by the department in their possession while hunting cougar.

(c) Individuals selected for a kill permit may kill and possess two cougar per permit and only the permittee may kill the cougar(s). However, a kill permit holder may not kill a second cougar in a hunt zone until January 15 (or sooner as identified by the director).

(d) Individuals selected for a cougar kill or pursuit-only permit may use dog handlers. However, no more than three handlers may accompany the permittee while hunting or pursuing cougar. Dog handlers may not pursue cougar when the permit hunter is not present at the time the dogs are released from a leash or unrestrained. Dog handlers must have a dog handler identification card, issued by the department, in their possession while participating in a pursuit-or-kill season or pursuit-only season.

(e) Dog handlers must be a Washington resident and possess a valid hunting license.

(f) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(g) Participants must have a vehicle placard issued by the department. The vehicle placard must be placed in the permittee's and dog handler's vehicles and be visible from outside the vehicles at all times while hunting or pursuing cougar.

(h) Kill and pursuit-only permit hunters are required to maintain and return to the department a pilot cougar hunting season logbook. At the end of each day hunting cougar, the permit hunters must record their hunting activities, including that of their dog handlers, in their logbook. If requested by department staff, permit hunters must provide the logbook for inspection. Logbooks must be mailed to the department at WDFW-Pilot Cougar Hunt, 600 Capitol Way North, Olympia, WA 98501-1091 by April 10, ~~((2006))~~ 2007. A violation of this requirement under this subsection is punishable as an infraction under RCW 77.15.160.

(9) The permit belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

AMENDATORY SECTION (Amending Order 06-92, filed 5/8/06, effective 6/8/06)

WAC 232-28-515 Trapping seasons and regulations.
Trapping Regulations

To be issued your first Washington State trapping license an individual must pass the Washington State trapper education exam.

~~((A trapping license will only be issued to a trapper that has returned the mandatory trapper report of catch postmarked on or before April 10 of the previous year. A trapper that fails to submit a report of catch must wait one year before purchasing another trapping license. False reports will be considered the same as failure to return the catch report.))~~

It is unlawful to: Trap for wild animals before October 1, and after March 15, in western Washington, except that owners of, or persons legally controlling a property (or their designee) may trap unclassified wild animals that are causing damage or depreddating on said property.

It is unlawful to: Place traps or establish drowning wires and weights prior to 7:00 a.m. on the opening date of the trapping season. All opening and closing season dates are inclusive.

Trapping Seasons:

General Western Washington Trapping Seasons (Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom counties):

SPECIES	OPENING DATE	CLOSING DATE
Bobcat	November 18, 2006 November 17, 2007 November 15, 2008	February 28, 2007, 2008, and 2009
Beaver, River Otter, Red Fox, Weasel, Marten, Mink, Muskrat, and Raccoon	November 1, 2006, 2007, and 2008	March 31, 2007, 2008, and 2009

Exceptions to General Western Washington Trapping Seasons:

Game Management Unit 522 (Loo-wit) (Cowlitz and Skamania counties) is closed to all trapping.

Island County

The red fox season is closed.

Lewis County

Green River drainage, above and including Miners Creek drainage, is closed to all trapping except for bobcat and coyote.

Skagit and Whatcom counties

Ross Lake National Recreation Area is closed to all trapping. Red fox season is closed, except within the boundaries of Mount Baker-Snoqualmie and Okanogan National Forests.

Skamania County

The following areas are closed to all trapping, except for bobcat and coyote: Muddy River drainage, above and including Bean Creek drainage; Pine Creek drainage above USFS Road 83; and Green River drainage, above and including Miners Creek drainage.

General Eastern Washington Trapping Seasons (Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties):

SPECIES	OPENING DATE	CLOSING DATE
Bobcat	November 18, 2006 November 17, 2007 November 15, 2008	February 28, 2007, 2008, and 2009
Badger, Beaver, Mink, Muskrat, Raccoon, Red Fox, Weasel, Marten, River Otter (Season Bag Limit is 6 River Otter in Eastern Washington)	November 1, 2006, 2007, and 2008	March 31, 2007, 2008, and 2009

Exceptions to General Eastern Washington Trapping Seasons:

River otter trapping season is closed in all Eastern Washington counties, except that it is open in Chelan, Ferry, Klickitat, Kittitas, Okanogan, Pend Oreille, Spokane, Stevens, and Yakima counties, as well as in the Snake and Walla Walla River drainages.

Chelan County

Beaver season is closed in Swakane and Mud Creek drainages.

Columbia County

Trapping is not allowed on the Umatilla Tribes Rainwater Wildlife Area in Columbia County, as per their management plan.

Kittitas County

Beaver season is closed in the following drainages: North fork of Tarpiscan Creek and Umtanum Creek.

Urban Trapping Areas: Special Regulations and Trap Restrictions

The following described areas are closed to the taking of classified furbearing animals, and coyote, opossum, nutria, and skunk, by the use of body-gripping or kill traps **except** by permit under WAC 232-12-141.

Thurston County, within the established city limits (including county islands) of Lacey, Olympia, and Tumwater.

Within Snohomish, King, and Pierce counties: Beginning at the confluence of Snohomish River and Puget Sound; east up

Snohomish River to Interstate 5 (I-5); south on I-5 to Interstate 405 (I-405); south on I-405 to I-5; south on I-5 to Pioneer Way; east on Pioneer Way to Waller Road; south on Waller Road to SR 512; west on SR 512 to Highway 7; south on Highway 7 and Highway 507 to Pierce County line; north on Pierce County line to Puget Sound; north along coast to mouth of Snohomish River and point of beginning.

Licensed trappers must comply with reporting requirements in WAC 232-12-134.

AMENDATORY SECTION (Amending Order 06-92, filed 5/8/06, effective 6/8/06)

WAC 232-28-354 2006 Elk special permits.

Special Elk Permit Hunting Seasons (Open to Permit Holders Only)

Hunters must purchase an elk hunting license prior to purchase of a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice; however, Multiple Season Permit holders may apply for Eastern or Western Washington archery, muzzleloader, or modern firearm permit hunts. Applicants must have purchased the proper tag for these hunts. The elk tag prefixes required to apply for each hunt are shown in the following table. Hunters drawn for a special permit hunt must comply with weapon restrictions and dates listed for the hunt.

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Modern Firearm Bull Permit Hunts (Only modern firearm elk tag holders may apply.)					
Prescott A	Oct. 23 - Nov. 5	Any bull	EF	GMU 149	2
Blue Creek A	Oct. 23 - Nov. 5	Any bull	EF	GMU 154	2
Watershed	Oct. 28 - Nov. 5	3 pt. min. or Antlerless	EA, EF, EM	GMU 157	40
Dayton A	Oct. 23 - Nov. 5	Any bull	EF	GMU 162	12
Tucannon A	Oct. 23 - Nov. 5	Any bull	EF	Elk Area 1014	2
Wenaha A	Oct. 23 - Nov. 5	Any bull	EF	GMU 169	14
Mountain View A	Oct. 23 - Nov. 5	Any bull	EF	GMU 172	4
Couse A	Oct. 23 - Nov. 5	Any bull	EF	GMU 181	1
Mission A	Oct. 23 - Nov. 5	Any bull	EF	GMU 251	2
Colockum A	Oct. 23 - Nov. 5	Any bull	EF	GMUs 328, 329	7
Teanaway A	Dec. 23 - Jan. 5, 2007	Any bull	EF	GMU 335	24
Peaches Ridge A	Oct. 23 - Nov. 5	Any bull	EF	GMUs 336, 346	132
Little Naches A	Oct. 1-10	Any bull	EF	GMU 346	15
Observatory A	Oct. 23 - Nov. 5	Any bull	EF	GMUs 340, 342	76
Goose Prairie A	Oct. 23 - Nov. 5	Any bull	EF	GMUs 352, 356	88
Bethel A	Oct. 23 - Nov. 5	Any bull	EF	GMU 360	50
Rimrock A	Oct. 23 - Nov. 5	Any bull	EF	GMU 364	118
Cowiche A	Oct. 23 - Nov. 5	Any bull	EF	GMU 368	24
Klickitat Meadows A	Oct. 23 - Nov. 5	Any bull	EF	Elk Area 3068	1
Green River	Oct. 28 - Nov. 3	Any bull	WF	GMU 485	3
Margaret A	Nov. 4-12	Any bull	WF	GMU 524	23
Toutle A	Nov. 4-12	Any bull	WF	GMU 556	91
Clearwater	Oct. 1-10	Any bull	WA, WF, WM	GMU 615	2
Matheny	Oct. 1-10	Any bull	WA, WF, WM	GMU 618	3
Olympic A	Nov. 1-9	Any bull	WF	GMU 621, EXCEPT for Elk Area 6071	21
Skokomish A	Nov. 1-9	Any bull	WF	GMU 636	9

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Wynoochee	Oct. 1-10	Any bull	WA, WF, WM	GMU 648	1
White River A	Nov. 4-12	Any bull	WF	GMU 653	23
Modern Firearm Elk Permit Hunts (Only modern firearm elk tag holders may apply.)					
Aladdin A	Oct. 28 - Nov. 5	Any elk	EF	GMU 111	15
Selkirk A	Oct. 28 - Nov. 5	Any elk	EF	GMU 113	20
49 Degrees North	Oct. 28 - Nov. 5	Any elk	EF	GMU 117	30
Blue Creek B	Oct. 28 - Nov. 5	Antlerless	EF	GMUs 149, 154	100
Prescott B	Oct. 28 - Nov. 5	Antlerless	EF	GMU 149	75
Dayton B	Oct. 28 - Nov. 5	Antlerless	EF	GMU 163 and Elk Area 1011	200
Dayton C	Oct. 28 - Nov. 5	Antlerless	EF	GMU 149 and Elk Area 1012	100
Peola A	Oct. 28 - Nov. 5	Antlerless	EF	GMU 178	50
Couse B	Aug. 27 - Sept. 7	Antlerless	EF	GMU 181	25
Couse C	Oct. 1-10	Antlerless	EF	GMU 181	25
Mountain View B	Oct. 28 - Nov. 5	Antlerless	EF	Elk Area 1013	60
Lick Creek A	Oct. 28 - Nov. 5	Antlerless	EF	GMU 175	25
Malaga A	Aug. 12-31	Antlerless	EF	Elk Area 2032	30
Malaga B	Sept. 8-30	Any elk	EF	Elk Area 2032	10
Malaga C	Sept. 15-25	Antlerless	EF	Elk Area 2032	70
Malaga D	Nov. 6 - Dec. 31	Antlerless	EF	Elk Area 2032	120
Malaga E	Nov. 6 - Dec. 18	Any elk	EF	Elk Area 2032	10
Malaga F	Dec. 19 - Feb. 28, 2007	Any elk	EF	Elk Area 2032	15
Peshastin A	Aug. 15-31	Antlerless	EF	Elk Area 2033	20
Peshastin B	Sept. 15 - Oct. 1	Antlerless	EF	Elk Area 2033	20
Peshastin C	Sept. 22-30	Any elk	EF	Elk Area 2033	5
Peshastin D	Nov. 30 - Feb. 28, 2007	Antlerless	EF	Elk Area 2033	30
Peshastin E	Dec. 15 - Feb. 28, 2007	Any elk	EF	Elk Area 2033	10
West Bar A	Oct. 28 - Nov. 1	Antlerless	EF	GMU 330	5
West Bar B	Nov. 2-5	Antlerless	EF	GMU 330	5
Teanaway B	Dec. 23 - Jan. 30, 2007	Antlerless	EF	GMU 335	100
Taneum A	Nov. 1-5	Antlerless	EF	GMU 336	((+)) 150
Manastash A	Nov. 1-5	Antlerless	EF	GMU 340	250
Umtanum A	Nov. 1-5	Antlerless	EF	GMU 342	250
Cleman	Dec. 1-15	Antlerless	EF	Elk Area 3944	50
Little Naches B	Nov. 1-5	Antlerless	EF	GMU 346	150
Nile A	Nov. 1-5	Antlerless	EF	GMU 352	50
Bumping B	Nov. 1-5	Antlerless	EF	GMU 356	100
Bethel B	Nov. 1-5	Antlerless	EF	GMU 360	100
Rimrock B	Nov. 1-5	Antlerless	EF	GMU 364	150
Cowiche B	Nov. 1-5	Antlerless	EF	GMU 368	150
Klickitat Meadows B	Nov. 1-5	Spike bull or antlerless	EF	Elk Area 3068	9
Alkali A	Oct. 21 - Nov. 5	Any elk	EF	GMU 371	25
Willapa Hills A	Nov. 4-12	Antlerless	WF	GMU 506	35
Winston A	Nov. 4-12	Antlerless	WF	GMU 520	12
Margaret B	Nov. 13-17	Antlerless	WF	GMU 524	30
Ryderwood A	Nov. 4-12	Antlerless	WF	GMU 530	32
Coweeman A	Nov. 4-12	Antlerless	WF	GMU 550	15
Toutle B	Nov. 13-17	Antlerless	WF	GMU 556	50
Toledo G	Nov. 4-12	Antlerless	WF	Elk Area 5029	20
Green Mtn C	Nov. 4-12	Antlerless	WF	Elk Area 5051	10
Carlton	Oct. 1-10	Any bull	WF	Elk Area 5057	5
West Goat Rocks	Oct. 1-10	Any bull	WF	Elk Area 5058	5
Mt. Adams	Oct. 1-10	Any bull	WF	Elk Area 5059	5
Wildwood A	Jan. 16-30, 2007	Antlerless	WF	Elk Area 5061	15
Lewis River A	Nov. 4-12	Antlerless	WF	GMU 560	80

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Siouxon A	Nov. 4-12	Antlerless	WF	GMU 572	40
Raymond A	Nov. 5-10	3 pt. min. or antlerless	WF	Elk Area 6010	20
Raymond B	Dec. 16-31	Antlerless	WF	Elk Area 6010	30
Raymond C	Jan. 1-30, 2007	Antlerless	WF	Elk Area 6010	15
Raymond D	Feb. 1-28, 2007	Antlerless	WF	Elk Area 6010	15
Chehalis Valley A	Oct. 1-31	Antlerless	WF	Elk Area 6066	10
Chehalis Valley B	Nov. 5-10	Antlerless	WF	Elk Area 6066	10
North Minot A	Oct. 20-31	Antlerless	WF	Elk Area 6067	60
Deschutes	Jan. 15-23, 2007	Antlerless	WF	GMU 666	10
North River	Nov. 8-13	Antlerless	WF	GMU 658	10
Williams Creek	Nov. 8-13	Antlerless	WF	GMU 673	50
Tri Valley A	Dec. 1 - Jan. 30, 2007	Antlerless	WF	Elk Area 6012	10
North Shore A	Nov. 5-9	Antlerless	WF	Elk Area 6068	5
Muzzleloader Bull Permit Hunts (Only muzzleloader elk tag holders may apply.)					
Note: Fire closures may limit access during early October seasons.					
Prescott C	Oct. 1-10	Any bull	EM	GMU 149	1
Blue Creek C	Oct. 1-10	Any bull	EM	GMU 154	1
Dayton D	Oct. 1-10	Any bull	EM	GMU 162	3
Tucannon B	Oct. 1-10	Any bull	EM	Elk Area 1014	1
Wenaha B	Oct. 1-10	Any bull	EM	GMU 169	2
Mountain View C	Oct. 1-10	Any bull	EM	GMU 172	1
Couse D	Oct. 1-10	Any bull	EM	GMU 181	1
Mission B	Oct. 1-10	Any bull	EM	GMU 251	1
Colockum B	Oct. 1-10	Any bull	EM	GMUs 328, 329	1
Teanaway C	Dec. 9-22	Any elk	EM	GMU 335	7
Peaches Ridge B	Oct. 1-10	Any bull	EM	GMUs 336, 346	19
Observatory B	Oct. 1-10	Any bull	EM	GMUs 340, 342	23
Goose Prairie B	Oct. 1-10	Any bull	EM	GMUs 352, 356	14
Bethel C	Oct. 1-10	Any bull	EM	GMU 360	9
Rimrock C	Oct. 1-10	Any bull	EM	GMU 364	16
Cowiche C	Oct. 1-10	Any bull	EM	GMU 368	11
Klickitat Meadows C	Oct. 1-10	Any bull	EM	Elk Area 3068	1
Margaret C	Oct. 7-13	Any bull	WM	GMU 524	5
Toutle C	Oct. 7-13	Any bull	WM	GMU 556	17
Olympic B	Oct. 4-10	Any bull	WM	GMU 621, EXCEPT for Elk Area 6071	3
Skokomish B	Oct. 4-10	Any bull	WM	GMU 636	1
White River B	Oct. 1-10	Any bull	WM	GMU 653	3
Muzzleloader Permit Hunts (Only muzzleloader elk tag holders may apply.)					
Aladdin B	Oct. 7-13	Any elk	EM	GMU 111	10
Selkirk B	Oct. 7-13	Any elk	EM	GMU 113	10
49 Degrees North	Oct. 7-13	Any elk	EM	GMU 117	10
Blue Creek D	Dec. 9 - Jan. 30, 2007	Antlerless	EM	GMUs 149, 154	60
Mountain View D	Oct. 1-10	Antlerless	EM	Elk Area 1013	25
Lick Creek B	Oct. 1-10	Antlerless	EM	GMU 175	25
Couse E	Dec. 1-31	Antlerless	EM	GMU 181	50
Couse F	Jan. 1 - 30, 2007	Antlerless	EM	GMU 181	50
Malaga G	Oct. 1-21	Antlerless	EM	Elk Area 2032	100
Malaga H	Oct. 1-21	Any elk	EM	Elk Area 2032	15
West Bar C	Oct. 1-10	Antlerless	EM	GMU 330	5
Taneum B	Oct. 7-13	Antlerless	EM	GMU 336	25
Manastash B	Oct. 7-13	Antlerless	EM	GMU 340	25
Umtanum B	Oct. 7-13	Antlerless	EM	GMU 342	250
Nile B	Oct. 7-13	Antlerless	EM	GMU 352	40
Bumping B	Oct. 7-13	Antlerless	EM	GMU 356	90
Bethel D	Oct. 7-13	Antlerless	EM	GMU 360	40

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Cowiche D	Oct. 7-13	Antlerless	EM	GMU 368	225
Klickitat Meadows D	Oct. 7-13	Spike bull or antlerless	EM	Elk Area 3068	4
Alkali B	Oct. 1-15	Any elk	EM	GMU 371	15
Stella A	Nov. 24 - Dec. 15	Antlerless	WM	GMU 504	75
Stella B	Jan. 1-16, 2007	Antlerless	WM	GMU 504	50
Toledo A	Dec. 7-20	Antlerless	WM	Elk Area 5029	30
Mossyrock A	Jan. 1-16, 2007	Antlerless	WM	Elk Area 5052	20
Randle A	Jan. 1-16, 2007	Antlerless	WM	Elk Area 5053	15
Boistfort A	Jan. 1-16, 2007	Antlerless	WM	Elk Area 5054	40
Willapa Hills B	Nov. 22 - Dec. 15	Antlerless	WM	GMU 506	15
Green Mt. A	Jan. 1-16, 2007	Antlerless	WM	Elk Area 5051	30
Wildwood B	Jan. 1-15, 2007	Antlerless	WM	Elk Area 5061	15
Winston B	Nov. 22 - Dec. 15	Antlerless	WM	GMU 520	3
Margaret D	Nov. 22 - Dec. 15	Antlerless	WM	GMU 524	15
Ryderwood B	Oct. 7-13	Antlerless	WM	GMU 530	8
Coweeman B	Nov. 22 - Dec. 15	Antlerless	WM	GMU 550	5
Toutle D	Nov. 22 - Dec. 15	Antlerless	WM	GMU 556	15
Lewis River B	Oct. 7-13	Antlerless	WM	GMU 560	25
Siouxon B	Oct. 7-13	Antlerless	WM	GMU 572	10
Yale	Nov. 22 - Dec. 15	3 pt. min. or antlerless	WM	GMU 554	75
Twin Satsop A	Jan. 5-15, 2007	Antlerless	WM	Elk Area 6061	10
Mashel A	Jan. 1-15, 2007	Antlerless	WM	Elk Area 6054	25
North River	Nov. 26 - Dec. 15	Antlerless	WM	GMU 658	20
North Minot B	Oct. 1-7	Antlerless	WM	Elk Area 6067	60
Raymond E	Oct. 1-31	Antlerless	WM	Elk Area 6010	30
Chehalis Valley C	Jan. 1-30, 2007	Antlerless	WM	Elk Area 6066	15
Capitol Peak A	Nov. 19 - Dec. 15	Antlerless	WM	GMU 663	10
Capitol Peak B	Dec. 16-31	Antlerless	WM	GMU 663	10
Tri Valley B	Dec. 1 - Jan. 30, 2007	Antlerless	WM	Elk Area 6012	30
Archery Permit Hunts (Only archery elk tag holders may apply.)					
Note: Fire closures may limit access during September seasons.					
Prescott D	Sept. 8-21	Any bull	EA	GMU 149	1
Blue Creek E	Sept. 8-21	Any bull	EA	GMU 154	1
Dayton E	Sept. 8-21	Any bull	EA	GMU 162	4
Tucannon C	Sept. 8-21	Any bull	EA	Elk Area 1014	1
Wenaha C	Sept. 8-21	Any bull	EA	GMU 169	3
Mountain View E	Sept. 8-21	Any bull	EA	GMU 172	2
Couse G	Sept. 8-21	Any bull	EA	GMU 181	1
Colockum C	Sept. 8-21	Any bull	EA	GMUs 328, 329	8
Teanaway E	Nov. 20 - Dec. 8	Any bull	EA	GMU 335	29
Peaches Ridge C	Sept. 8-21	Any bull	EA	GMUs 336, 346	108
Observatory C	Sept. 8-21	Any elk	EA	GMUs 340, 342	88
Goose Prairie C	Sept. 8-21	Any bull	EA	GMUs 352, 356	147
Bethel E	Sept. 8-21	Any bull	EA	GMU 360	47
Rimrock D	Sept. 8-21	Any bull	EA	GMU 364	118
Cowiche E	Sept. 8-21	Any bull	EA	GMU 368	22
Klickitat Meadows E	(Sept. 8-24) Oct. 11-22	Any bull	EA	Elk Area 3068	1
Klickitat Meadows F	(Sept. 8-24) Oct. 11-22	Spike bull or antlerless	EA	Elk Area 3068	9
Malaga I	Sept. 1-7	Antlerless	EA	Elk Area 2032	50
Peshastin G	Sept. 1-14	Any elk	EA	Elk Area 2033	30
Margaret E	Sept. 15-30	Any bull	WA	GMU 524	8
Toutle E	Sept. 15-30	Any bull	WA	GMU 556	47
Olympic C	Sept. 8-21	Any bull	WA	GMU 621, EXCEPT for Elk Area 6071	6
Skokomish C	Sept. 8-21	Any bull	WA	GMU 636	5
White River C	Sept. 8-21	Any bull	WA	GMU 653	19

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Advanced Hunter Education (AHE) Master Hunter Special Elk Permit Hunts: Only AHE master hunters may apply; antlerless only hunts will not affect accumulated points; and any weapon may be used.					
Peshastin F	Aug. 18-31	Any elk	Any elk tag	Elk Area 2033	5
Mossyrock B	Jan. 17-30, 2007	Antlerless	Any elk tag	Elk Area 5052	20
Randle B	Jan. 17-30, 2007	Antlerless	Any elk tag	Elk Area 5053	15
Quinault Ridge	Oct. 1-10	3 pt. min. or antlerless	Any elk tag	GMU 638	5
Green Mt. B	Jan. 17-30, 2007	Antlerless	Any elk tag	Elk Area 5051	20
Merwin A	Nov. 24 - Dec. 15	Antlerless	Any elk tag	Elk Area 5060	10
Merwin B	Jan. 17-30, 2007	Antlerless	Any elk tag	Elk Area 5060	10
Advanced Hunter Education (AHE) Master Hunter, Second Elk Tag Hunts: Only AHE master hunters may apply; these hunts will not affect accumulated points; a second tag may be purchased by successful applicants as needed; and any weapon may be used. The second elk license and tag type must be the same tag type as the first one.					
Peola B	Aug. 11 - Sept. 7	Antlerless	Any elk tag	Designated areas in GMU 178	15 ^{HM}
Peola C	Dec. 9 - Jan. 31, 2007	Antlerless	Any elk tag	Designated areas in GMU 178	15 ^{HM}
Malaga J	Jan. 1 - Mar. 31, 2007	Antlerless	Any elk tag	Elk Area 2032	30 ^{HM}
Fairview A	Feb. 1-28, 2007	Antlerless	Any elk tag	Elk Area 3911	20 ^{HM}
Rattlesnake Hills	Aug. 1 - Feb. 28, 2007	Antlerless	Any elk tag	Designated areas in GMU 372	20 ^{HM}
Corral Canyon A	Aug. 1 - Sept. 14	Spike bull or antlerless	Any elk tag	Elk Area 3721	10
Corral Canyon B	Sept. 15 - Oct. 15	Spike bull or antlerless	Any elk tag	Elk Area 3721	10
Corral Canyon C	Nov. 15 - March 31, 2007	Spike bull or antlerless	Any elk tag	Elk Area 3721	20
Corral Canyon D	July 1-31	Any bull except spike bull only July 1-31	Any elk tag	Elk Area 3721	10 ^{HM}
Blackrock A	Aug. 1 - March 31, 2007	Any elk	Any elk tag	Elk Area 3722	3 ^{HM}
Blackrock B	Aug. 1 - March 31, 2007	Antlerless	Any elk tag	Elk Area 3722	5 ^{HM}
Toledo B	Dec. 21-31	Antlerless	Any elk tag	Elk Area 5029	20
Toledo C	Aug. 1-7	Antlerless	Any archery elk tag	Elk Area 5029	5
Toledo D	Aug. 8-14	Antlerless	Any archery elk tag	Elk Area 5029	5
Toledo E	Aug. 15-21	Antlerless	Any archery elk tag	Elk Area 5029	5
Toledo F	Aug. 22-28	Antlerless	Any archery elk tag	Elk Area 5029	5
Boistford [Boistfort] B	Aug. 1-7	Antlerless	Any archery elk tag	Elk Area 5054	5
Boistford [Boistfort] C	Aug. 8-14	Antlerless	Any archery elk tag	Elk Area 5054	5
Boistford [Boistfort] D	Aug. 15-21	Antlerless	Any archery elk tag	Elk Area 5054	5
Boistford [Boistfort] E	Aug. 22-28	Antlerless	Any archery elk tag	Elk Area 5054	5
JBH A*	Nov. 13-17	Antlerless	Any elk tag	Elk Area 5090	5
JBH B*	Dec. 11-15	Antlerless	Any elk tag	Elk Area 5090	5
JBH C*	Dec. 16 - Feb. 28, 2007	Antlerless	Any elk tag	Elk Area 5090	20 ^{HM}
Trout Lake A**	Sept. 1-7	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake B**	Oct. 1-7	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake C**	Nov. 20-30	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake D**	Dec. 1-14	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake E**	Jan. 15-30, 2007	Antlerless	Any elk tag	Elk Area 5062	5
North River B	Dec. 16 - Feb. 28, 2007	Antlerless	Any elk tag	Designated areas in GMU 658	10 ^{HM}
Chehalis Valley D	Aug. 1 - Feb. 28, 2007	Antlerless	Any elk tag	Designated areas in Elk Area 6066	20 ^{HM}
Raymond F	Dec. 1 - Feb. 28, 2007	Antlerless	Any elk tag	Elk Area 6010	10 ^{HM}
Hannaford C	Aug. 1 - Feb. 28, 2007	Antlerless	Any elk tag	Designated areas in Elk Area 6069	5 ^{HM}

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Dungeness A	Sept. 1-30	Antlerless	Any elk tag	Elk Area 6071	6
Dungeness B	Oct. 1-31	Antlerless	Any elk tag	Elk Area 6071	6
Dungeness C	Nov. 1-30	Antlerless	Any elk tag	Elk Area 6071	6
Dungeness D	Dec. 1-31	Antlerless	Any elk tag	Elk Area 6071	6
Dungeness E	Sept. 1-30	Any bull	Any elk tag	Elk Area 6071	2
Dungeness F	Oct. 1-31	Spike only	Any elk tag	Elk Area 6071	2
Dungeness G	Nov. 1-30	Any bull	Any elk tag	Elk Area 6071	2
Dungeness H	Dec. 1-31	Spike only	Any elk tag	Elk Area 6071	2
Dungeness I	Jan. 1-30, 2007	Any bull	Any elk tag	Elk Area 6071	2
Dungeness J	Feb. 1-28, 2007	Spike only	Any elk tag	Elk Area 6071	2
Youth - Special Elk Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)					
Blackrock C	Aug. 1 - Mar. 31, 2007	Spike or antlerless	Any elk tag	Elk Area 3722	20 ^{HM}
Fairview B	Aug. 1 - Feb. 28, 2007	Antlerless	Any elk tag	Elk Area 3911	10 ^{HM}
Dungeness K	Sept. 1 - Feb. 28, 2007	Any elk	Any elk tag	Elk Area 6071	2
Sol Duck Valley	Aug. 1 - Mar. 31, 2007	Antlerless	Any elk tag	Elk Area 6072	10
Clearwater Valley	Aug. 1 - Mar. 31, 2007	Antlerless	Any elk tag	Elk Area 6073	5
Persons of Disability Only - Special Elk Permit Hunts					
Observatory D	Oct. 23 - Nov. 5	Any elk	EF or EM	GMUs 340, 342	7
Little Naches C	Oct. 1-10	Any elk	EF, EM, EA	GMU 346	5
Little Naches D	Nov. 1-5	Antlerless	EF, EM, EA	GMU 346	8
Alkali C	Oct. 21 - Nov. 5	Any elk	EF	GMU 371	4
Blackrock D	Aug. 1 - Mar. 31, 2007	Antlerless	Any elk tag	Elk Area 3722	2 ^{HM}
Fairview C	Aug. 1 - Feb. 28, 2007	Antlerless	Any elk tag	Elk Area 3911	10 ^{HM}
Mudflow A	Nov. 6-12	Antlerless	Any elk tag	Elk Area 5099	5
Mudflow B	Nov. 20-26	Antlerless	Any elk tag	Elk Area 5099	5
Centralia Mine A	Oct. 23-24	Antlerless	Any elk tag	Elk Area 6011	2
Centralia Mine B	Oct. 30-31	Antlerless	Any elk tag	Elk Area 6011	2
North Shore B	Oct. 1-31	Antlerless	Any elk tag	Elk Area 6068	5
North Shore C	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6068	5
North Shore D	Jan. 1-30, 2007	Antlerless	Any elk tag	Elk Area 6068	5
North Shore E	Feb. 1-28, 2007	Antlerless	Any elk tag	Elk Area 6068	5
Chehalis Valley E	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6066	15
Hannaford A	Jan. 1-15, 2007	Antlerless	Any elk tag	Elk Area 6069	5
Hunters 65 or Older Only - Special Elk Permit Hunts					
Hannaford B	Jan. 16-30, 2007	Antlerless	Any elk tag	Elk Area 6069	5

*Muzzleloaders only; scopes allowed in JBH hunt.

**May only hunt on privately owned lands. Must use only archery or legal shotgun (10 or 12 gauge; slugs only).

^{HM}This is a damage hunt administered by a WDFW designated hunt master. Successful applicants will be contacted on an as-needed basis to help with specific sites of elk damage on designated landowner's property. Not all successful applicants will be contacted in any given year depending on elk damage activity for that year.

Hunter Education Instructor Incentive Permits				
<ul style="list-style-type: none"> - Special elk permits will be allocated through a random drawing to those hunter education instructors that qualify. - Permit hunters must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons. - Qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing. - Instructors who are drawn, accept a permit, and are able to participate in the hunt, will not be eligible for these incentive permits for a period of ten years thereafter. - Permittees may purchase a second license for use with the permit hunt only. 				
Area	Dates	Restrictions	GMUs	Permits
Region 3	All general season and permit seasons established for GMUs included with the permit	Any elk	GMUs 335-368	2
Region 5		Any elk	All 500 series GMUs except GMU 522	1
Region 6		Any elk	GMUs 654, 660, 672, 673, 681	1

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

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

AMENDATORY SECTION (Amending Order 06-92, filed 5/8/06, effective 6/8/06)

WAC 232-28-337 Deer and elk area descriptions.

ELK AREAS

Elk Area No. 1010 (Columbia County): GMU 162 excluding National Forest land and the Rainwater Wildlife Area.

Elk Area No. 1011 (Columbia County): That part of GMU 162 east of the North Touchet Road, excluding National Forest land.

Elk Area No. 1012 (Columbia County): That part of GMU 162 west of the North Touchet Road, excluding National Forest land and the Rainwater Wildlife Area.

Elk Area No. 1013 (Asotin County): GMU 172, excluding National Forest lands.

Elk Area No. 1014 (Columbia-Garfield counties): That part of GMU 166 Tucannon west of the Tucannon River and USFS Trail No. 3110 (Jelly Spr.-Diamond Pk. Trail).

Elk Area No. 2032 Malaga (Kittitas and Chelan counties): Beginning at the mouth of Davies Canyon on the Columbia River; west along Davies Canyon to the cliffs above (north of) the North Fork Tarpiscan Creek; west and north along the cliffs to the Bonneville Power Line; southwest along the power line to the North Fork Tarpiscan Road in Section 9, Township 20N, Range 21E; north and west along North Fork Tarpiscan Road to Colockum Pass Road (Section 9, Township 20N, Range 21E); south and west on Colockum Pass Road to section line between Sections 8 & 9; north along the section line between Sections 8 and 9 as well as Sections 4 & 5 (T20N, R21E) & Sections 32 & 33 (T21N, R21E) to Moses Carr Road; west and north on Moses Carr Road to Jump Off Road; south and west on Jump Off Road to Shaller Road; north and west on Shaller Road to Upper Basin Loop Road; north and west on Upper Basin Loop Road to Wheeler Ridge Road; north on Wheeler Ridge Road to the Basin Loop Road (pavement) in Section 10 (T21N, R20E); north on Basin Loop Road to Wenatchee Heights Road; west on Wenatchee Heights Road to Squilchuck Road; south on Squilchuck Road to Beehive Road (USFS Rd 9712); northwest on Beehive Road to USFS Rd 7100 near Beehive Reservoir; north and west on USFS Rd 7100 to Peavine Canyon Road (USFS Rd 7101); north and east on Peavine Canyon Road to Number Two Canyon Road; north on Number Two Canyon Road to Crawford Street in Wenatchee; east on Crawford Street to the Columbia River; south and east along the Columbia River to Davies Canyon and point of beginning. (Naneum Green Dot, Washington Gazetteer, Wenatchee National Forest)

Elk Area No. 2033 Peshastin (Chelan County): Beginning at Crawford Street and the Columbia River in Wenatchee; west on Crawford Street and Number Two Canyon Road to USFS 7101 Road (Peavine Canyon); west on USFS 7101 Road to Mission Creek Road; north on Mission Creek Road to USFS 7104 Road (Sand Creek Road); west on USFS 7104 Road (Sand Creek Road) to Camas Creek; west up Camas Creek to where Camas Creek crosses USFS 7200 Road, T22N, R18E, Section 4; north along USFS 7200 Road to U.S.

Highway 97; north on U.S. Highway 97 to USFS 7300 Road (Mountain Home Road); north on the USFS 7300 Road to the Wenatchee River at Leavenworth; down the Wenatchee River and Columbia River to the point of beginning.

Elk Area No. 2051 Tronsen (Chelan County): All of GMU 251 except that portion described as follows: Beginning at the junction of Naneum Ridge Road (WDFW Rd 9) and Ingersol Road (WDFW Rd 1); north and east on Ingersol Road to Colockum Road (WDFW Rd 10); east on Colockum Road and Colockum Creek to the intersection of Colockum Creek and the Columbia River; south on the Columbia River to mouth of Tarpiscan Creek; west up Tarpiscan Creek and Tarpiscan Road (WDFW Rd 14) and North Fork Road (WDFW Rd 10.10) to the intersection of North Fork Road and Colockum Road; southwest on Colockum Road to Naneum Ridge Road; west on Naneum Ridge Road to Ingersol Road and the point of beginning.

Elk Area No. 3028 Cooke Creek (Kittitas County): Beginning at the junction of the Naneum Ridge and Swift Creek Road in T20N, R20E, Section 16, east on the Naneum Ridge Road to the Colockum Road; south on the Colockum and Brewton roads to the power lines in T20N, R21E, Section 29; south and west on the power lines to the Coleman Creek Road; north on the Coleman Creek Road to the Swift Creek Road and point of beginning, excluding Arthur Coffin Game Reserve.

Elk Area No. 3068 Klickitat Meadows (Yakima County): Beginning at Darland Mountain, southeast along the main divide between the Diamond Fork drainage and the Ahtanum Creek drainage to the point due west of the headwaters of Reservation Creek (Section 18, T12N, R14E); then along a line due west to Spencer Point (as represented in the DNR 100k map); northeast from Spencer Point to US Forest Service (USFS) Trail 1136; north along USFS Trail 1136 to USFS Trail 615; east on USFS Trail 615 to Darland Mountain and the point of beginning.

Elk Area No. 3721 Corral Canyon (Benton and Yakima counties): That part of GMU 372 beginning at the Yakima River Bridge on SR 241 just north of Mabton; north along SR 241 to the Rattlesnake Ridge Road (mile post #19); east on Rattlesnake Ridge Road to the Hanford Reach National Monument's (HRNM) southwest corner boundary; east and south along the HRNM boundary to SR 225; south on SR 225 to the Yakima River Bridge in Benton City; west (upstream) along Yakima River to point of beginning (SR 241 Bridge).

Elk Area No. 3722 Blackrock (Benton and Yakima counties): That part of GMU 372 beginning at southern corner of the Yakima Training Center border on Columbia River, northwest of Priest Rapids Dam; southeast on southern shore of Columbia River (Priest Rapids Lake) to Priest Rapids Dam; east along Columbia River to the Hanford Reach National Monument's (HRNM) western boundary; south along the HRNM boundary to the Rattlesnake Ridge Road; west on Rattlesnake Ridge Road to SR 241; south on SR 241 to the Yakima River Bridge just north of Mabton; west along Yakima River to SR 823 (Harrison Road) south of town of Pomona; east along SR 823 (Harrison Road) to SR 821;

southeast on SR 821 to Firing Center Road at I-82; east on Firing Center Road to main gate of Yakima Training Center; south and east along Yakima Training Center boundary to southern corner of Yakima Training Center boundary on Columbia River and point of beginning.

Elk Area No. 3911 Fairview (Kittitas County): Beginning at the intersection of the BPA Power Lines in T20N, R14E, Section 36 and Interstate 90; east along the power lines to Highway 903 (Salmon La Sac Road); northwest along Highway 903 to USFS Road 4305 (Bear Creek Road); ~~(west)~~ east on USFS Road 4305 to Corral Creek, east along Corral Creek to West Fork Teanaway River; east along West Fork Teanaway River to North Fork Teanaway River; north along North Fork Teanaway River to Teanaway Road; southeast on Teanaway Road to Ballard Hill Road; east on Ballard Hill Rd and Swauk Prairie Road to Hwy 970; northeast on Hwy 970 to Hwy 97; south on Hwy 97 to the power lines in T20N, R17E, Section 34; east on the power lines to Naneum Creek; south on Naneum Creek approximately 1/2 mile to power lines in T19N, R19E, Section 20; east along BPA power lines to Colockum Pass Road in T19N, R20E, Section 16; south on Colockum Pass Road to BPA power lines in T18N, R20E, Section 6; east and south along power lines to Parke Creek; north on Parke Creek to Whiskey Jim Creek; east on Whiskey Jim Creek to Beacon Ridge Road; south on Beacon Ridge Road to the Vantage Highway; east along the Vantage Highway to I-90; west along I-90 to the Yakima Training Center boundary; south and west along the Yakima Training Center boundary to I-82; north on I-82 to Thrall Road; west on Thrall Road to Wilson Creek; south on Wilson Creek to Yakima River; north on Yakima River to gas pipeline crossing in T17N, R18E, Section 25; south and west on the gas pipeline to Umtanum Creek; west on Umtanum Creek to the Durr Road; north on the Durr Road to Umtanum Road; north on Umtanum Road to South Branch Canal; west on South Branch Canal to Bradshaw Road; west on Bradshaw Road to the elk fence; north and west along the elk fence to power line crossing in T19N, R16E, Section 10; west along the power line (south branch) to the Cabin Creek Road; east and north on Cabin Creek Road to Easton and I-90; east on I-90 to point of beginning.

Elk Area No. 3912 Old Naches (Yakima County): Starting at the elk fence and Roza Canal along the south boundary T14N, R19E, Section 8; following the elk fence to the sheep feeding site in T15N, R16E, Section 36; south on the feeding site Access Road to the Old Naches Highway; west and south on the Old Naches Highway to State Route 12 and the Naches River; down the Naches River to the Tieton River; up the Tieton River approximately 2 miles to the elk fence in T14N, R16E, Section 3; due south from the start of the elk fence to the top of the cliff; southwest along the cliff/rimrock to the irrigation canal in T14N, R16E, Section 9; southwest along the irrigation canal to the elk fence in T14N, R16E, Section 8; the elk fence to the township line between T12N, R15E and T12N, R16E; south along the township line to the South Fork Ahtanum Creek; South Fork Ahtanum Creek to Ahtanum Creek to Yakima River; up the Yakima River to Roza Canal and point of beginning.

Elk Area No. 3944 Clemen (Yakima County): That portion of GMU 342 beginning at the junction of Highway 410 and USFS Road 1701 (Big Bald Mountain Road); north to USFS Road 1712; east on USFS Road 1712 (Clemen Ridge Road) to the elk fence gate (T15N; R17E; Section 23 NE 1/4) at the top of Austin Spur Road; south and west along the elk fence to Highway 410 to the point of beginning.

Elk Area No. 4041 Grandy Creek (Skagit County): Begin at the intersection of CP 190 Road and CP 132 Road (Section 28, T36N, R5E); east along the CP 132 Road to the CP 130 Road; east and south along CP 130 Road to CP 110 Road; west, south and east along CP 110 Road to Childs Creek; south down Childs Creek to State Route 20; east on State Route 20 to Grandy Creek; south down Grandy Creek to the Skagit River; south on a line to South Skagit Hwy; west on South Skagit Hwy to State Route 9; north on State Route 9 to State Route 20; east on State Route 20 to Helmick Road; north on Helmick Road to CP 190 Road to CP 132 Road and the point of beginning. (WA Atlas & Gazetteer & Mt. Baker-Snoqualmie National Forest Map)

Elk Area No. 4941 Skagit River (Skagit County): Beginning at the intersection of State Route 9 and State Route 20; east on State Route 20 to Grandy Creek; south down Grandy Creek to the Skagit River; south on a line to South Skagit Highway; west on South Skagit Highway to State Route 9; north on State Route 9 to point of beginning.

Elk Area No. 5029 Toledo (Lewis and Cowlitz counties): Beginning at the Cowlitz River and State Highway 505 junction; east along the Cowlitz River to the Weyerhaeuser 1800 Road; south along Weyerhaeuser 1800 Road to Cedar Creek Road; east along Cedar Creek Road to Due Road; south on Due Road to Weyerhaeuser 1823 Road; south along Weyerhaeuser 1823 Road to the Weyerhaeuser 1945 Road; south along the Weyerhaeuser 1945 Road to the Weyerhaeuser 1900 Road; south along the Weyerhaeuser 1900 Road to the North Fork Toutle River; west along the North Fork Toutle River to the Toutle River; west on the Toutle River to the Cowlitz River; North along the Cowlitz River to the junction of State Highway 505 and the point of beginning.

~~(Elk Area No. 5050 Curtis (Lewis County): Beginning at the Boistfort Road, State Highway 6 intersection; west to the Mauerman Road; west and southwest on the Mauerman Road to the Pe Ell/McDonald Road; south and east on the Pe Ell/McDonald Road to the Lost Valley Road; south and southeast on the Lost Valley Road to the Boistfort Road; east and north along the Boistfort Road to State Highway 6 and point of beginning.)~~

Elk Area No. 5051 Green Mountain (Cowlitz County): Beginning at the junction of the Cowlitz River and the Toutle River; east along the Toutle River to the North Fork Toutle River; east along the North Fork Toutle River to the Weyerhaeuser 1900 Road; south along the Weyerhaeuser 1900 Road to the Weyerhaeuser 1910 Road; south along the Weyerhaeuser 1910 Road to the Weyerhaeuser 2410 Road; south along the Weyerhaeuser 2410 Road to the Weyerhaeuser 4553 Road; south along the Weyerhaeuser 4553 Road to the Weyerhaeuser 4500 Road; south along the Weyerhaeuser

4500 Road to the Weyerhaeuser 4400 Road; south along the Weyerhaeuser 4400 Road to the Weyerhaeuser 4100 Road; east along the Weyerhaeuser 4100 Road to the Weyerhaeuser 4700 Road; south along the Weyerhaeuser 4700 Road to the Weyerhaeuser 4720 Road; west along the Weyerhaeuser 4720 Road to the Weyerhaeuser 4730 Road; west along the Weyerhaeuser 4730 Road to the Weyerhaeuser 4732 Road; west along the Weyerhaeuser 4732 Road to the Weyerhaeuser 4790 Road; west along the Weyerhaeuser 4790 Road to the Weyerhaeuser 1390 Road; south along the Weyerhaeuser 1390 Road to the Weyerhaeuser 1600 Road; west along the Weyerhaeuser 1600 Road to the Weyerhaeuser Logging Railroad Tracks at Headquarters; west along the Weyerhaeuser Logging Railroad Track to Ostrander Creek; west along Ostrander Creek to the Cowlitz River; north along the Cowlitz River to the Toutle River and point of beginning.

Elk Area No. 5052 Mossyrock (Lewis County): Beginning at the intersection of Winston Creek Road and State Highway 12; east on State Highway 12 to the Cowlitz River; east on the Cowlitz River to Riffe Lake; southeast along the south shore of Riffe Lake to Swofford Pond outlet creek; south on Swofford Pond outlet creek to Green Mountain Road; west on Green Mountain Road to Perkins Road; west on Perkins Road to Longbell Road; south on Longbell Road to Winston Creek Road; north on Winston Creek Road to State Highway 12 and the point of beginning. (All lands owned and managed by the Cowlitz Wildlife Area are excluded from this Elk Area.)

Elk Area No. 5053 Randle (Lewis County): Beginning at the town of Randle and the intersection of U.S. Highway 12 and State Route 131 (Forest Service 23 and 25 roads); south on State Route 131 to Forest Service 25 Road; south on Forest Service 25 Road to the Cispus River; west along the Cispus River to the Champion 300 line bridge; south and west on the Champion 300 line to the Champion Haul Road; north along the Champion Haul Road to Kosmos Road; north on Kosmos Road to U.S. Highway 12; east on U.S. Highway 12 to Randle and point of beginning. (All lands owned and managed by the Cowlitz Wildlife Area are excluded from this Elk Area.)

Elk Area No. 5054 Boistfort (Lewis County): Beginning at the town of Vader; west along State Highway 506 to the Wildwood Road; north along the Wildwood Road to the Abernathy 500 line gate (Section 20, T11N, R3W, Willamette Meridian); northwest along the 500, 540, and 560 lines to the Weyerhaeuser 813 line; northwest along the 813, 812, 5000J, 5000 and 4000 lines to the Pe Ell/McDonald Road (Section 15, T12N, R4W); west along the Pe Ell/McDonald Road to the Lost Valley Road; northeast along the Lost Valley Road to the Boistfort Road; north along the Boistfort Road to the King Road; east along the King Road to the town of Winlock and State Highway 603; south along Highway 505 to Interstate 5; south along Interstate 5 to State Hwy 506; west along State Hwy 506 to the town of Vader and the point of beginning.

Elk Area No. 5056 Grays River Valley (Wahkiakum County): On or within 3/4 mile of agricultural land in the Grays River Valley within the following sections: T10N,

R7W, Sections 8, 9, 17, 18 and T10N, R8W, Sections 13, 23, 24, 26.

Elk Area No. 5057 Carlton (Lewis County): That part of 513 (South Rainier) lying east of Highway 123 and north of Highway 12.

Elk Area No. 5058 West Goat Rocks (Lewis County): Goat Rocks Wilderness west of the Pacific Crest Trail.

Elk Area No. 5059 Mt. Adams Wilderness (Skamania and Yakima counties): The Mt. Adams Wilderness.

Elk Area No. 5060 Merwin (Cowlitz County): Begin at the State Route 503 and the Longview Fibre Road WS-8000 junction; north and west on the Longview Fibre Road WS-8000 to Day Place Road; west on Day Place Road to Dubois Road; south on Dubois Road to State Route 503; east on State Route 503 to the State Route 503 and the Longview Fibre Road WS-8000 junction and point of beginning.

Elk Area No. 5061 Wildwood (Lewis County): Beginning at the junction of the Pacific West Timber (PWT) 600 Road and the Wildwood Road (SE1/4 S29 T11N R3W); southwest on the 600 Road to the 800 Road (NW1/4 S36 T11N R4W); southwest on the 800 Road to the 850 Road (SW1/4 S3 T10N R4W); northwest on the 850 Road to the Weyerhaeuser 4720 Road (S20 T11N R4W); north on the Weyerhaeuser 4720 Road to the Weyerhaeuser 4700 Road (S17 T11N R4W); east on the Weyerhaeuser 4700 Road to the Weyerhaeuser 5822 Road (NW1/4 S16 T11N R4W); east on the Weyerhaeuser 5822 Road to the Weyerhaeuser 5820 Road (NW1/4 S10 T11N R4W); southeast on the Weyerhaeuser 5820 Road to the PWT 574 Road (SE1/4 S10 T11N R4W); south on the PWT 574 Road to the 570 Road (NW1/4 S14 T11N R4W); south on the 570 Road to the 500 Road (NW1/4 S14 T11N R4W); northeast on the 500 Road to the 560 Road (SW1/4 S12 T11N R4W); east on the 560 Road to the 540 Road (SE1/4 S12 T11N R4W); east and south on the 540 Road to the 500 Road (SE1/4 S18 T11N R3W); east on the PWT 500 Road to the Wildwood Road (N1/2 S20 T11N R3W); south on the Wildwood Road to the point of beginning, the PWT 600 Road junction (SE1/4 S29 T11N R3W).

Elk Area No. 5062 Trout Lake (Klickitat County): Those portions of GMUs 560 (Lewis River) and 578 (West Klickitat) beginning at the intersection of SR 141 and Sunnyside Road; north on Sunnyside Road to Mount Adams Recreational Area Road; north on Mount Adams Recreational Area Road to USFS Road 23; north on USFS Road 23 to DNR T-4300 Road; west on DNR T-4300 Road to Trout Lake Creek Road; south on Trout Lake Creek Road to SR 141; east and south on SR 141 to the intersection of SR 141 and Sunnyside Road to the point of beginning.

Elk Area No. 5090 JBH (Wahkiakum County): The mainland portion of the Julia Butler Hansen National Wildlife Refuge, as administered by the U.S. Fish and Wildlife Service as described: Beginning at the junction of State Route 4 and Steamboat Island Slough Road, northwest on Steamboat Island Slough Road to Brooks Slough Road, east on Brooks Slough Road to State Route 4, south on State Route 4 to Steamboat Slough Road and point of beginning.

Elk Area No. 5099 Mudflow (Cowlitz County): That part of GMU 522 (Loo-wit) that is within the boundary of the St. Helens Wildlife Area.

Elk Area No. 6010 Mallis (Pacific County): That part of GMUs 506, 672, and 673 within one mile either side of State Road 6 between the east end of Elk Prairie Road and the Mallis Landing Road.

Elk Area No. 6011 Centralia Mine (Lewis County): That portion of GMU 667 within Centralia Mine property boundary.

Elk Area No. 6012 Tri Valley (Grays Harbor and Mason counties): Those portions of GMUs 648 (Wynoochee) and 651 (Satsop) within one mile of Brady-Matlock Road from State Highway 12 north to the junction with Schaefer State Park Road (east Satsop Road) and all lands within one mile of Wynoochee Valley Road from State Highway 12 north to the junction with Cougar Smith Road, and all lands within one mile of Wishkah Valley Road from north Aberdeen city limit to the junction with Wishkah-East Hoquiam Road and all lands within 2 miles north of SR 12 between the Satsop River and Schouweiler and Hurd roads and then a line north from the end of Hurd Road to a point 2 miles north of SR 12.

Elk Area No. 6054 Puyallup River (Pierce County): That part of GMU 654 south of the Puyallup River.

Elk Area No. 6061 Twin Satsop Farms (Mason County): That portion of GMU 651 starting at the junction of the Deckerville Road and the Brady-Matlock Road; southwest to the junction with the West Boundary Road; north on West Boundary Road to the Deckerville Road; east on the Deckerville Road to the junction of Brady-Matlock Road and point of beginning. In addition, the area within a circle with a radius of two miles centered on the junction of State Route 108 and the Eich Road.

Elk Area No. 6062 South Bank (Grays Harbor County): That portion of GMU 660 (Minot Peak) described as follows: Beginning at Highway 12 and Wakefield Road Junction (South Elma); south on Wakefield Road, across the Chehalis River to the South Bank Road; southeast on the South Bank Road to Delezene Road; south on the Delezene Road to a point one mile from the South Bank Road; southeast along a line one mile southwest of the South Bank Road to the Oakville-Brooklyn Road; east on the Oakville-Brooklyn Road to Oakville and Highway 12; northwest on Highway 12 to Wakefield Road to Elma and the point of beginning.

Elk Area No. 6063 (Grays Harbor and Jefferson counties): Private lands within Elk Area 6064 east of Highway 101.

Elk Area No. 6064 Quinault Valley (Grays Harbor and Jefferson counties): That portion of GMU 638 (Quinault) within the Quinault River watershed.

Elk Area No. 6066 Chehalis Valley (Grays Harbor County): That portion of GMU 660 (Minot Peak) beginning at Highway 12 and Highway 107 junction near Montesano; east and south on Highway 12 to Oakville; south on Oakville-Brooklyn Road to a point one mile west of South Bank Road;

northwest along a line one mile southwest of South Bank Road to Delezene Road; north along Delezene Road to South Bank Road; northwest along South Bank Road to Wakefield Road; north on Wakefield Road to Chehalis River; west on Chehalis River to Highway 107 bridge; north on Highway 107 to Highway 12 and the point of beginning.

Elk Area No. 6067 North Minot (Grays Harbor County): The portion of GMU 660 (Minot Peak) beginning at the junction on State Route 107 and the Melbourne A-line, on the Melbourne A-line to the Vesta F-line; south on Vesta F-line to Vesta H-line (Vesta Creek Road); south on Vesta Creek Road to the North River Road; south and east on North River Road to the Brooklyn Road; east on Brooklyn Road to the Garrard Creek Road; east and north on Garrard Creek Road to the South Bank Road; east on South Bank to South State Street (Oakville); north on South State Street to U.S. 12; northwest and west on U.S. 12 to State Route 107; south and southwest on SR 107 to the Melbourne A-line and the point of beginning.

Elk Area No. 6068 Willapa (Grays Harbor County): That part of GMU 658 south of SR 105 between the intersection of SR 105 and Hammond Road and the SR 105 bridge over Smith Creek; and within one mile north of SR 105 west from Hammond Road and east of the SR 105 bridge over Smith Creek.

Elk Area No. 6069 Hanaford (Lewis and Thurston counties): That part of GMU 667 (Skookumchuck) beginning at the intersection of Salzer Valley Road and Centralia-Alpha Road; east and north on Salzer Valley Road to Little Hanaford Road; west on Little Hanaford Road to Teitzel Road; north on Teitzel Road to Big Hanaford Road; west on Big Hanaford Road to State Route 507; north on State Route 507 to Skookumchuck Road; east on Skookumchuck Road to the first bridge over the Skookumchuck River; east along the Skookumchuck River to the Skookumchuck Road bridge; east on Skookumchuck Road to the steel tower power line; southwest along the power line to Big Hanaford Road; east and south along Big Hanaford Road to Weyerhaeuser Road E150; east on Weyerhaeuser Road E150 to Weyerhaeuser Road E247; south and west on Weyerhaeuser Road E247 to Weyerhaeuser Road E240; south on Weyerhaeuser Road E240 to North Fork Road; south on North Fork Road to Centralia-Alpha Road; west on Centralia-Alpha Road to Salzer Valley Road and the point of beginning.

Elk Area No. 6071 Dungeness (Clallam County): Portions of GMUs 621 (Olympic) and 624 (Coyle) beginning at the mouth of the Dungeness River; east and south along the coast of the Strait of Juan De Fuca to the mouth of Jimmycome-lately Creek on Sequim Bay; south and west up Jimmycome-lately Creek to Don Schmith Road; north on Don Schmith Road to Palo Alto Road; west and southwest on Palo Alto Road to US Forest Service Road 2880; southwest on US Forest Service Road 2880 to the Dungeness River; north down the Dungeness River to its mouth and the point of beginning.

Elk Area No. 6072 Sol Duck Valley (Clallam County): That portion of GMU 607 (Sol Duck) between the Sol Duck River and Hwy 101 from a point at the Sol Duck River bridge

over Hwy 101 approximately 2 miles north of Forks to the westernmost Sol Duck River bridge over Hwy 101 at a point approximately 1 mile east of Lake Pleasant.

Elk Area No. 6073 Clearwater Valley (Jefferson County): That portion of GMU 615 (Clearwater) within one mile of the Clearwater Road from the Quinault Indian Reservation boundary to a point 4 miles to the north.

DEER AREAS

Deer Area No. 1010 (Columbia County): GMU 162 excluding National Forest land and the Rainwater Wildlife Area.

Deer Area No. 1020 Prescott (Columbia and Garfield counties): That portion of GMU 149 between Hwy 261 and Hwy 127.

Deer Area No. 1021 Clarkston (Asotin County): That portion of GMU 178 beginning at the junction of the Highway 12 bridge and Alpowa Creek; east on Highway 12 to Silcott Road; south and east on Silcott Road to Highway 128; southwest on Highway 128 to McGuire Gulch Road; southeast along the bottom of McGuire Gulch to Asotin Creek; east on Asotin Creek to the Snake River; north and west on the Snake River to Alpowa Creek; southwest of Alpowa Creek to the Highway 12 bridge and the point of beginning.

Deer Area No. 1030 Flat Creek (Stevens County): That portion of GMU 105, beginning at the junction of Northport-Flat Creek Rd (Co. 4005) and Bull Hill Rd; north on Bull Hill Rd to USFS Rd 240; north on USFS Rd 240 to USFS Rd 230 (Belshazzar Mtn Rd); east and north on USFS Rd 230 to East Boundary of Colville National Forest at Section 24; north on Forest Boundary to Sheep Creek Rd (USFS 15, Co. 4220); west on Sheep Creek Rd to USFS Rd 170 at Kiel Springs; south on USFS Rd 170 to Lael-Flat Creek Rd (USFS 1520); south on Lael-Flat Creek Rd (USFS 1520, Co. 4181) to Northport-Flat Creek Rd; north on Northport-Flat Creek Rd to Bull Hill Rd junction and point of beginning.

Deer Area No. 1040 Summit Lake (Stevens County): That portion of GMU 105, beginning at the intersection of Sand Creek Rd (Co. 4017) and the Kettle River at the Rock Cut Bridge; north and east on Sand Cr Rd to Lael-Flat Cr Rd (Co. 4181, USFS Churchill Mine Rd, 1520); east on Lael-Flat Cr Rd (Churchill Mine Rd) to intersection with USFS Rd 15 near Fisher Cr; north and east on USFS Rd 15 to USFS Rd 180; north and west on USFS Rd 180 and continue west on Box Canyon-Deep Creek Rd (USFS Rd 030, Co. 4212) to the intersection of Box Canyon-Deep Creek Rd and the Kettle River; south on the Kettle River to the intersection of Sand Creek Rd and the Kettle River at the Rock Cut Bridge and the point of beginning.

Deer Area No. 2010 Benge (Adams County): That part of GMU 284 beginning at the town of Washtucna; north on SR 261 to Weber Road; east on Weber Road to Bengel Road; north on Bengel Road to Wellsandt Road; east on Wellsandt Road to McCall Road; east on McCall Road to Gering Road; east on Gering Road to Lakin Road; east on Lakin Road to Revere Road; south on Revere Road to Rock Creek; south along Rock Creek to the Palouse River; south and west along

the Palouse River to SR 26; west on SR 26 to Washtucna and the point of beginning.

Deer Area No. 2011 Lakeview (Grant County): That part of GMU 272 beginning at the junction of SR 28 and First Avenue in Ephrata; west on First Avenue to Sagebrush Flats Road; west on Sagebrush Flats Road to Davis Canyon Road; north on Davis Canyon Road to E Road NW; north on E Road NW to the Grant-Douglas county line; east along the county line to the point where the county line turns north; from this point continue due east to SR 17; south on SR 17 to SR 28 at Soap Lake; south on SR 28 to the junction with First Avenue in Ephrata and the point of beginning.

Deer Area No. 3071 Whitcomb (Benton County): That part of GMU ((~~372~~) 373) made up by the Whitcomb Unit of the Umatilla National Wildlife Refuge.

Deer Area No. 3072 Paterson (Benton County): That part of GMU ((~~372~~) 373) made up by the Paterson Unit of the Umatilla National Wildlife Refuge.

Deer Area No. 4004 (San Juan County): That part of GMU 410 made up of Shaw Island.

Deer Area No. 4005 (San Juan County): That part of GMU 410 made up of Lopez Island.

Deer Area No. 4006 (San Juan County): That part of GMU 410 made up of Orcas Island.

Deer Area No. 4007 (San Juan County): That part of GMU 410 made up of Decatur Island.

Deer Area No. 4008 (San Juan County): That part of GMU 410 made up of Blakely Island.

Deer Area No. 4009 (Skagit County): That part of GMU 410 made up of Cypress Island.

Deer Area No. 4010 (San Juan County): That part of GMU 410 made up of San Juan Island.

Deer Area No. 4011 (Island County): That part of GMU 410 made up of Camano Island.

Deer Area No. 4012 (Island County): That part of GMU 410 made up of Whidbey Island.

Deer Area No. 4013 (King County): That part of GMU 454 made up of Vashon and Maury islands.

Deer Area No. 6014 (Pierce County): That part of GMU 652 made up of Anderson Island.

Deer Area No. 4926 Guemes (Skagit County): That part of GMU 407 (North Sound) on Guemes Island.

Deer Area No. 3088 High Prairie (Klickitat County): That portion of GMU 388 (Grayback) that is south of SR 142.

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

WSR 06-17-096
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-195—Filed August 15, 2006, 11:12 a.m., effective September 15, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adopt WAC 232-28-430 2006-07 Migratory waterfowl seasons and regulations; and repeal WAC 232-28-429 2005-06 Migratory waterfowl seasons and regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-429.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-13-102 on June 21, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC 232-28-430 2006-07 Migratory waterfowl seasons and regulations.

Changes, if any, from the text of the proposed rule and reasons for difference:

- WAC title changed from "2005-06" to "2006-07" to correct a typographical error.
- Under Written Authorization Required to Hunt Snow Geese, second paragraph, the following changes were made:
 - In the first sentence, "paved road" was changed to "paved public road" and the wording "from December 10, 2006 through January 7, 2007" was deleted, to provide for hunting on private property with paved roads and simplify the rule.
 - In 2), conditions for invalidation of authorization were changed from "shooting within 100 feet of a public highway" to "shooting from, across, or along the maintained part of any public highway," to correct a duplication of condition 3) and expand the invalidation condition.
 - In 3), "paved road" was changed to "paved public road" and the wording "from December 10, 2006 through January 7, 2007" was deleted, to make this invalidation condition consistent with changes made in the first sentence of the paragraph.
- Under Quality Hunting Areas in Goose Management Area 1, the following changes were made:
 - In the second sentence, the application procedure for special authorizations was changed from internet only to internet or mail, to allow hunters without internet access to apply for this special hunt.
 - In the second to last sentence, Monday was added to the list of open days to provide additional recreational opportunity.
- Under Goose Management Areas 2A and 2B, the opening of hunting hours was changed from "1/2 hour after the start of official hunting hours for migratory game birds" to "8 a.m.," to maintain traditional 8 a.m. - 4 p.m. hours, maintain consistency with Oregon, and avoid additional check station costs.
- Under Goose Management Area 4, January 1, 2007 was added to the list of open dates to provide additional recreational opportunity.

- Under Brant season: In Skagit County, January 24, was deleted and January 18, 23, and 25 were added, and in Pacific County January 17 was deleted and January 11, 16, and 18 were added, to provide more recreational opportunity consistent with brant population status.

A final cost-benefit analysis is available by contacting Morris Barker, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826, fax (360) 902-2155, e-mail barkemwb@dfw.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 5, 2006.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

NEW SECTION

WAC 232-28-430 2006-07 Migratory waterfowl seasons and regulations.

DUCKS

Statewide

Oct. 14-18, 2006 and Oct. 21, 2006 - Jan. 28, 2007.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 23-24, 2006.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 1 pintail, 3 scaup, 1 canvasback, 2 redhead, 1 harlequin, 4 scoter, and 4 long-tailed duck.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 2 pintail, 6 scaup, 2 canvasback, 4 redhead, 1 harlequin, 8 scoter, and 8 long-tailed duck.

Season limit: 1 harlequin.

WRITTEN AUTHORIZATION REQUIRED TO HUNT SEA DUCKS.

All persons hunting sea ducks (harlequin, scoter, long-tailed duck) in Western Washington are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who held a 2005-06 authorization and returned the harvest report prior to the deadline will be mailed a 2006-07 authorization in early October.

Hunters who did not possess a 2005-06 authorization must fill out an application (available at Washington department of fish and wildlife, Olympia and regional offices). Application forms must be delivered to a department office no later than September 25 or postmarked on or before September 25 in order for applicants to be mailed a 2006-07 authorization before the season starts. No applications will be accepted after October 31, 2006. Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2007, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2007-08 sea duck season.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.

Possession limit: 25 coots.

COMMON SNIPE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.

Possession limit: 16 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 23-24, 2006, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.

Possession limit: 8 Canada geese.

Western Washington Goose Seasons

Goose Management Area 1

Island, Skagit, Snohomish counties.

Oct. 14, 2006 - Jan. 7, 2007 for snow, Ross', or blue geese.

Oct. 14-26, 2006 and Nov. 4, 2006 - Jan. 28, 2007 for other geese (except Brant).

Daily bag limit: 4 geese.

Possession limit: 8 geese.

WRITTEN AUTHORIZATION REQUIRED TO HUNT SNOW GEESE.

All persons hunting snow geese in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who held a 2005-06 authorization and returned the harvest report prior to the deadline will be mailed a 2006-07 authorization in early October. Hunters who did not possess a 2005-06 authorization must fill out an application (available at Washington department of fish and wildlife, Olympia and regional

offices). Application forms must be delivered to a department office no later than September 25 or postmarked on or before September 25 in order for applicants to be mailed a 2006-07 authorization before the season starts. No applications will be accepted after October 31, 2006. Immediately after taking a snow goose into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2007, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2007-08 snow goose season.

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County. While hunting snow geese on Fir Island, if a hunter is convicted of 1) trespass, 2) shooting from, across, or along the maintained part of any public highway, 3) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County, or 4) exceeding the daily bag limit for snow geese, written authorization will be invalidated for the remainder of the 2006-07 snow goose season and an authorization will not be issued for the 2007-08 snow goose season.

QUALITY HUNTING AREAS IN GOOSE MANAGEMENT AREA 1.

Hunters possessing written authorization to hunt snow geese in Goose Management Area 1 can apply for a special authorization to access private lands around Fir Island enrolled in a new quality snow goose hunting program. Hunters must apply for special authorization to hunt on these special areas by September 29, 2006, using the department's internet or mail application systems. A random drawing will select hunters for participation, and special hunt authorizations will be mailed prior to the season. Up to 3 individuals possessing snow goose authorizations can hunt with the successful applicant on each hunt day. Successful applicants must check in with the WDFW hunt coordinator at least 24 hours prior to hunting and all hunters must hunt over decoys. Special authorizations are not valid for commercial uses. Authorizations are valid for one week (only on Monday, Wednesday and Saturday) and only on private lands specified by the WDFW hunt coordinator. Hunters will be assigned at random to private farms participating in the program.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 11-26, 2006 and Dec. 6, 2006 - Jan. 28, 2007, except closed Dec. 24, 2006. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 14-25, 2006 and Dec. 7, 2006 - Jan. 20, 2007, except closed Nov. 23, 2006.

Goose Management Area 2B

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 14, 2006 - Jan. 13, 2007.

Bag limits for Goose Management Areas 2A and 2B:
Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 2 cackling geese.
Possession limit: 8 geese, to include not more than 1 dusky Canada goose, 2 Aleutian geese, and 4 cackling geese.
Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Special Provisions for Goose Management Areas 2A and 2B:

The Canada goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 80 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 80 dusky, to be distributed 15 for Zone 1 (Ridgefield NWR); 25 for Zone 2 (Cowlitz County south of the Kalama River); 20 for Zone 3 (Clark County except Ridgefield NWR); 10 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 10 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunting is only permitted by written authorization from the Washington department of fish and wildlife. Hunters who maintained a valid 2005-06 written authorization will be mailed a 2006-07 authorization card prior to the 2006-07 season. New hunters and those who did not maintain a valid 2005-06 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive written authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time. Information on training materials and testing dates/locations is available at the Olympia and regional offices.

With written authorization, hunters will receive a harvest report. Hunters must carry the authorization card and harvest report while hunting. Immediately after taking a Canada goose (dusky, lesser/Taverner, cackling, or other subspecies) into possession, hunters must record in ink the information required on the harvest report. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest report, written authorization will be invalidated and the hunter will not be able to hunt Canada geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late Canada goose

season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Canada Goose Season for Goose Management Area 2A:

Open to Washington department of fish and wildlife advanced hunter education (AHE) program graduates and youth hunters (15 years of age or under, who are accompanied by an AHE hunter) possessing a valid 2006-07 southwest Washington Canada goose hunting authorization, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 3 - Mar. 10, 2007.

Daily bag limit: 4 Canada geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 2 cackling geese.
Possession limit: 8 Canada geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 4 cackling geese.
Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late Canada goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding written authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 14-26, 2006 and Nov. 4, 2006 - Jan. 28, 2007.

Daily bag limit: 4 geese.
Possession limit: 8 geese.

Eastern Washington Goose Seasons**Goose Management Area 4**

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Oct. 14-16, 2006, and Saturdays, Sundays, and Wednesdays only during Oct. 21, 2006 - Jan. 21, 2007; Nov. 10, 23, and

24, 2006; Dec. 25, 26, 28, and 29, 2006; January 1, 2007; January 15, 2006; and every day Jan. 22-28, 2007.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 14-16, 2006, every day from Oct. 21, 2006 - Jan. 28, 2007.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.
Possession limit: 8 geese.

BRANT

Open in Skagit County only on the following dates:

Jan. 18, 20, 21, 23, 25, 27, 28, 2007.

If the 2006-07 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:

Jan. 11, 13, 14, 16, 18, 20, 21, 2007.

WRITTEN AUTHORIZATION REQUIRED:

All hunters participating in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who held a 2005-06 authorization and reported harvest prior to the deadline will be mailed a 2006-07 authorization in November. Hunters who did not possess a 2005-06 authorization must fill out an application (available at Washington department of fish and wildlife regional offices). Application forms must be delivered to a department office no later than 5:00 p.m. on November 8, or postmarked on or before November 8, after which applicants will be mailed a 2006-07 authorization. Late applications will not be accepted. Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2007, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2007-08 brant season.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.
Possession limit: 4 brant.

SWANS

Season closed statewide.

FALCONRY SEASONS

DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. 14-18, 2006 and Oct. 21, 2006 - Jan. 28, 2007 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 14, 2006 - Jan. 7, 2007.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 11-26, 2006 and Dec. 6, 2006 - Jan. 28, 2007, except closed Dec. 24, 2006.

Goose Management Area 2B: Wednesdays and Saturdays only, Oct. 14, 2006 - Jan. 13, 2007.

Goose Management Areas 3, 4, and 5: Oct. 14-16, 2006 and Nov. 4, 2006 - Jan. 28, 2007.

Daily bag limit for all areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-429	2005-06 Migratory waterfowl seasons and regulations.
----------------	--

WSR 06-17-102
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-209—Filed August 16, 2006, 10:53 a.m., effective September 16, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend wildlife rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-12-071.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-10-087 on May 3, 2006.

Changes Other than Editing from Proposed to Adopted Version: Changes from the text of the proposed rule and reasons for difference:

"or country" was added to subsection (3) 1st sentence to allow non-US producers of farmed game to import meat for retail sale. That subsection (3) sentence now reads: It is lawful to purchase and sell the meat of game-farmed raised deer and elk, provided the meat is imported from a licensed game farm in another state or country, the meat is boned and only meat is imported for sale, and the meat is packaged for retail sale prior to import into this state.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 9, 2006.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 01-69, filed 4/26/01, effective 5/27/01)

WAC 232-12-071 Buying or selling game unlawful—~~Game-farmed meat exception.~~ (1) Unless prohibited by federal regulations, nonedible parts of wild animals, game birds or game fish lawfully taken may be offered for sale, sold, purchased or traded, **except** ~~((;+))~~ it is unlawful to offer for sale, sell, purchase or trade the following unless authorized by a written permit issued by the director:

(a) Nonedible parts of ~~((eougar;))~~ bighorn sheep ~~((;))~~ or mountain goat.

(b) Velvet antlers of deer or elk.

(c) Gall bladder, claws, or teeth of bear, **except** those claws or teeth permanently attached to a full bear skin or mounted bear.

(2) It is unlawful to knowingly buy, sell, or otherwise exchange, or offer to buy, sell, or otherwise exchange the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not pursuant to permit.

(3) It is lawful to purchase and sell the meat of game-farm raised deer and elk, provided the meat is imported from a licensed game farm in another state or country, the meat is boned and only meat is imported for sale, and the meat is packaged for retail sale prior to import into this state. It is unlawful to fail to maintain proof of the source of the game-farmed meat together with the meat until the meat is consumed or exported.

WSR 06-17-114

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed August 18, 2006, 10:01 a.m., effective September 18, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Multiple sections of chapter 388-865 WAC are no longer accurate because the changes made to chapters 71.24 and 71.05 RCW by ESSB [ESHB] 1290, ESSB 5763 and 2SSB 6793 (chapter 503 and 504, Laws of 2005, and chapter 333, Laws of 2006 respectively). Amended rules are needed to be consistent with the statutes.

The statutes changed the definition from "county designated mental health professional" to "designated mental health professional" removing the reference to county. This is consistent with the other statutory changes that created the structure for allowing private entities to act as regional support networks (RSN). The rule changes removed the term county from designated mental health professional. The changes also implement the goal of allowing a private entity to become certified as an RSN.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0105, 388-865-0150, 388-865-0205, 388-865-0245, 388-865-0275, 388-865-0430, 388-865-0440, 388-865-0452, 388-865-0466, 388-865-0468, and 388-865-0575.

Statutory Authority for Adoption: RCW 71.24.035 and 71.05.560.

Other Authority: Chapters 71.24 and 71.05 RCW as amended by chapters 503 and 504, Laws of 2005, and chapter 333, Laws of 2006.

Adopted under notice filed as WSR 06-12-085 on June 6, 2006.

Changes Other than Editing from Proposed to Adopted Version: DSHS updated references to chapter 71.34 RCW in WAC 388-865-0575. Chapter 71.34 RCW was recodified in 2005 making the references in WAC 388-865-0575 incorrect.

A final cost-benefit analysis is available by contacting J. Paul DesJardien, P.O. Box 45320, Olympia, WA 98504-5320, phone (360) 902-0873, fax (360) 902-0809, e-mail desjap@dsht.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 11, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 11, Repealed 0.

Date Adopted: August 18, 2006.

Robin Arnold-Williams
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-18 issue of the Register.

WSR 06-17-126
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket A-060357, General Order No. R-538—Filed August 21, 2006, 2:36 p.m., effective September 21, 2006]

In the matter of amending and adopting WAC 480-07-307, 480-07-825, 480-07-903, 480-07-904, and 480-07-905, relating to chapter 480-07 WAC, relating to delegation of certain commission decisions and the finality of initial orders.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 06-13-093, filed with the code reviser on June 20, 2006. The commission brings this proceeding pursuant to SHB 2426, chapter 246, Laws of 2006, RCW 80.01.040 and 80.04.160.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, a description of the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments reflecting the commission's consideration of them.

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends and adopts the following sections of the Washington Administrative Code: Adopting WAC 480-07-307 Probable cause determinations, 480-07-903 Delegation of authority to the executive secretary, 480-07-904 Delegation of authority to the executive secretary to decide certain matters and 480-07-905 Delegation of authority to executive secretary to enter ex parte orders; and amending WAC 480-07-825 Initial orders—Petitions for administrative review.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on March 15, 2006, at WSR 06-07-099.

8 The statement advised interested persons that the commission was considering entering a rule making to delegate certain functions by rule or order and identify a notice process to enable persons affected by a proposal to ensure that commissioners personally considered the matter. The com-

mission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by a notice to all local exchange companies, electric companies, gas companies, boat carriers, solid waste carriers, and bus carriers, to the commission's list of persons interested in telecommunications, transportation, electric, gas, boat, solid waste, bus, and other agency rule makings, and to the commission's lists of regulatory attorneys. The commission posted the relevant rule-making information on its internet web site at <http://www.wutc.wa.gov/060357>.

9 MEETINGS OR WORKSHOPS; ORAL COMMENTS: The public counsel section of the attorney general's office (public counsel), PacifiCorp, and Avista submitted written comments during the inquiry phase.

10 The commission held a rule-making workshop on May 11, 2006. Participants in the workshop included Avista, Washington Independent Telephone Association (WITA), PacifiCorp, Qwest, Washington Refuse & Recycling Association (WRRA), PSE, Verizon, public counsel, CenturyTel, and Sprint.

11 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on June 20, 2006, at WSR 06-13-093. The commission scheduled this matter for oral comment and adoption under the notice at WSR 06-13-093 at 10:30 a.m., Friday, July 28, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

12 WRITTEN COMMENTS: The commission received written comments from public counsel and Verizon Northwest Inc. Summaries of written comments and commission responses are presented below.

13 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on July 28, 2006, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission heard oral comments from Judith Krebs, assistant attorney general, public counsel.

14 SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED: Stakeholders submitting written and oral comments suggested changes to the proposed rules. The suggested changes and the commission's reason for rejecting or accepting the suggested changes are as follows: Verizon suggested that there be some mechanism to seek ratification of an ALJ order. This provision is unnecessary. The rule does not preclude a party from requesting review for that purpose.

15 Verizon suggested deletion of proposed WAC 480-07-903(c), providing for delegation by commission order. This suggestion is not accepted. The statute permits the agency to delegate by rule or order. There are many advantages to making the delegation by rule, but there may be circumstances in which it will be more appropriate to do so by order. Because the provision is statutory, inclusion in the rule has no operative effect but clarifies process and identifies the statutory option. It is better to include the provision for better understanding.

16 Public counsel suggested language to allow late-filed requests for review under proposed WAC 480-07-904(3) for "good cause." This suggestion is adopted. The commission may waive nonstatutory deadlines under its general authority, consistent with RCW 34.05.080 and pursuant to WAC 480-07-130(2) and 480-07-110(1) without a specific provision in this rule. However, for clarity, we accept the suggestion.

17 Public counsel suggested that the rule provide for notice of delegated decisions by mail. This suggestion is not adopted. However, the commission acknowledges the possibility that some stakeholders may be unable to use the web site and will add a statement in WAC 480-07-904(2) to acknowledge that the information can be provided in other formats upon request.

18 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR 06-13-093 with the changes described below.

19 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 06-13-093:

Draft WAC 480-07-825(7) proposed a statement noting that the precedential value of an initial order that becomes final depends on the quality of the order (as it does not express a commission analysis or opinion). The statement appears to be obvious, consistent with legal analysis relating to trial court and decisions of administrative law judges for other administrative agencies, and is removed as unnecessary.

Draft WAC 480-07-904(2) proposed contents of the web-based listing of delegated matters. We add to that list, for clarity, the last date for timely requesting commission consideration. In addition, as noted above, we make clear the option of requesting the opportunity to make a late-filed request for commission consideration.

APPENDIX A

Docket A-060357 Delegation Rules Comment Matrix

Because the commission received few comments, a matrix of comments is not included. A summary of written and oral comments may be found on pages 3 and 4 of the order.

APPENDIX B

20 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-07-825 should be amended and WAC 480-07-307, 480-07-903, 480-07-904, and 480-07-905 should be adopted to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

ORDER

THE COMMISSION ORDERS:

21 The commission amends and adopts WAC 480-07-307, 480-07-825, 480-07-903, 480-07-904, and 480-07-905, to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after filing with the code reviser pursuant to RCW 34.05.380(2).

22 This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, August 16, 2006.

Washington utilities and transportation commission

Mark H. Sidran, Chairman

Patrick J. Oshie, Commissioner

Philip B. Jones, Commissioner

NEW SECTION

WAC 480-07-307 Probable cause determinations. An administrative law judge will review the information or evidence supporting a proposed complaint or penalty assessment and determine whether probable cause exists to issue the complaint or assess penalties. If the judge determines that the information would support the proposed penalties or sustain the complaint, if proved at hearing and if not rebutted or explained, the judge will sign the complaint or penalty assessment on behalf of the commission. The existence of a finding of probable cause may not in any later stage of the proceeding be considered as support for the proposed penalties or the complaint.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-825 Initial orders—Petitions for administrative review. (1) **When a petition for administrative review is appropriate.** A party who wishes to challenge any finding of fact, conclusion of law, remedy, or result proposed by an initial order may file a petition for administrative review. A party also may file a petition for administrative review to challenge the reasons stated in support of any result reached in an initial order. The commission will accept only one petition for administrative review from any party.

(2) **Timing of petition.** Any party to an adjudicative proceeding may file and serve a petition for administrative

review within twenty days after the initial order is served. The commission may extend the time on a showing of good cause.

(3) **Contents; length.** Petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific. The petitioner must separately state and number every contention. A petition that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding of fact. A petition that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law. A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision. Petitions for administrative review must not exceed sixty pages, without prior permission from the commission.

(4) **Answers.**

(a) **Who may answer.** Any party to the adjudication may answer another party's petition for administrative review.

(b) **Filing and service.** An answer to a petition for administrative review must be filed and served within ten days after the petition is filed. The commission may designate a different time for filing answers to petitions.

(c) **Challenge to order in answer.** A party who did not file a petition for administrative review of an initial order may challenge the order or portions of the order in its answer to the petition of another party.

(5) **Reply.**

(a) **By right.** A party has the right to reply to new challenges to the order that are raised under subsection (c) of this section.

(b) **By leave of commission.** A party otherwise has no right to reply to an answer, but may petition for leave to reply, citing new matters raised in the answer and stating why those matters were not reasonably anticipated and why a reply is necessary. The petitioner may attach a reply to the petition for leave to accept the reply.

(c) **Timing.** A reply under (a) of this subsection, or a petition for leave to reply under (b) of this subsection, must be filed no later than five days after service of the answer. The commission may extend the time upon a showing of good cause.

(6) **Oral argument.** The commission may hear oral argument on a petition for administrative review at a time and place the commission designates by notice to all parties to the proceeding. A party who desires to present oral argument may request argument, stating why oral argument is necessary to assist the commission in making its decision and why written presentations will be insufficient.

(7) **Initial order finality.**

(a) The initial order of an administrative law judge will become a final order of the commission unless, within the time for filing petitions for administrative review:

(i) A party petitions for administrative review, or receives an extension of time to file a petition for administrative review and files within the extended period; or

(ii) The commission serves a notice to the parties of its intention to review the initial order.

(b) Parties who seek finality of an initial order before the end of the petition period may waive the right to seek administrative review. If all parties waive review, the order will become final on the day the commission declines to exercise administrative review or when the time for exercising review ends. If the commission exercises administrative review, all parties may state objections and responses as permitted in subsection (8) of this section.

(c) An initial order that becomes final by operation of law does not reflect a decision by the commissioners and has no precedential value. Such orders, if cited, must be identified as ALJ orders.

(8) Designation for review. The commission may designate an initial order for administrative review by serving on the parties a notice of its intention to review the order. The notice will identify the docket number and the title of the proceeding, a time period within which the parties may state objections to the initial order, and a time to respond to others. The notice may invite the parties to address specific issues relating to the initial order.

(9) Final order. The commission may by final order adopt, modify, or reject an initial order after ~~((reviewing))~~ considering the ~~((initial order and any petitions for review, answers, replies, briefs, and oral arguments.))~~ pleadings and the record. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer.

(10) Judicial review. The statutory time for filing a petition for judicial review commences when the commission serves its final order, when an initial order becomes final under RCW 80.01.060(3) and subsection (7) of this section, or when a petition for reconsideration is deemed denied as a matter of law, as provided in RCW 34.05.470. However, if a party timely files a petition for reconsideration of the final order, and complies with the commission's procedural rules governing reconsideration, the time for filing a petition for judicial review does not commence until the date on which the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470.

NEW SECTION

WAC 480-07-903 Delegation of authority to the executive secretary. (1) General provisions.

(a) The working title of the secretary position authorized in RCW 80.01.030 is "executive secretary."

(b) The commission delegates authority to the executive secretary as set out in this section and WAC 480-07-904 and 480-07-905, pursuant to RCW 80.01.030 and subject to oversight and direction by a majority of the commissioners.

(c) The commission may also delegate functions to the executive secretary by order.

(d) When the executive secretary is absent or otherwise unavailable to perform authorized duties, the commission

authorizes the executive secretary's designee to perform the duties on behalf of the executive secretary.

(2) **General delegation of authority.** The commission authorizes the executive secretary to supervise the general administrative functions of the agency, including without limitation the following specific tasks.

(a) **Filings, correspondence and documents.** The executive secretary will sign commission documents to be filed with the code reviser, courts, or other agencies or governmental entities. The executive secretary will sign other official commission correspondence and filings that the commissioners do not sign. The executive secretary will sign all permits and other official commission documents.

(b) **Appointing authority.** The executive secretary is the "appointing authority" for the commission and has authority over appointment, separation, and discipline of commission employees. This authority includes, but is not limited to, appointments, terminations, reductions in force, dismissals, suspensions, and demotions pursuant to WAC 356-30-007 and 356-34-011

(c) **Grievance procedure.** The commission authorizes the executive secretary to hear bargaining unit employee grievances and enter a final agency decision. The commission reserves the right to hear individual grievances or to select another designee to hear grievances on a case-by-case basis.

(d) **Rejection of defective filings.** The executive secretary will sign orders or letters rejecting tariffs, contracts, applications, or other filings that do not comply with statutory requirements or commission rules regarding effective dates, required supporting documents, or other standards for a complete filing.

(3) **Authority to resolve delegated matters.** Matters delegated to the executive secretary by rule are specified in this section and in WAC 480-07-904 and 480-07-905. The executive secretary may exercise discretion to defer any delegated matter to the commissioners for decision.

(4) **Authority to sign discretionary orders implementing commission decisions.**

(a) **Commissioner direction.** A majority of the commissioners may direct the executive secretary to sign an order or decision implementing a decision made by a majority of the commissioners.

(b) **Commissioner unavailability.** When a majority of the commissioners are unavailable to sign and enter decisions and orders of the commission, the executive secretary is authorized to do so without express direction only when:

(i) A majority of the commissioners has previously reached a decision on the merits of the particular matter; and

(ii) In the executive secretary's judgment, in consultation with any available commissioner, entry of the order cannot be deferred pending commissioner availability.

(5) **Commission review.** Commission review of decisions delegated under RCW 80.01.030 is *de novo*.

NEW SECTION

WAC 480-07-904 Delegation of authority to the executive secretary to decide certain matters. (1) The commission delegates the following matters to the executive secre-

tary for decision. The executive secretary's decision shall take effect immediately on entry of an order or on a later date specified in the order, without prior notice. Upon request, the commission will review the matter under subsection (3) of this section at a commission open meeting.

(a) Applications for funding highway-railroad grade crossing improvements under the grade crossing protection fund for applications under WAC 480-62-405 (1)(a).

(b) Petitions for approval of changes to existing highway-railroad grade crossings, including installation or modification of signals; reconstruction of the crossing; or implementation of changes in design or construction.

(c) Applications by water companies for removal from regulation or for the commission to exercise regulation under RCW 80.04.010.

(d) Applications for approval of:

(i) Fully negotiated telecommunications interconnection agreements; and

(ii) Adoptions of existing interconnection agreements.

(e) Applications for less than statutory notice approval of transportation company fuel surcharges and requests for rate increases limited to passing through costs that are authorized for pass-through, such as tipping fees.

(f) Requests for a commission order establishing that a securities filing complies with RCW 80.08.040.

(g) Requests for assignment of telephone number resources.

(h) Petitions for mitigation of penalties when the petitioner does not request a hearing, or when commission staff supports the request for mitigation.

(i) Requests for approval of service area agreements.

(j) Requests for extensions of time to make filings under deadlines set by rule or order, not including deadlines established in an adjudication.

(2) **Notice.** The commission will post on its internet web site for at least fourteen days a listing of all matters decided pursuant to subsection (1) of this section, showing the docket number, date of entry of decision, company name and last date for a request for review to be filed. The commission will regularly publish electronic notice of listings to persons requesting such notice. Any person may request notice by alternative means.

(3) **Opportunity for review.** Any affected person may ask the commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for commission consideration no later than the fourteenth day after the date of the posting. The commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. The commission will provide a form for this purpose on the commission's web site. The commission will schedule a request for review promptly for consideration and will notify the affected company, and any person requesting review, of the time and place of the open meeting at which review will be taken.

NEW SECTION

WAC 480-07-905 Delegation of authority to executive secretary to enter *ex parte* orders. The commission authorizes the executive secretary to enter the following *ex parte* orders in the name of the commission in nonadjudicative matters. Notice of the order will be published, and responses must follow the procedure outlined, in WAC 480-07-904 (2) and (3).

(1) **Motor freight carriers, chapter 480-14 WAC, (excluding household goods carriers).**

(a) Orders and permits authorizing intrastate transportation of general commodities, materials transported by armored car, or hazardous materials if the applicant satisfies the requirements of chapter 480-14 WAC.

(b) Orders and permits authorizing or reflecting change of carrier name and business structure if the carrier satisfies the requirements of chapter 480-14 WAC.

(c) Orders and permits reinstating previously held authority if the carrier meets the requirements of chapter 480-14 WAC.

(d) Orders suspending and/or canceling a permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier:

(i) That the permit may be reinstated prior to cancellation if the carrier corrects conditions leading to suspension; and

(ii) That the carrier may contest the suspension and/or cancellation by requesting an adjudication or brief adjudication.

(e) Orders permanently canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request an adjudication or brief adjudication.

(f) Orders permanently canceling permit authority or dismissing an application by request of carrier or applicant.

(g) Orders dismissing an application after notice to the applicant of failure to meet the requirements of chapter 480-14 WAC.

(2) **Household goods carriers, chapter 480-15 WAC.**

(a) Permit authority granted by a commission order authorizing permanent, provisional or temporary intrastate transportation of household goods.

(b) Orders and permits authorizing permanent intrastate transportation of household goods if the applicant satisfies the requirements of chapter 480-15 WAC.

(c) Orders and permits authorizing or reflecting change of a carrier's permit name, corporate name, trade name, or addition of a trade name.

(d) Orders authorizing voluntary suspension of permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(e) Orders reinstating voluntarily suspended permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(f) Orders permanently canceling permit authority or dismissing application by request of carrier or applicant.

(g) Orders suspending and/or canceling a permit if the carrier fails to maintain evidence of required cargo and/or liability insurance coverage. Such orders will inform the carrier that a permit may be reinstated if the carrier corrects conditions leading to suspension and that the carrier may contest

the suspension and/or cancellation by requesting an adjudicative or brief adjudicative proceeding.

(h) Orders vacating suspension of a permit if the commission receives the insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(i) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(j) Orders reinstating previously canceled permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(k) Orders rejecting applications for temporary authority if WAC 480-15-285 applies.

(3) **Solid waste collection companies—Specialized, chapters 81.77 RCW and 480-70 WAC.**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by any existing carrier.

(b) Orders and permits authorizing change of carrier's corporate name, trade name, or addition of a trade name.

(c) Orders and permits approving unprotested applications to transfer or lease certificate.

(d) Orders suspending a permit if the carrier fails to maintain evidence of the required liability insurance coverage. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudication or brief adjudicative proceeding.

(e) Orders vacating suspension of permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests an adjudication or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

(4) **Solid waste collection companies—Traditional, chapters 81.77 RCW and 480-70 WAC.**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by an existing carrier.

(b) Orders and permits authorizing change of carrier's name, trade name or addition of a trade name.

(5) **Private, nonprofit transportation providers, chapter 480-31 WAC.**

(a) Orders and permits authorizing intrastate transportation of persons with special needs.

(b) Orders and permits authorizing sale, assignment, lease, acquisition or transfer.

(c) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order must inform the carrier that the permit may be reinstated if the carrier cor-

rects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(6) Charter and excursion busses.

(a) Orders authorizing intrastate transportation of passengers by charter or excursion.

(b) Orders suspending permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(c) Orders vacating suspension of permit if the commission receives an insurance filing during the suspension period or orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(d) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension and fails to request a hearing or brief adjudicative proceeding during the suspension period.

(e) Orders canceling permit authority or dismissing an application by request of the carrier or applicant.

(f) Orders dismissing application after due notice to applicant for failure to meet the requirements of chapter 480-40 WAC.

(g) Orders authorizing lease, assignment, or transfer of permit authority.

(7) Auto transportation companies, chapter 81.68 RCW.

(a) Orders and permits authorizing intrastate, intercity transportation of passengers involving unopposed applications to serve routes not served by any existing carrier and that do not fall within the boundaries of a transit district.

(b) Orders and permits involving name changes, including trade names.

(8) Commercial ferries, chapter 480-51 WAC.

(a) Orders suspending a certificate if the carrier fails to maintain the required insurance coverage. The order will inform the carrier that the certificate may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest suspension by requesting a brief adjudication or an adjudication.

(b) Orders vacating suspension of a certificate if the carrier corrects conditions leading to suspension and orders of abeyance if the respondent requests a brief adjudication or an adjudication.

(c) Orders canceling a previously suspended certificate if the carrier fails to correct conditions leading to suspension and fails to timely request an adjudication or brief adjudication.

(9) **Temporary transportation authority.** The commission delegates to the executive secretary decisions in applications for temporary motor carrier or solid waste authority. The decision takes effect immediately on entry of an order without prior notice of delegation. An applicant whose application is denied, in whole or in part, may obtain

review by requesting an adjudication within twenty days following entry of the order. Commission review of delegated decisions under this provision will be *de novo*.

WSR 06-17-128

PERMANENT RULES

FOREST PRACTICES BOARD

[Filed August 21, 2006, 3:19 p.m., effective September 21, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend Title 222 WAC to provide for northern spotted owl habitat conservation.

Citation of Existing Rules Affected by this Order: Amending WAC 222-10-041 (4)(b) and 222-16-010.

Adopted under notice filed as WSR 06-07-143 on March 21, 2006.

Changes Other than Editing from Proposed to Adopted Version: The changes from the proposed to the adopted version are nonsubstantive edits for language clarification.

A final cost-benefit analysis is available by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@wadnr.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2006.

Pat McElroy
Chair

AMENDATORY SECTION (Amending WSR 02-11-075, filed 5/13/02, effective 6/13/02)

WAC 222-10-041 Northern spotted owls. The following policies shall apply to forest practices subject to SEPA if the forest practices may cause adverse impacts to northern spotted owls.

(1) **In SOSEAs or areas of SOSEAs where the goal is demographic support**, suitable spotted owl habitat should be maintained either to protect the viability of the owl(s) associated with each northern spotted owl site center or to provide demographic support for that particular SOSEA as described in the SOSEA goals.

(2) **In SOSEAs or areas of SOSEAs where the goal is dispersal support**, either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated

with each northern spotted owl site center or dispersal habitat should be managed, over time, to provide the dispersal support for that particular SOSEA as described in the SOSEA goals. Dispersal support is provided by a landscape which includes dispersal habitat at the stand level interspersed with areas of higher quality habitat. Stands of dispersal habitat should be managed to reduce gaps between stands and to maintain a sufficient level of dispersal habitat to meet the SOSEA goals over time.

(3) **In SOSEAs or areas of SOSEAs where the goal is a combination of dispersal support and demographic support**, either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated with each northern spotted owl site center or a variety of habitat conditions should be provided which in total are more than dispersal support and less than demographic support. This can be accomplished by providing:

(a) Dispersal support as described in subsection (2) of this section;

(b) Areas of suitable spotted owl habitat that contain some opportunities for nesting as well as roosting and foraging habitat; and

(c) Connectivity between areas of SOSEAs designated for demographic support or adjacent federal lands which are designated as late successional reserves, congressionally reserved areas, or administratively withdrawn areas.

(4) **Within SOSEAs**, the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of the owl(s) associated with each northern spotted owl site center, in the absence of more specific data or a mitigation plan, as provided for in subsections (6) and (7) of this section respectively:

(a) All suitable spotted owl habitat within 0.7 mile of each northern spotted owl site center;

(b) Including the suitable spotted owl habitat identified in (a) of this subsection:

(i) For the Hoh-Clearwater/Coastal Link SOSEA - A total of 5,863 acres of suitable spotted owl habitat within the median home range circle (2.7 mile radius).

(ii) For all other SOSEAs - A total of 2,605 acres of suitable spotted owl habitat within the median home range circle (1.8 mile radius).

The department shall first identify the highest quality suitable spotted owl habitat for this purpose. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable habitat. Suitable spotted owl habitat identified outside 0.7 mile of a northern spotted owl site center may support more than one median home range circle.

~~((Suitable spotted owl habitat harvested by a landowner shall continue to be counted as part of the total acres necessary under (b) of this subsection for other landowners within the median home range circle if the harvest is conducted pursuant to agreements or plans approved under subsection (6) of this section or WAC 222-16-080 (1)(h)(iv), (6)(a)(iv), or (f).))~~

(5) **Outside SOSEAs**, during the nesting season (between March 1 and August 31), seventy acres of the highest quality suitable spotted owl habitat surrounding a northern spotted owl site center should be maintained. The seventy

acres for one site center shall not be utilized for meeting suitable habitat needs of any other site center.

(6) The assumptions set forth in subsection (4) of this section are based on regional data. Applicants or others may submit information that is more current, accurate, or specific to a northern spotted owl site center, proposal, or SOSEA circumstances or goals. The department shall use such information in making its determinations under this section where the department finds, in consultation with the department of fish and wildlife, that the information is more likely to be valid for the particular circumstances than the assumptions established under subsection (4) of this section. If the department does not use the information, it shall explain its reasons in writing to the applicant.

(7) The department shall consider measures to mitigate identified adverse impacts of an applicant's proposal. Mitigation measures must contribute to the achievement of SOSEA goals or to supporting the viability of impacted northern spotted owl site centers.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

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.)

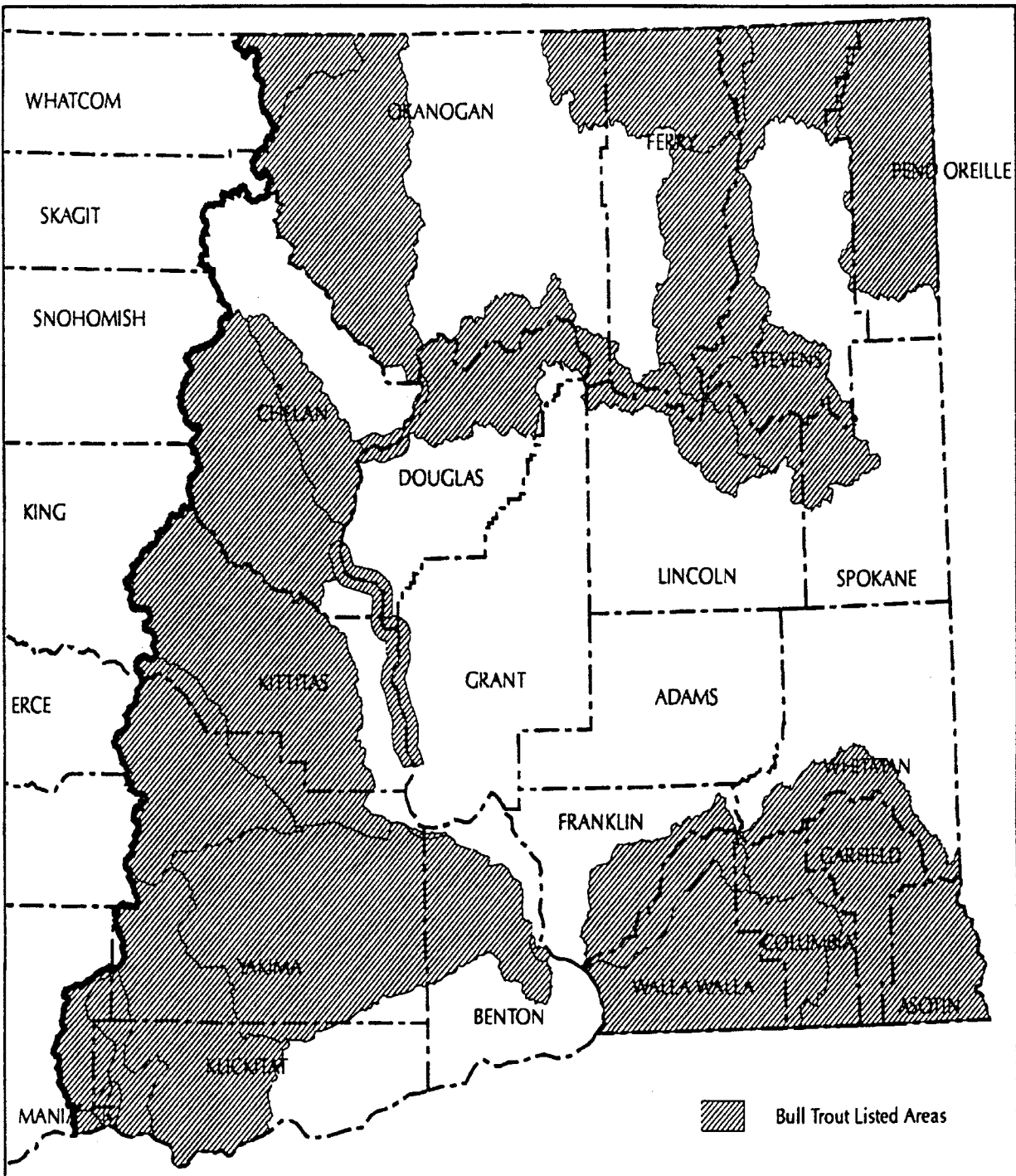
"Board" means the forest practices board established by the act.

"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 landowner" 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. 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 landowner" 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:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that 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. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. 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 techni-

cal 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.

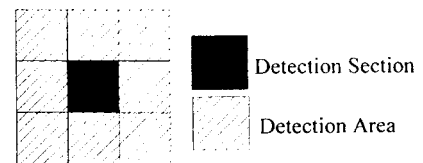
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"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:

(1) Until June 30, 2007, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After June 30, 2007, 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 com-

pleted 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 either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

- (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).

WSR 06-17-131

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed August 22, 2006, 8:46 a.m., effective September 22, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Housekeeping amendments to Title 478 WAC rules that update citations of the state's recodified public records laws.

Citation of Existing Rules Affected by this Order: Amending WAC 478-04-010, 478-250-010, 478-250-060, 478-276-010, 478-276-060, 478-276-080, 478-276-100, and 478-276-110.

Statutory Authority for Adoption: RCW 28B.20.130 and chapter 274, Laws of 2005.

Other Authority: Executive Order 97-02.

Adopted under notice filed as WSR 06-12-066 on June 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: August 18, 2006.

Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 90-15-005, filed 7/6/90, effective 8/6/90)

WAC 478-04-010 Purpose. The purpose of this chapter is to establish rules implementing RCW 34.05.220 (1)(b) and ~~((42.17.250))~~ 42.56.040 (1)(a) and (b).

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-250-010 Purpose. This chapter is enacted by the board of regents of the University of Washington in compliance with chapter ~~((42.17))~~ 42.56 RCW, "~~(Disclosure—Campaign finances—Lobbying—)~~ Public records"; and chapter 34.05 RCW, "Administrative Procedure Act"; and in particular with RCW ~~((42.17.260))~~ 42.56.070 and 34.05.220.

AMENDATORY SECTION (Amending WSR 05-08-064, filed 3/31/05, effective 5/1/05)

WAC 478-250-060 Rule indexing. (1) Content. The university rules coordination office shall maintain an index of final orders, declaratory orders, interpretive statements, and policy statements, as defined by RCW ~~((42.17.260))~~ 42.56.070(5), issued after June 30, 1990, by the board of regents of the University of Washington, the president of the University of Washington, or their designees.

(2) Form. The index shall reference final orders, declaratory orders, interpretive statements, or policy statements by one or more of the following classifications: Date of implementation, organizational unit, or subject matter.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-276-010 Purpose. This chapter is enacted by the board of regents of the University of Washington in compliance with the provisions of chapter ~~((42.17))~~ 42.56 RCW, "~~(Disclosure—Campaign finances—Lobbying—Records—)~~ and in particular with RCW ~~42.17.250 through 42.17.340 dealing with~~)" Public records."

AMENDATORY SECTION (Amending WSR 01-11-136 [06-13-021], filed 5/23/01 [6/13/06], effective 6/23/01 [7/14/06])

WAC 478-276-060 Public records officer. For purposes of compliance with chapter ~~((42.17))~~ 42.56 RCW, the person designated as public records officer for the University of Washington is the director of public records and open public meetings. Duties for this individual shall include but not be limited to: The implementation of the university's rules and regulations regarding release of public records, coordinating the staff of the public records and open public meetings office in this regard, and generally coordinating compliance by the university with the public records disclosure

requirements of chapter ~~((42.17))~~ 42.56 RCW. The person so designated shall be at the following location:

University of Washington
Public Records and Open Public Meetings Office
Visitors Information Center
4014 University Way N.E.
Seattle, WA 98105-6203

(for internal campus mail use: Box 355502).

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

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 01-11-136, filed 5/23/01, effective 6/23/01)

WAC 478-276-080 Requests for public records. In accordance with requirements of chapter ~~((42.17))~~ 42.56 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records required to be disclosed by chapter ~~((42.17))~~ 42.56 RCW, may be inspected or copies of such records may be obtained, by members of the public upon compliance with the following procedures: All requests shall be directed to the director of public records and open public meetings at the address set forth in WAC 478-276-140. The request shall include the following information:

- (1) The name and address of the person requesting the records;
- (2) The date on which the request was made; and
- (3) The public record(s) requested.

AMENDATORY SECTION (Amending WSR 01-11-136, filed 5/23/01, effective 6/23/01)

WAC 478-276-100 Inspection of public records—Copying—Costs. (1) Public records of the University of Washington required to be disclosed by chapter ~~((42.17))~~ 42.56 RCW, shall be made available for inspection and copying by the public records and open public meetings office staff under the supervision of the director of public records and open public meetings. Arrangements for photocopying of documents in accordance with RCW ~~((42.17.300))~~ 42.56.210 shall be made by the university in such a way as to protect the records from damage or disorganization and to prevent excessive interference with other essential functions of the agency.

(2) No fee shall be charged for the inspection of public records. The university imposes a charge for providing copies of public records whether the copies are on paper or on other media such as, but not limited to, CDs, diskettes, audio or videotape; the university also charges for packaging, postage, and other charges as allowed by statute. Such charges shall not exceed the amount necessary to reimburse the university for actual costs as allowed by law.

(3) No person shall be provided a copy of a public record which has been copied by the university at the request of such

person until and unless such person has tendered payment for the charge for providing such copying.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-276-110 Exemptions—Court protection.

(1) The University of Washington reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 478-276-080 is exempt under the provisions of chapter ~~((42.17))~~ 42.56 RCW.

(2) In addition, pursuant to chapter ~~((42.17))~~ 42.56 RCW, the University of Washington reserves the right to delete identifying details when it makes available or publishes any public record in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by RCW ~~((42.17.255))~~ 42.56.050.

(3) Responses by the University of Washington refusing, in whole or in part, inspection of any record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

(4) Pursuant to RCW ~~((42.17.330))~~ 42.56.540, the University of Washington reserves the right to seek to enjoin the examination of any specific record, the examination of which the university determines would clearly not be in the public interest and would substantially and irreparably damage any person or would substantially and irreparably damage vital governmental functions.

WSR 06-17-132

PERMANENT RULES

GAMBLING COMMISSION

[Order 601—Filed August 22, 2006, 8:50 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: 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. As part of the rewrite, some items from chapter 230-02 WAC, General provisions and definitions; chapter 230-04 WAC, Licensing; chapter 230-08 WAC, Records and reports; chapter 230-12 WAC, Rules of general applicability, may be incorporated into this new chapter. This new chapter is numbered chapter 230-06 WAC and contains rules pertaining to all licensees.

(1) Intoxicated persons participating in gambling activities:

WAC 230-06-015 Prevent intoxicated persons from operating or playing gambling activities, the proposed change will expand the current rules prohibiting intoxicated persons from operating or playing punch boards, pull-tabs, or card games to apply to all gambling activities. This change will make commission enforcement more consistent across all gambling activities. All gambling licensees will now have to prevent intoxicated persons from operating or participating in gambling activities.

(2) Reporting timelines:

WAC 230-06-085 Report changes to application information and submit updated documents and information, 230-06-090 Report criminal actions filed, 230-06-095 Report civil and administrative actions filed, 230-06-100 Change given name, trade name, or corporate name, 230-06-110 Report change of management, 230-06-130 Sell or transfer gambling equipment to manufacturers or distributors, and 230-06-145 Failing to apply for license class upgrade, the current rules have a number of different time periods associated with submitting information regarding licensure. These new rules will standardize the amount of time we give licensees to submit several types of information to thirty days. The proposed change will make our regulation of licensees more consistent because it changes the response period to a consistent thirty days for each type of information.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-07-156 on March 22, 2006, with a published date of April 25 [5], 2006.

Changes Other than Editing from Proposed to Adopted Version: At a public meeting, the commission pulled WAC 230-06-040, from this rules package. It will be included in new chapter 230-07 WAC, Charitable and nonprofit rules, as it relates only to charitable and nonprofit organizations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 29, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 29, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 29, Amended 0, Repealed 0.

Date Adopted: August 21, 2006.

Susan Arland
Rules Coordinator

Chapter 230-06 WAC

RULES FOR ALL LICENSEES

**RULES FOR CONDUCTING
A GAMBLING ACTIVITY**

NEW SECTION

WAC 230-06-001 Defining "operator." "Operator" means any person who buys or otherwise receives gambling equipment for use in authorized gambling activities from a manufacturer or distributor and operates or displays that equipment.

NEW SECTION

WAC 230-06-005 Accept checks in gambling activities. (1) Licensees may accept a check in the place of cash from a player for authorized gambling activities if the check is fully negotiable when it is accepted and is:

(a) From the player's personal account and is dated the same day; or

(b) Issued by a government agency or by a business, such as a payroll check.

(2) Licensees must not accept:

(a) Third-party checks drawn on a personal account or counter checks; or

(b) Checks from a player who owes the licensee money from a previous returned personal check. If licensees use check guarantee and collection services, this subsection does not apply.

(3) If licensees accept a check in violation of the provisions of this section, they are violating the rules against extending credit.

NEW SECTION

WAC 230-06-010 Age restrictions for players. Licensee must not allow anyone under the age of eighteen to participate in gambling activities except:

(1) To play in licensed bingo games when accompanied by an adult member of his/her immediate family or a guardian, who is at least eighteen years old. "Immediate family" means only the spouse, parents, or grandparents of an individual. "Guardian" means only a court-appointed, legal guardian of an individual; or

(2) To play bingo at agricultural fairs or school carnivals; or

(3) To play amusement games; or

(4) To sell raffle tickets.

NEW SECTION

WAC 230-06-015 Prevent intoxicated persons from operating or playing gambling activities. Licensees must not allow any person who appears to be intoxicated or under the influence of any narcotic or other substance to operate or play any gambling activity.

NEW SECTION

WAC 230-06-020 Restrictions on alcohol as prizes. Licensees must not offer or award beverages that contain alcohol as a prize or in place of a prize for any gambling activity except:

(1) Dice or coin contests for music, food, or beverage payment as authorized by RCW 9.46.0305; and

(2) Unlicensed members-only raffles authorized by RCW 9.46.0315, but only if the liquor control board granted the appropriate permit; and

(3) Other gambling activities where the liquor control board has authorized alcohol as a prize.

NEW SECTION

WAC 230-06-025 Restrictions on firearms as prizes.

Only charitable or nonprofit organizations operating a raffle may award firearms, air guns, or other mechanical devices which are capable of discharging dangerous projectiles, including but not limited to, BB or CO₂ guns, rifles, shotguns, pistols or revolvers, or crossbows as a prize. If the prize awarded is restricted from transfer by state or federal law, the licensee must award the winner a certificate, redeemable by a licensed firearms dealer, for the prize offered.

NEW SECTION

WAC 230-06-030 Restrictions and conditions for gambling promotions. Licensees may conduct gambling promotions to encourage players to participate in a gambling activity, but you must follow these restrictions and conditions:

(1) Promotional items must not exceed five hundred dollars each; and

(2) You must give all players an equal opportunity to participate; and

(3) You must establish standards to determine how you will give promotional items to players. You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game; and

(4) You must not give another chance to participate in a gambling activity as a promotional item; and

(5) You must display all rules or restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

(6) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

NEW SECTION

WAC 230-06-035 Offer no credit, loans, or gifts. (1)

Licensees, employees, or members must not extend credit, make loans, or give gifts to any person playing in an authorized gambling activity or which makes it possible for any person to play in an authorized gambling activity.

(2) Gifts are items licensees give to their customers. Licensees must not connect these gifts to gambling activities we regulate unless the gifts are:

(a) Gambling promotions; or

(b) Transportation services to and from gambling activities; or

(c) Free or discounted food, drink, or merchandise which:

(i) Costs less than five hundred dollars per individual item; and

(ii) Must not be traded back to you for cash; and

(iii) Must not give a chance to participate further in an authorized gambling activity.

(3) You must collect the price required to participate in the gambling activity in full before allowing someone to participate. Licensees must collect cash, check, or electronic point-of-sale bank transfer.

(4) If the price paid for the opportunity to play a punch board or pull-tab series is ten dollars or less, licensees may collect the price immediately after the play is completed.

(5) If a charitable or nonprofit organization has a regular billing system for all of the activities of its members, it may use its billing system in connection with the playing of any licensed activities as long as the organization limits play to full and active members of its organization.

(6) Charitable or nonprofit organizations may allow credit cards, issued by a state regulated or federally regulated financial institution, for payment to participate in raffles.

NEW SECTION

WAC 230-06-045 Conduct gambling activities on licensed business premises only. (1) Licensees must conduct all gambling activities, except for raffle ticket sales, on the licensed business premises.

(2) Charitable or nonprofit organizations licensed to conduct bingo and punch board and pull-tab games may sell punch boards and pull-tabs to customers of a licensed card room if the charitable or nonprofit organization:

- (a) Shares a common wall with the card room; and
- (b) Controls all doors, counters, or windows allowing customer access through the common wall between the two premises and the charitable or nonprofit organization can securely close and lock the doors, counters, or windows; and
- (c) Keeps and sells the punch board and pull-tab games and redeems prizes only on their licensed business premises. Punch board and pull-tab players may take already purchased punch boards and pull-tabs into the card room area; and
- (d) Allows only its employees to sell the punch board and pull-tabs; and
- (e) Posts signs at the door, window, or counter common to the two business premises that clearly notify customers of the organization's identity.

NEW SECTION

WAC 230-06-050 Review of electronic or mechanical gambling equipment. (1) Persons who wish to submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC must pay the application deposit before we perform the review. They must also reimburse us for any additional costs of the review.

(2) We may require manufacturers to submit electronic or mechanical gambling equipment for review. To allow for continued testing and training, staff may keep any equipment submitted for review for as long as the equipment remains in play in Washington. The manufacturers must reimburse us for any costs of the review. We are not liable for any damage to equipment while in our possession.

(3) Licensees must operate equipment identical to the version staff approved.

NOTIFYING LAW ENFORCEMENT, POSTING PUBLIC NOTICES, AND RECORDKEEPING

NEW SECTION

WAC 230-06-055 Notify law enforcement of gambling activity. (1) Licensees must notify local law enforcement agencies, in writing, that they have been licensed before they begin to conduct any activity under the license.

- (2) Licensees must tell local law enforcement agencies:
 - (a) The address where they will conduct the gambling activity; and
 - (b) The type of gambling activity licensed; and
 - (c) The first date they will conduct the gambling activity; and
 - (d) The proposed schedule for the operation of the gambling activity if they plan to conduct the activity on a regular basis.
- (3) Licensees must not conduct the activity until they have made the notification.

NEW SECTION

WAC 230-06-060 Maintain copy of commission rules on business premises. Licensees must maintain a current version of our rules on their business premises. If any person asks to see our rules, the licensee must produce the rules for that person.

NEW SECTION

WAC 230-06-065 Display copies of all licenses or have them present on business premises. (1) Licensees must prominently display all gambling activity licenses or permits we have issued in the gambling area of their business premises.

- (2) Licensees must have these licenses and permits ready for inspection by us, other law enforcement, and the public at all times.
- (3) Card room employers may choose not to display employee licenses, but must maintain a copy of all card room employees' licenses, proof of licensing, or applications if we have not issued a license, on the licensed premises at all times.

NEW SECTION

WAC 230-06-070 Keep monthly records. Every person or organization licensed to operate any gambling activity must maintain permanent monthly records of all financial transactions directly or indirectly related to gambling activities. The licensee must include all financial transactions in enough detail to prove compliance with recordkeeping requirements for the specific gambling activity.

- (1) Every licensee must record for each licensed activity:
 - (a) The gross gambling receipts; and
 - (b) Full details on all expenses; and
 - (c) The total cost of all prizes paid.
- (2) Commercial stimulant licensees must also record:
 - (a) Gross sales of food and drink for consumption on the business premises; and

(b) Gross sales of food and drink for consumption off the business premises; and

(c) Gross sales from all other business activities occurring on the business premises.

(3) Licensees must record each licensed activity separately and include all transactions occurring during the calendar month. Licensees must complete these records and have them available for audit or inspection by our agents or other law enforcement no later than thirty days following the end of each month.

(4) Licensees must include copies of all additional financial data which support tax reports to any governmental agency.

(5) Licensees must maintain each of these records for at least three years from the end of the fiscal year.

NEW SECTION

WAC 230-06-075 Removal of equipment or records for inspection. (1) If we believe with a reasonable probability that you, your employees, or your members are violating or have violated the provisions of chapter 9.46 RCW, its amendments, or any of our rules, we may remove, inspect, and investigate any records, equipment, parts, and devices of any nature located on your premises that relate to the licensed activity or any other gambling activity.

(2) We also may remove records from your premises or your control in order to facilitate our review of the records.

(3) If we receive a written request from you, we will provide you with copies of retained records.

(4) After the case is resolved, we will return all records, equipment, parts, and devices to the premises or to your address.

REPORTING CHANGES TO APPLICATION INFORMATION

NEW SECTION

WAC 230-06-080 Report changes to application information and submit updated documents and information. (1) Licensees must notify us in writing if any information filed with the application changes in any way within thirty days of the change.

(2) Licensees must submit to us any new or updated documents and information, including the following:

(a) Articles of incorporation or bylaws, or any other documents which set out the organizational structure and purposes; and

(b) All oral or written contracts and agreements which relate to gambling activities or alter the organizational structure of the licensee's organization or business activities in Washington; and

(c) All cash or asset contributions, draws from lines of credit, and loans (except those from recognized financial institutions) during any calendar year which by themselves or totaled together are more than ten thousand dollars. Cash or asset contributions do not include donations to licensed charitable or nonprofit organizations; and

(d) Internal Revenue Service tax deductible status of contributions for charitable and nonprofit organizations.

REPORTING CRIMINAL, ADMINISTRATIVE, AND CIVIL ACTIONS

NEW SECTION

WAC 230-06-085 Report criminal actions filed. (1) Licensees must report to us in writing within thirty days all criminal actions filed against the licensee, any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization.

(2) We must receive a copy of the final written decision or settlement within thirty days after the case is resolved.

NEW SECTION

WAC 230-06-090 Report administrative and civil actions filed. (1) All licensees must report to us in writing within thirty days all administrative actions filed against them by other gambling regulatory agencies, including those from other countries and Indian tribes.

(2) Licensed organizations must report to us in writing within thirty days all civil and administrative actions that are filed by or against any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization. Actions include, but are not limited to:

(a) Divorces; and

(b) Bankruptcy; and

(c) Tax liens; and

(d) Business dissolutions.

(3) The report must consist of a complete copy of the original documents filed. Licensees must notify the commission of the final disposition of the case and include a copy of the final documents filed including, but not limited to, settlement agreements.

(4) For cases involving patent infringement on gambling equipment, licensees must send only the final written decision or settlement.

(5) We must receive a copy of the final written decision or settlement within thirty days after the case is resolved.

CHANGING NAMES OR LOCATIONS

NEW SECTION

WAC 230-06-095 Change given name, trade name, or corporate name. Licensees must notify us and pay a fee for any change to the given name, trade name, or corporate name on their license at least thirty days before the actual change date.

NEW SECTION

WAC 230-06-100 Changing business locations. (1) Licensees must apply to us and pay a fee to change the location of their licensed business premises. Licensees must receive our approval before changing the business location.

(2) Commercial amusement game licensees may add or delete from the list of locations for which we issued their license without paying a fee.

CHANGING MANAGEMENT OR OWNERSHIP

NEW SECTION

WAC 230-06-105 Report change of management. (1) Licensees must report in writing changes made to their organization's management, directors, officers, or any other position that makes management decisions directly affecting the operation of their licensed gambling activity. We provide the forms to report these changes.

(2) If you are a commercial business licensee, you must report within thirty days.

(3) If you are a charitable or nonprofit organization licensee, you must report the changes when renewing your annual license.

SALES AND TRANSFERS OF EQUIPMENT, PRODUCTS, AND SERVICES

NEW SECTION

WAC 230-06-110 Buy, sell, or transfer gambling equipment. (1) Before selling gambling equipment, licensees must ensure that the buyer possesses a valid gambling license.

(2) Before purchasing gambling equipment, licensees must ensure that the seller possesses a valid gambling license.

(3) Applicants for Class F or house-banked card room licenses may purchase and possess gambling equipment during the precicensing process, but only after receiving written approval from us.

(4) Licensees may transfer gambling equipment as a part of a sale of a business as long as a condition of the sale is that the buyer receives a gambling license before the sale is complete. Licensees must make a complete record of all gambling equipment transferred in this manner, including commission identification and inspection services stamp numbers. Licensees must report these transfers, including a copy of the inventory record, to us.

NEW SECTION

WAC 230-06-115 Using checks or credit cards to purchase gambling equipment, products, or services. (1) Licensees may use checks or credit cards from state or federally regulated financial institutions to purchase gambling equipment, devices, related supplies or paraphernalia, and services.

(a) Checks must be drawn on the licensed buyer's business account or on the personal account of an owner, partner, officer, or a substantial interest holder of a corporate licensee; and

(b) Checks must be negotiable and dated on or before the delivery date of the product or service.

(2) Licensees must deposit checks at their bank:

(a) Within ten calendar days after the date the licensee delivered the product or service; or

(b) If a licensed buyer makes payment by mail, within thirteen days from the date postmarked on the envelope containing the payment.

NEW SECTION

WAC 230-06-120 Sell or transfer gambling equipment to manufacturers or distributors. (1) If we have revoked your operator or distributor license, your license has expired, or you have voluntarily surrendered your license, you may sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor.

(2) Transfers of gambling equipment in this manner are subject to the following requirements:

(a) The transfer must be complete within thirty days of the date the license became invalid; and

(b) Distributors must use the cash or credit against amounts they owe manufacturers; and

(c) Operators or distributors selling the equipment must report to us within ten days of the transaction a complete inventory of all the gambling equipment transferred, including commission identification and inspection services stamp numbers; and

(d) Manufacturers or distributors receiving the equipment must prepare a credit memorandum and retain it with their records.

LICENSE RENEWALS

NEW SECTION

WAC 230-06-125 Renew your license in a timely manner. (1) Licensees must ensure a properly completed renewal application and all applicable fees are received at our headquarters fifteen days before the expiration date on their license.

(2) If licensees do not submit a properly completed application and all fees, their license expires, and they must immediately stop the gambling activity covered by their license.

(3) If your license expires, you must submit a new application and you must not operate any gambling activity until a new license is issued.

NEW SECTION

WAC 230-06-130 Exceeding license class. (1) Licensees must not exceed the gross gambling receipts limits for their license class during any annual license period.

(2) Licensees must apply a projection of year-to-date receipts to the remaining period of their license and, if it indicates that it is reasonably likely that they may exceed their license, they must immediately:

(a) Apply for a license that authorizes the anticipated level of gross gambling receipts; and

(b) Submit the fee required for the new license, minus the amount originally submitted for the previous license, plus a change of classification fee.

(3) If we issue a license upgrade, it is valid only for the remainder of the original term of the license.

(4) Licensees may exceed license class limits once, by the amount shown in the fees table, without having to upgrade or pay the penalties as long as they upgrade to the higher license class the next time they renew their license.

NEW SECTION

WAC 230-06-135 Failing to apply for license class upgrade. (1) If licensees fail to apply for a license class upgrade and exceed the license class limit within a present or previous license year, we assess an additional fee. We charge an additional fee of up to fifty percent of the difference between the fee for the present license class and the new license class, or one thousand dollars, whichever is less.

(2) Licensees must pay any required license class upgrade fee, plus any additional fee required by subsection (1) of this section, within thirty days of our notification.

(3) Failure to pay the fees may result in an immediate summary suspension of all licenses.

NEW SECTION

WAC 230-06-140 Partial refund of license fees if gambling receipts limit not met. (1) Licensees may apply for a partial refund of their license fee when their annual gross gambling receipts are less than the minimum for the class of license we issued to them.

(2) Licensees may receive a refund for the difference between the fees actually paid and the fees that would normally apply to the level of gross gambling receipts actually received during the period.

(3) Licensees may make their request for refund after the end of any annual license period and before the end of the next annual license period.

NEW SECTION

WAC 230-06-145 Surrendering suspended or revoked licenses. If we suspend or revoke your license, you must, on demand, surrender the license and return it to us.

WSR 06-17-141
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 22, 2006, 11:49 a.m., effective September 22, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Language in the 2006 supplemental budget regarding incentive grants to encourage school districts to increase enrollment in vocational skills centers made this necessary. The language allows that funds may be distributed for: (i) Increasing enrollment including allowing up to an additional .2 full time equivalent student enrollment at skills centers; (ii) increasing enrollment and capacity of summer vocational programs at the skills centers.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-465.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 06-13-061 on June 16, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 22, 2006.

Marty Daybell
Deputy Superintendent

AMENDATORY SECTION (Amending WSR 05-19-138, filed 9/21/05, effective 10/22/05)

WAC 392-121-465 Formula for and distribution of state moneys for the state incentive grants for increased enrollment in vocational skills centers program. The purpose of this section is to establish policies and procedures for the calculation and distribution of state incentive moneys to school districts increasing their enrollments in vocational skills centers.

(1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term is defined in WAC 392-121-133(1).

(2) Enrollment used in this calculation shall be the AAFTE reported in the form and by the deadline required by the superintendent of public instruction.

(3) A district's state incentive grants for increased enrollment in vocational skills centers shall be calculated as follows:

(a) Determine the increase in the vocational skill center AAFTE of the resident district from the base year of 2004-05 to the current year;

(b) Multiply the number of students obtained in (a) of this subsection by the per pupil allocation established and subject to the limitations in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(c) The product is the district's annual incentive payment.

(4) As provided in the State Operating Appropriations Act in effect at the time apportionment is due, money appropriated but not spent in subsection (3) of this section shall be distributed to skills centers for increased capacity of summer vocational programs. The allocation methodology shall be based upon the skills center full-time equivalent reported enrollment from the prior October 1.

(5) The superintendent of public instruction shall apportion to districts for the state incentive grants for increased enrollment in vocational skills centers the amount calculated

per district in this section in June of each year commencing June 2006.

WSR 06-17-142
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 22, 2006, 11:50 a.m., effective September 22, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rules are updated to: (1) Reflect changes in the state and federal revenues in the levy base, and (2) make permanent the rule adopted last year on an emergency basis that allows OSPI to include in the school district's levy base federal revenues that have been paid directly to the ESD on behalf of the district.

Citation of Existing Rules Affected by this Order: Amending WAC 392-139-310.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 06-13-060 on June 16, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 22, 2006.

Marty Daybell
Deputy Superintendent

AMENDATORY SECTION (Amending WSR 03-21-040, filed 10/8/03, effective 11/8/03)

WAC 392-139-310 Determination of excess levy base.

The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

(a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;

(b) The state and federal categorical allocations for the following:

(i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:

4199 Transportation - operations; and

4499 Transportation - depreciation.

(ii) Special education. Allocations for special education include allocations for the following accounts:

4121 Special education; and

6124 Special education supplemental.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

3100 Barrier reduction;

4155 Learning assistance;

4165 Transitional bilingual;

4163 Promoting academic success;

4166 Student achievement;

6151 Disadvantaged;

6153 Migrant;

6164 Limited English proficiency;

6264 Bilingual (direct);

6267 Indian education - JOM;

6268 Indian education - ED; and

6367 Indian education - JOM.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

4198 School food services (state);

6198 School food services (federal); and

6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

~~((4175 Flexible education; and))~~

6176 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

5200 General purpose direct federal grants - unassigned;

6100 Special purpose - OSPI - unassigned;

6121 Special education - Medicaid reimbursement;

6138 Secondary vocational education;

6146 Skills center;

6152 School improvement;

6154 Reading first;

~~((6177 Eisenhower professional development;))~~

6200 Direct special purpose grants; and

6300 Federal grants through other agencies - unassigned;

~~((and))~~

6310 Medicaid administrative match; and

6352 School improvement.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington(~~(, revised 2002)~~).

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

3100 Barrier reduction:

4121 Special education;

4155 Learning assistance;

4163 Promoting academic success:

4165 Transitional bilingual;

4166 Student achievement;

4174 Highly capable;

~~((4175 Flexible education (2002-03 school year and thereafter));))~~

4198 School food services (state);

4199 Transportation - operations;

4499 Transportation - depreciation;

6121 Special education - Medicaid reimbursements;

6124 Special education - supplemental;

6138 Secondary vocational education;

6146 Skills center;

6151 Disadvantaged;

6152 School improvement;

6153 Migrant;

6154 Reading first;

6164 Limited English proficiency;

6176 Targeted assistance;

~~((6177 Eisenhower professional development;))~~ and

6198 School food services (federal).

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

5200 General purpose direct federal grants - unassigned;

6100 Special purpose - OSPI - unassigned;

6200 Direct special purpose grants;

6264 Bilingual (direct);

6267 Indian education - JOM;

6268 Indian education - ED;

6300 Federal grants through other agencies - unassigned;

6310 Medicaid administrative match;

6352 School improvement:

6367 Indian education - JOM; and

6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public

instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

WSR 06-17-145

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed August 22, 2006, 1:26 p.m., effective September 22, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required to make additions to the rules to comply with ESSB 5204, 59th legislative regular session, expanding the requirements to transfer title.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-310 and 308-93-445.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 06-12-051 on June 2, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 22, 2006.

Elizabeth A. Luce
Director

AMENDATORY SECTION (Amending WSR 01-21-071, filed 10/18/01, effective 11/18/01)

WAC 308-56A-310 Personal property lien—Chattel(~~-landlord~~). (1) **What is a chattel lien?** For the purposes of this section a (~~(")~~)chattel lien(~~(" means: A lien obtained by any person, firm or company who provides services or materials for a vehicle at the owner's request, in the event of nonpayment by the owner. A person or firm that provides services or material for a vehicle at the owner's request may obtain a lien on such vehicle. In the event of nonpayment the lien may be foreclosed as provided by law)~~) is a process by which a person may sell or take ownership of a vehicle when:

(a) They provide services or materials for a vehicle at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(2) ~~What documents ((does the department require to issue)) are required to obtain a certificate of ownership for a vehicle ((obtained through the chattel lien process))?~~ ((In addition to other documents required by law or rule the department requires:)) The required documents include:

(a) A completed affidavit of sale chattel((/landlord)) lien form provided or approved by the department; ((/)) and

(b) A certified copy of ((a court order awarding the vehicle to the claimant)) the lien filing that is filed with the county auditor; and

(c) A copy of the letter(s) sent by the lien applicant via first class mail to the registered and legal owners of record; and

(d) A copy of the certified or registered mail, including the return receipt, to the address of the current registered and legal owners of the lien filing; and

(e) Affidavit of service by mail; and

(f) Application for certificate of ownership; and

(g) Other documents that may be required by law or rule.

(3) ~~When is a court order required ((by the department)) to issue a certificate of ownership as a result of a chattel lien?~~ A Washington court order is required when:

(a) The vehicle is no longer in the possession of the person((/business who is)) claiming the chattel((/landlord)) lien; or

(b) Someone other than the owner of record requested the services; or

(c) There is ((an existing lien holder on record)) no record of the vehicle on file with the department; or

((i) In order to remove an existing lien holder from record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(A) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(B) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.

(d) There is more than one lien claimed against the vehicle.

(i) In order to remove an existing lien holder from record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(A) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(B) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.

(4) ~~What ((is a landlord)) laws regulate chattel liens?~~ ((For the purposes of vehicle licensing and titling, a landlord lien is an encumbrance on a vehicle as security for the payment of moneys owing for rent.

(5) ~~What documents does the department require to issue a certificate of ownership for a vehicle, obtained through the landlord lien process?~~ In addition to other documents required by law or rule the department requires:

(a) A completed affidavit of sale chattel/landlord lien form provided or approved by the department; or

(b) A copy of a court order awarding the vehicle to the claimant.

(6) ~~When does the department require a court order to issue a certificate of ownership as a result of a landlord lien?~~ A court order is required when:

(a) The vehicle is no longer in the possession of the person/business who is claiming the landlord lien; or

(b) The vehicle owner of record is someone other than the person owing for rent; or

(c) There is an existing lien holder on record.

(i) In order to remove an existing lien holder from record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(A) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(B) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.

(d) There is more than one lien against the vehicle.

(i) In order to remove any existing lien holders from the record, the court order must specifically authorize the removal of any lien. If it does not, the claimant may:

(A) Negotiate with the lien holders to obtain either a release of interest or a new security agreement; or

(B) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.

(7) ~~Why is a court order required for a landlord lien if there is a lien holder on the existing record?~~ In order to record a secured interest on a Washington certificate of ownership, there must be a security agreement between the registered owner and the legal owner except for government liens as provided in law.)) Chapter 60.08 RCW regulates chattel liens.

NEW SECTION

WAC 308-56A-311 Personal property lien—Landlord's lien for rent. (1) **What is a landlord's lien for rent?** For the purposes of this chapter, a landlord's lien for rent is a process by which a landlord may sell or take ownership of a tenant's vehicle as security for rent due.

(2) **What documents are required to issue a certificate of ownership for a vehicle obtained through the landlord's lien for rent process?** The required documents include:

(a) A completed affidavit of landlord lien form provided or approved by the department;

(b) Application for certificate of ownership; and

(c) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a landlord's lien for rent?** A Washington court order is required when there is no record of the vehicle on file with the department.

(4) **What laws regulate landlords' lien for rent?** Chapters 59.18, 60.10, and 60.72 RCW regulate landlord liens for rent.

NEW SECTION

WAC 308-56A-312 Personal property lien—Self-service storage facilities. (1) **What is a self-service storage facilities lien?** For the purposes of this chapter, a self-stor-

age facilities lien is a process by which the owner of a self-storage facility may sell a vehicle stored at the facility as security for rent or other charges due.

(2) **What documents are required to obtain a certificate of ownership for a vehicle obtained through the self-service storage facilities lien process?** The required documents include:

(a) A completed affidavit of self-storage facilities lien sale form provided or approved by the department;

(b) Application for certificate of ownership; and

(c) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a self-service storage facilities lien?**

(a) The vehicle is no longer in the possession of the person who is claiming the self-service storage facilities lien; or

(b) There is an existing lien holder on the vehicle record; or

(c) There is no record of the vehicle on file with the department.

(4) **What law regulates self-service storage facilities liens?** Chapter 19.150 RCW regulates self-storage facilities liens.

AMENDATORY SECTION (Amending WSR 01-21-071, filed 10/18/01, effective 11/18/01)

WAC 308-93-445 Personal property lien—Chattel((; landlord)). (1) **What is a chattel lien?** For the purposes of this ((section)) chapter, a ((^))chattel lien((^ means)) is a process by which a person may sell or take ownership of a vessel when: ((A lien obtained by any person, firm or company who provides services or materials for a vessel at the owner's request, in the event of nonpayment by the owner. A person or firm that provides services or material for a vessel at the owner's request may obtain a lien on such vessel. In the event of nonpayment the lien may be foreclosed as provided by law:))

(a) They provide services or materials for the vessel at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(2) **What ((documentation does the department require)) documents are required to issue a certificate of ownership for a vessel ((obtained through the chattel lien process))?** ((In addition to other documents required by law or rule, the department requires:)) The required documents include:

(a) A completed affidavit of sale chattel((/landlord)) lien form provided or approved by the department; ((&)) and

(b) A certified copy of ((a court order awarding the vessel to the claimant)) the lien filing that is filed with the county auditor; and

(c) A copy of the letter sent by the lien applicant via first class mail to the registered and legal owner; and

(d) A copy of the certified or registered mail, including the return receipt, to the address of the current registered and legal owner notifying the current registered and legal owner of the lien filing, and an affidavit of service by mail; and

(e) Application for certificate of ownership; and

(f) Other documents that may be required by law or rule.

(3) **When is a Washington court order required ((by the department)) to issue a certificate of ownership as a result of a chattel lien?** A court order is required when:

(a) The vessel is no longer in the possession of the person((/business who is)) claiming the chattel((/landlord)) lien; or

(b) Someone other than the owner of record requested the services; or

(c) There is ((an existing lien holder on record; or In order to remove an existing lien holder from the record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(i) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(ii) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved; or

(d) There is more than one lien claimed against the vessel.

In order to remove an existing lien holder from record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(i) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or

(ii) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved)) no record of the vessel on file with the department.

(4) **What ((is a landlord)) laws regulate chattel liens?** ((For the purposes of vessel licensing and titling, a landlord lien is an encumbrance on a vessel as security for the payment of moneys owed for rent.

(5) **Can a landlord lien be attached to a vessel adrift?** Vessels adrift as defined in RCW 88.26.020 do not qualify for landlord liens.

(6) **Can a landlord lien be attached to a vessel moored in a private marina?** No, lien foreclosures are defined in RCW 60.10.020 and 61.10.023.

(7) **What documents does the department require to issue a certificate of ownership for a vessel obtained through the landlord lien procedure?** In addition to other documents required by law or rule the department requires:

(a) A completed affidavit of sale chattel/landlord lien form provided or approved by the department; or

(b) A copy of a court order awarding the vessel to the claimant:

In order to remove an existing lien holder from the record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:

(i) Negotiate with a secured party to obtain either a release of interest or a new security agreement; or

(ii) Petition the original court that issued the order, or higher court, to have the matter of secured interest resolved.

(8) **When does the department require a court order to issue a certificate of ownership as a result of a landlord lien?** A court order is required when:

(a) The vessel is no longer in the possession of the person/business who is claiming the landlord lien; or

(b) The vessel owner of record is someone other than the person owing for rent; or

~~(c) There is an existing lien holder on record.~~

~~In order to remove an existing lien holder from the record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:~~

~~(i) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or~~

~~(ii) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.~~

~~(d) There is more than one lien against the vessel.~~

~~In order to remove an existing lien holder from the record, the court order must specifically authorize the removal of the lien. If it does not, the claimant may:~~

~~(i) Negotiate with the lien holder to obtain either a release of interest or a new security agreement; or~~

~~(ii) Petition either the court that issued the original order, or a higher court to have the matter of secured interest resolved.~~

~~(9) **Why is a court order required for a landlord lien if there is a lien holder on the existing record?** In order to record a security interest on a Washington certificate of ownership, there must be a security agreement between the registered owner and the legal owner except for government liens as provided in law. The security agreement on record was not established between the legal owner and the new applicant.)) Chapters 60.08 and 60.10 RCW regulate chattel liens.~~

NEW SECTION

WAC 308-93-446 Personal property lien—Landlord's lien for rent. (1) **What is a landlord's lien for rent?** For the purposes of this chapter, a landlord's lien for rent is a process by which a landlord may sell or take ownership of a tenant's vessel as security for rent due.

This chapter does not apply to vessels (including transient vessels) moored or stored at a private moorage facility (see chapter 88.26 RCW).

(2) **What documents are required to issue a certificate of ownership for a vessel obtained through the landlord's lien for rent process?** The required documents include:

(a) A completed affidavit of landlord lien form provided or approved by the department;

(b) Application for certificate of ownership; and

(c) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a landlord's lien for rent?** A Washington court order is required when there is no record of the vessel on file with the department.

(4) **What laws regulate landlord's liens for rent?** Chapters 58.18, 60.10, and 60.72 RCW regulate landlord's liens for rent.

NEW SECTION

WAC 308-93-447 Personal property lien—Self-service storage facilities. (1) **What is a self-service storage facilities lien?** A self-service storage facilities lien is a process by which the owner of a self-service storage facility may sell a vessel stored at the facility as security for rent or other charges due.

(2) **What documentation is required to obtain a certificate of ownership for a vessel obtained through the self-service storage facilities lien process?** The required documents include:

(a) A completed affidavit of self-service storage facilities lien form provided or approved by the department;

(b) Application for certificate of ownership; and

(c) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a self-service storage facilities lien?**

(a) The vessel is no longer in the possession of the person who is claiming the self-service storage facilities lien; or

(b) There is an existing lien holder on the vessel record; or

(c) There is no record of the vessel on file with the department.

(4) **What law regulates self-service storage facilities liens?** Chapter 19.150 RCW regulates self-service storage facilities liens.

WSR 06-17-182

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed August 23, 2006, 10:54 a.m., effective September 23, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: (1) Reflect changes in law made by SSB 5752 in 2005; (2) move human remains handling provisions in chapter 246-490 WAC, Vital statistics, to a new chapter 246-500 WAC, Handling of human remains; (3) adopt provisions to respect religious diversity; (4) establish provisions to implement the waiver clause in RCW 18.39.215 to allow funeral directors and embalmers to delay placing human remains under, or removing from, refrigeration; (5) allow local health officers to impose additional requirements or suspend requirements of this chapter in emergency situations; and (6) clarify the rule.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-490-001, 246-490-040, 246-490-050, and 246-490-060.

Statutory Authority for Adoption: RCW 43.20.050.

Other Authority: RCW 18.39.215.

Adopted under notice filed as WSR 06-12-113 on June 7, 2006.

Changes Other than Editing from Proposed to Adopted Version: (1) Definition of human remains clarified by stating that the term does not mean archaeological resources under chapter 27.53 RCW; (2) definition of refrigerate changed to provide that leak-resistant sealed ice packs are an acceptable means of cooling human remains outside of a funeral establishment; (3) clarification is added to WAC 246-500-030 stating that this rule does not restrict the authority of the coroner or medical examiner when human remains are under his or her jurisdiction under RCW 68.50.010.

A final cost-benefit analysis is available by contacting Ned Therien, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4103, fax (360) 236-4088, e-mail ned.therien@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 2.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 0, Repealed 1.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2006.

Craig McLaughlin
Executive Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-490-001	Legal authorities.
WAC 246-490-040	Handling and care of human remains.
WAC 246-490-050	Transportation of human remains.
WAC 246-490-060	Cremated remains.

Chapter 246-500 WAC

HANDLING OF HUMAN REMAINS

NEW SECTION

WAC 246-500-010 Definitions. (1) "Barrier precaution" means protective attire, equipment, or other physical barriers worn to protect or prevent exposure of skin and mucous membranes of the wearer to infected or potentially infected blood, tissue, and body fluids.

(2) "Burial transit permit" means a form, approved and supplied by the state registrar of vital statistics as described in chapter 70.58 RCW, identifying the name of the deceased, date and place of death, general information, disposition and registrar and sexton information.

(3) "Coroner" means the county official as described under chapter 36.24 RCW and RCW 36.16.030.

(4) "Department" means the Washington state department of health.

(5) "Embalmer" means a person defined and licensed under chapter 18.39 RCW.

(6) "Funeral establishment" means a place of business defined and licensed under chapter 18.39 RCW.

(7) "Funeral director" means a person defined and licensed under chapter 18.39 RCW.

(8) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care, including persons credentialed in Washington state under Title 18 RCW and military personnel providing health care within Washington state regardless of licensure.

(9) "Human remains" or "remains" means the body of a deceased person, in any stage of decomposition, and includes cremated human remains, but excludes archaeological resources under chapter 27.53 RCW.

(10) "Local health officer" means a licensed physician defined and appointed under RCW 70.05.050.

(11) "Local registrar of vital statistics" means the local health officer or administrator who registers certificates of birth and death occurring in his or her designated registration district under chapter 70.58 RCW.

(12) "Medical examiner" means a physician appointed by the county legislative authority to replace the coroner under RCW 36.24.190.

(13) "Refrigerate" means:

(a) Placing in a mechanically cooled unit maintained at a maximum temperature of 48°F in a licensed funeral establishment; or

(b) Placing in a mechanically cooled unit maintained at a maximum temperature of 48°F or packing with dry ice or leak-resistant sealed ice packs outside of a funeral establishment.

NEW SECTION

WAC 246-500-020 Contact with human remains. (1) Funeral directors, embalmers, medical examiners, coroners, health care providers, and others directly handling or touching human remains must:

(a) Wash hands and other exposed skin surfaces with soap and water or equivalent immediately and thoroughly after contact with human remains, blood, or body fluids;

(b) Use barrier precautions if a procedure involves potential contact with blood, body fluids, or internal tissues of the deceased;

(c) Not eat, drink, or smoke in areas where handling of human remains or body fluids takes place;

(d) Use reasonable precautions to prevent spillage of body fluids during transfer and transport of human remains including, when necessary:

(i) Containing, wrapping, or pouching with materials appropriate to the condition of the human remains; and

(ii) Obtaining approval from the coroner or medical examiner prior to pouching any human remains under their jurisdiction;

(e) Wash hands immediately after gloves are removed;

(f) Take precautions to prevent injuries by needles, scalpels, instruments, and equipment during use, cleaning, and disposal;

(g) Properly disinfect or discard protective garments and gloves immediately after use;

(h) Properly disinfect all surfaces, instruments, and equipment after contact with human remains, blood, or body fluids;

(i) Provide appropriate means for disposing of body fluids, blood, tissues, and wastes or for retaining them for final disposition with the body.

(i) All autopsy rooms, morgues, preparation rooms, and other places where human remains are handled must be equipped with impervious containers with disposable, impervious liners and tightly fitting closures.

(ii) Body fluids, blood, tissues, and wastes removed from human remains must be kept with the body or disposed in accordance with local ordinances and other applicable laws and rules for infectious waste.

(iii) A sewage system approved by the local health officer or the department may be used for the disposal of blood and other body fluids.

(iv) All containers and liners used to receive solid or fluid materials removed from human remains must be cleaned and disinfected immediately after use, interred with the body, or disposed in accordance with local ordinances and other applicable laws and rules for infectious waste.

(2) Persons responsible for transfer or transport of human remains must clean and disinfect equipment and the vehicle if soiled with body fluids or any other portion of human remains.

NEW SECTION

WAC 246-500-030 Refrigeration or embalming of human remains. (1) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition must refrigerate or embalm the remains upon receipt.

(2) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition may delay refrigeration upon receipt or remove human remains from refrigeration for the following activities:

(a) Embalming;

(b) Transporting;

(c) Cremating or burying;

(d) Viewing for identification for a period of time not to exceed one hour by a person able to identify the deceased;

(e) Washing, anointing, clothing, praying over, reading to, singing to, sitting with, guarding, viewing, or otherwise accompanying the deceased for a period of time not to exceed twenty-four hours by persons acting according to the directions of the deceased or the person having the right to control the disposition of the remains under RCW 68.50.160, provided that anyone directly touching the remains uses barrier precautions according to requirements under WAC 246-500-020 (1)(b); or

(f) As otherwise approved by the local health officer after evaluating specific circumstances, the need to protect public health, and recognition of religious beliefs.

(3) A funeral director, embalmer, or other person assisting in the preparation of human remains for final disposition must prohibit activities otherwise allowed under subsection (2)(e) of this section if informed by a local health officer or medical examiner that such activities would pose a direct threat to human health.

(4) Nothing in this section restricts the authority of a coroner or medical examiner when human remains are under his or her jurisdiction in accordance with RCW 68.50.010.

NEW SECTION

WAC 246-500-040 Transportation of human remains. (1) Persons who transport human remains must:

(a) Use effective hygienic measures consistent with handling potentially infectious material; and

(b) Obtain a burial-transit permit from the local health officer or local registrar of vital statistics or file a notice of removal according to requirements of RCW 70.58.230 prior to transporting human remains from one registration district to another.

(2) Prior to transporting human remains by common carrier, the persons responsible for preparing and handling the remains must:

(a) Enclose the human remains in a leak-resistant container placed inside another leak-resistant, securely constructed shipping container to prevent the release of all body fluids;

(b) Obtain and enclose the burial-transit permit in a sturdy envelope; and

(c) Attach the burial-transit permit to the shipping container.

(3) Persons responsible for human remains routed to the point of final destination on a burial-transit permit:

(a) May temporarily hold the remains at a stopover point within the state of Washington for funeral or other purposes without an additional permit; and

(b) Must surrender the burial-transit permit to the sexton or crematory official at the point of interment or cremation.

(4) Sextons and cremation officials shall accept the burial-transit permit as authority for interment in a cemetery or for cremation within the state of Washington.

NEW SECTION

WAC 246-500-050 Cremated human remains. (1) Other than the provisions in this section, this chapter does not apply to human remains after cremation.

(2) A local registrar, in cooperation with the Washington state cemetery board, may issue a permit for disposition of cremated human remains. The permit for the disposition of cremated remains may be used in connection with the transportation of cremated remains by common carrier or other means.

(3) The local registrar or the department of health may issue a permit for the disposition of cremated human remains which have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more. This permit will specify that the disposition of cremated remains must be consistent with Washington state laws and rules.

NEW SECTION

WAC 246-500-060 Authority of the local health officer. To protect public health and respond to emergency situations, the local health officer may:

- (1) Impose additional requirements for the handling, care, transport, or disposition of human remains; or
- (2) Suspend any requirements of this chapter.

WSR 06-17-183
PERMANENT RULES
STATE BOARD OF HEALTH

[Filed August 23, 2006, 10:55 a.m., effective September 23, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the rule is to update the reference to the recommended childhood and adolescent immunization schedule from the 2005 version to the 2006 version effective July 1, 2007, and to remove the expired implementation effective date for varicella. This makes Washington state school and child care immunization age and interval requirements consistent with national standards.

Citation of Existing Rules Affected by this Order: Amending WAC 246-100-166.

Statutory Authority for Adoption: RCW 43.20.050.

Other Authority: RCW 28A.210.140.

Adopted under notice filed as WSR 06-12-115 on June 7, 2006.

A final cost-benefit analysis is available by contacting Vicki M. Bouvier, P.O. Box 47843, phone (360) 236-3583, fax (360) 236-3590, e-mail vicki.bouvier@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 23, 2006.

Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 05-16-051, filed 7/28/05, effective 8/28/05)

WAC 246-100-166 Immunization of child care and school children against certain vaccine-preventable diseases. (1) Purpose. Under the authority of RCW 43.20.050 and 28A.210.140, the state board of health is empowered to adopt rules to establish immunization requirements upon entry into school and child care. The following rule improves the public health of Washington by preventing vaccine-preventable disease outbreaks.

(2) Definitions. The words and phrases in this section have the following meanings:

- (a) Certificate of immunization status (CIS) means:
 - (i) A certificate of immunization status form approved by the department; or
 - (ii) A CHILD profile immunization record; or
 - (iii) Any other immunization form approved by the department.
- (b) "Chief administrator" means:
 - (i) The person with the authority and responsibility for supervising the immediate operation of a school or child care; or
 - (ii) A person designated in writing by the statutory or corporate board of directors of the school district or school; or
 - (iii) In the absence of the above, a person or persons with the authority and responsibility for supervising the general operation of the school district.
- (c) "Child" means any person regardless of age admitted to:
 - (i) Any public school district; or
 - (ii) Any private school or private institution subject to approval by the state board of education or described in RCW 28A.305.130 and 28A.195.010 through 28A.195.060; or
 - (iii) Any child care center.
- (d) "Child care center" means any licensed facility or center that regularly provides care of children for periods of less than twenty-four hours per day subject to licensure by the department of social and health services as described in chapter 74.15 RCW.
- (e) "Conditional status" is a type of immunization status where a child is not fully immunized under (g) of this subsection and is in the process of completing the required immunizations for his/her age.
- (f) "Exemption" is a type of immunization status where a child is not fully immunized under (g) of this subsection and meets school and child care documentation requirements under subsection (4)(b)(i) of this section.
- (g) "Full immunization" or "fully immunized" is an immunization status where a child has been vaccinated at ages and intervals consistent with the national immunization guidelines, with immunizing agents against:
 - (A) Diphtheria;
 - (B) Tetanus;
 - (C) Pertussis (whooping cough);
 - (D) Poliomyelitis;
 - (E) Measles (rubeola);
 - (F) Mumps;
 - (G) Rubella;
 - (H) Hepatitis B;
 - (I) Haemophilus influenzae type B disease; and
 - (J) Varicella for children under thirteen years of age (and admitted to school or child care after July 1, 2006).
- (h) "Immunizing agent" means any vaccine or other immunologic drug licensed and approved by the United States Food and Drug Administration (FDA), or meeting World Health Organization (WHO) requirements, for immunization of persons against vaccine-preventable diseases.
 - (i) "Local health officer" means the individual appointed under chapter 70.05 RCW as the health officer for the local health department, or appointed under chapter 70.08 RCW as

the director of public health of a combined city-county or combined county health district.

(j) Until July 1, 2007, "national immunization guidelines" means the schedule for the immunization described in the "Recommended Childhood and Adolescent Immunization Schedule: United States—2005" approved by the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

(k) Effective July 1, 2007, "national immunization guidelines" means the schedule for the immunization described in the "Recommended Childhood and Adolescent Immunization Schedule: United States—2006" approved by the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

(l) "Parent" means, for the purposes of signature requirements in this rule:

- (i) The mother, father, legal guardian, or any adult in loco parentis of a child seventeen years of age or younger; or
- (ii) A person eighteen years of age or older; or
- (iii) An emancipated minor.

((4)) (m) "School" means a facility, site, or campus for programs of education as defined in RCW 28A.210.070 to include preschool and kindergarten through grade twelve.

(3) Documentation of immunization status required by schools and child care center.

(a) Schools and child care centers shall require documented proof of immunization status in the form of a CIS.

(b) The CIS form must include:

- (i) Name of child or student;
- (ii) Birth date;
- (iii) Type of vaccine(s) administered;
- (iv) Month, day, and year of each dose of vaccine received;
- (v) Documentation of immunization status to indicate:
 - (A) Full immunization under subsection (2)(g) of this section; or
 - (B) Conditional status under subsection (2)(e) of this section; or
 - (C) Exemption under subsection (2)(f) of this section;
- (vi) Notice to parents that if an outbreak of vaccine-preventable disease for which the child is exempted occurs, the child may be excluded from school or child care for the duration of the outbreak;

(vii) Parent signature.

(c) As proof of a child's immunization status against varicella, schools and child care centers may accept one of the following:

- (i) Documentation on the CIS form that the child received age appropriate varicella vaccine; or
- (ii) Documentation by the parent that a child has a history of varicella; or
- (iii) Serologic proof of immunity against varicella.

(4) Duty of schools and child care centers.

(a) Schools and child care centers shall require a CIS form, signed by parents, for new enrollees registering for admission into kindergarten through grade twelve or child care as a requirement of admission.

(b) Full immunization is required upon admission unless:

(i) Parent(s) sign and submit a CIS form indicating a medical exemption.

(A) A permanent medical exemption is allowed when a signature of a licensed medical doctor (M.D.), a doctor of osteopathy (D.O.), doctor of naturopathy (N.D.), physician assistant (P.A.), or nurse practitioner (A.R.N.P.), acting within the scope of practice, certifies medical reasons to defer or forego one or more immunizations required for full immunization under subsection (2)(g) of this section.

(B) If immunizations are deferred on a temporary basis, the student must receive the required immunizations upon expiration of the exemption.

(ii) Parent(s) sign and submit a CIS form indicating a religious or philosophical, or personal exemption.

(iii) Parent(s) sign and submit a CIS form indicating conditional status if there is evidence of satisfactory progress toward full immunization, including:

(A) Documentation of start or continuance towards full immunization status;

(B) Documentation that immunizations received are consistent with the National Immunization Guidelines defined in subsection (2)(j) of this section; and

(C) Documentation of when the next immunization is due.

(c) Schools and child care centers maintenance of child immunization records:

(i) Schools and child care centers shall keep a department approved CIS for each enrolled child.

(ii) Schools and child care centers shall keep a list of children with medical, religious, philosophical, or personal exemptions.

(iii) The chief administrator shall retain records for at least three years on a child who is excluded from school under this section. The record must include the child's name, address, and date of exclusion.

(d) Schools and child care centers shall transmit the list of children with medical, religious, philosophical, or personal exemptions to the local health department upon request.

(e) A school or child care center shall return the department approved CIS or a legible copy to the parent if the child is withdrawn from school or child care or transferred from the school.

(f) A school or child care center may not withhold a child's department approved CIS for any reasons, including nonpayment of school child care fees.

(g) A school or child care center shall provide access to immunization records to agents of the state or local health department of each child enrolled.

(h) The chief administrator of a school or child care center shall submit a school immunization status report under chapter 28A.210 RCW either electronically on the internet or on the school immunization status report provided by the department. The report must be:

(i) Submitted to the department by November 1 of each year;

(ii) If a school opens after October 1, the report is due thirty days from the first day of school.

(5) Persons or organizations administering immunizations, either public or private shall:

(a) Furnish each person immunized, or his or her parent, with a written record of immunization containing information required by the state board of health; and

(b) Provide immunizations and records in accordance with chapter 246-100 WAC.

(6) A school or child care center shall exclude a child if one or more of the following applies:

(a) Parent(s) fail to provide a completed CIS form on or before the child's first day of attendance. Schools must use procedures consistent with Title 180 WAC.

(b) A child admitted under conditional status has not received the required immunization(s) within one month from the date due for completion of the next dose.

(c) A child has been admitted under a medical exemption and the particular vaccine for which the exemption was granted is no longer contraindicated and the child has not received the immunization within one month from the due date for completion of the next dose.

(7) A local health officer may exclude a child from school or child care under chapter 246-110 WAC during an outbreak of a vaccine-preventable disease if the child has not been fully immunized against that disease due to:

- (a) Medical exemption;
 - (b) Conditional status;
 - (c) Religious exemption;
 - (d) Philosophical exemption; or
 - (e) Personal exemption.
- (8) Implementation.

(a) The department shall develop and distribute implementation guidelines for schools and child care centers that:

(i) Interpret immunization requirements by grade level consistent with the ages specified in the national immunization guidelines and this section; and

(ii) Reflect national immunization guidelines for children who did not receive required immunizations prior to entry into kindergarten or first grade, and for whom a full series of immunizations is not recommended.

(b) The department may develop school implementation guidelines that waive or modify immunization requirements when a phasing-in period is warranted for a new immunization mandate, when there is limited availability of a required immunizing agent, or when new information about the safety or efficacy of an immunizing agent prompts a reevaluation of an existing vaccination requirement. Any waiver or modification must:

(i) Reflect the best available medical research as indicated by the ACIP or the state health officer recommendation;

(ii) Identify a specific vaccine-preventable disease or immunizing agent;

(iii) Identify a specific cohort of children by age or grade level;

(iv) Be limited in duration; and

(v) Be approved by the board.

WSR 06-17-186

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed August 23, 2006, 11:17 a.m., effective September 23, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 458-40-610 provides definitions for how a harvester must calculate the volume and stumpage value of harvested timber. The definition of "harvesting and marketing costs" has been revised to clarify that costs not directly and exclusively associated with harvesting merchantable timber, such as attorney fees or evaluation fees associated with maintaining an option of land conversion, are not harvesting and marketing costs.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-610 Timber excise tax—Definitions.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Adopted under notice filed as WSR 06-11-182 on May 24, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 23, 2006.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 06-02-007, filed 12/22/05, effective 1/22/06)

WAC 458-40-610 Timber excise tax—Definitions. (1) **Introduction.** The purpose of WAC 458-40-610 through 458-40-690 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through 458-40-690. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictionary of Forestry*, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection (13) of this section.

(8) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, hauling distance zone, harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

(9) **Harvester.** Every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another governmental entity as described above, acquiring title to or a possessory interest in such timber.

(10) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting ~~((the))~~ merchantable timber from the land and delivering it to the buyer. The term includes the costs of ~~((slash disposal))~~ piling logging residue on site, and costs to abate extreme fire hazard when required ~~((to abate extreme fire hazard))~~ by the department of natural resources. Harvesting and marketing costs do not include the costs of other consideration (for example, reforestation, permanent road construction), treatment to timber or land that is not a necessary part of a commercial har-

vest (for example, precommercial thinning, brush clearing, land grading, stump removal), costs associated with maintaining the option of land conversion (for example, county fees, attorney fees, specialized site assessment or evaluation fees), or any other costs not directly and exclusively associated with the harvesting and marketing of ~~((the))~~ merchantable timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, or when harvesting and marketing costs can not be separated from other costs, the deduction for harvesting and marketing costs is thirty-five percent of the gross receipts from the sale of the logs.

(11) **Hauling distance zone.** An area with specified boundaries as shown on the statewide stumpage value area and hauling distance zone maps contained in WAC 458-40-640, having similar accessibility to timber markets.

(12) **Legal description.** A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

(13) **Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than fifty percent of the gross scale; and meeting the following minimum requirements:

- (a) Minimum gross diameter—two inches.
- (b) Minimum gross length—twelve feet.
- (c) Minimum volume—ten board feet net scale.
- (d) Minimum recovery requirements—one hundred percent of adjusted gross scale in firm useable chips.

(14) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

(15) **MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

(16) **Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

(17) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. Some examples of permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruction of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

(18) **Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

(19) **Private timber.** All timber harvested from privately owned lands.

(20) **Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

(21) **Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

(22) **Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

(23) **Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding two million board feet in a calendar year.

(24) **Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs harvested in stumpage value areas 6 or 7 generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed twenty feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value areas 6 and 7, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ten board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Timber Piles (Designation: D 25)* of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions (ANSI 05.1)* of the American National Standards Institute.

(25) **Stumpage.** Timber, having commercial value, as it exists before logging.

(26) **Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

(27) **Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

(28) **Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within twenty-four months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than twenty-four months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber. For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate

deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

(29) **Thinning.** Timber removed from a harvest unit located in stumpage value area 1, 2, 3, 4, 5, or 10:

(a) When the total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest; and

(b) The harvester leaves a minimum of one hundred undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

WSR 06-17-187

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed August 23, 2006, 11:19 a.m., effective September 23, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 82.19 RCW imposes a litter tax on manufacturers, wholesalers, and retailers of certain products. WAC 458-20-243 (Rule 243) provides detailed information about litter tax, including the measure of the tax, the products to which the tax applies, and specific exemptions from the tax. Rule 243 has been revised to recognize statutory changes. These changes include requiring taxpayers to report litter tax on each excise tax return filed, instead of only the last tax return of the year. The rule now recognizes exemptions for food and beverages sold for consumption indoors on the seller's premises and certain sales made by caterers. Definitions for some items, such as soft drinks, have been updated to reflect Washington's adoption of streamlined sales and use tax agreement definitions.

The revised Rule 243 also reflects a change to the tax reporting instructions for publishers of newspapers and magazines. This rule provides that the measure of the litter tax for these publishers is the gross proceeds from the sale of newspapers and magazines, which does not include advertising income. The rule previously provided that the measure of the litter tax was the same as specified for B&O tax purposes, which is the gross income from the publishing business including advertising income.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-243 Litter tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapter 82.19 RCW.

Adopted under notice filed as WSR 06-12-015 on May 26, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 23, 2006.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending Order ET 83-1, filed 3/30/83)

WAC 458-20-243 Litter tax. ((RCW 70.93.120 levies an annual litter assessment upon)) (1) **Introduction.** Chapter 82.19 RCW imposes a litter tax on manufacturers, wholesalers, and retailers of certain products. ((The rate of this special tax is .00015 (.015%) and it applies to sales within this state made on and after May 21, 1971.)) Litter tax is imposed independently of the business and occupation (B&O) tax and retail sales and use taxes. RCW 82.19.010. This section provides detailed information about litter tax, including the measure of the tax, the products to which the tax applies, and specific exemptions from the tax.

((The tax is to be computed on and paid with the last return for the calendar year. A designated space on this return is to be used for reporting the litter tax.

The measure of the tax is the gross proceeds of the sales of the business and will apply to places of business on sales of products falling into the thirteen categories listed in RCW 70.93.130 which are defined as follows:

(1)) (2) **Tax measure.** For manufacturers, the measure of the tax is the value of products listed in subsection (4) of this section, including by-products manufactured in this state. For wholesalers and retailers, the measure of the tax is the gross proceeds of sales within this state of the products listed in subsection (4) of this section. In the case of publishers of newspapers and magazines, the measure of the tax is the gross proceeds of sales, and does not include advertising income.

Litter tax is imposed on subsequent sales of the same goods from the manufacturer to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consumer, if the goods are listed in subsection (4) of this section, and the sales are not specifically exempt by law.

(a) **Value of products and gross proceeds of sales.** For purposes of the litter tax, "value of products" and "gross proceeds of sales" have the same meanings as defined in RCW 82.04.450 and 82.04.070, respectively. See also WAC 458-20-112 for more information regarding "value of products."

(b) Grocery stores and drugstores. Where it is impractical to separate products that are and are not subject to litter tax, an alternative method is allowed. Persons operating drugstores may report and pay litter tax measured by fifty percent of total sales in lieu of separately accounting for sales of nondrug drugstore sundry products. (See subsection (4)(n) of this section for information about what constitutes nondrug drugstore sundry products.) Persons operating grocery stores may report and pay the litter tax measured by ninety-five percent of total sales in lieu of separately accounting for grocery and nongrocery products sold. (See subsection (4)(b) of this section for information about what constitutes grocery products.)

(3) When do I report and pay litter tax? The frequency of reporting and paying litter tax coincides with the reporting periods of taxpayers for their B&O tax. For example, a wholesaler who reports B&O tax monthly would also report any litter tax liability on the monthly return. For more information on tax reporting frequency, see WAC 458-20-22801 Tax reporting frequency—Forms.

(4) What products are subject to litter tax? Litter tax applies to the manufacture or sale of products in the product categories in this subsection, unless a specific exemption applies. Litter tax applies whether these products are sold packaged, unpackaged, or in recyclable containers. See subsection (5) of this section for the litter tax exemptions available for the manufacture or sale of products in these categories.

(a) Food for human or pet consumption ((means)). Food for human or pet consumption is any substance, except drugs, where the chief general use ((of which)) is for human or pet nourishment, ((including)) regardless of whether the substance is sold in a consumable form. Food for human or pet consumption includes candy, chewing gum, ((and)) condiments, packaged or unpackaged meat, bulk foods, shellfish, and ingredients used in processing food for human or pet consumption such as industrial chocolate, grain, barley, or hops. ((#)) This category includes sales of meals, snacks, lunches, or other food ((by)) and beverages at restaurants, drive-ins, snack bars, ((concessions, and taverns. Drugs means substances or products appearing in the latest listing of United States pharmacopoeia or national formulary the chief general use of which is as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like)) taverns, or by concessionaires.

((2)) (b) Groceries ((means)). Groceries are all products((-, except drugs,)) sold by persons in a place of business selling food for off-premises consumption, but excluding drugs, building materials, clothing, furniture, and appliances.

((3)) (c) Cigarettes and tobacco products. Cigarettes and tobacco products include all of the products subject to the excise taxes ((of)) imposed by chapters 82.24 and 82.26 RCW.

((4)) (d) Soft drinks and carbonated waters ((means all beverages, excluding liquor as defined by Title 66 RCW or rules and regulations of the Washington state liquor control board, but including fruit juices, milk, and all mixtures or dilutions of nonalcoholic beverages)). Soft drinks are nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or

milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume. Carbonated waters are nonalcoholic beverages, containing carbon dioxide, that do not contain natural or artificial sweeteners.

((5)) (e) Beer and other malt beverages ((means)). Beer and other malt beverages are all beverages defined as beer or malt liquor by Title 66 RCW or rules ((and regulations)) of the Washington state liquor control board.

((6)) (f) Wine ((means)). Wine includes all alcoholic beverages defined as wine in Title 66 RCW or rules ((and regulations)) of the Washington state liquor control board.

((7)) (g) Newspapers and magazines ((means)). Newspapers and magazines are all daily and periodical publications, including real estate guides, vehicle trader publications, free community newspapers, and the like.

((8)) (h) Household paper and paper products ((means)). Household paper and paper products are materials or substances made into sheets or leaves from natural organic or synthetic fibrous material for home or other personal use. ((#)) Household paper and paper products include((s-also)) products or articles made from such sheets or leaves for home or other personal use, such as toilet tissue, paper cups, plates, napkins, cards, wrapping paper, stationery, personal banking checks or deposit slips, computer printer or copier paper, and the like.

((9)) (i) Glass containers ((means)). Glass containers are articles made wholly or in substantial part of processed silicates ((which)) that can be, or are, used to hold other things within themselves. Glass containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Glass containers do not include containers that are produced to be sold at retail as empty reusable containers, such as drinking glasses, vases, and the like.

((10)) (j) Metal containers ((means)). Metal containers are articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver and any alloys thereof and ((which)) that can be, or are, used to hold other things within themselves. Metal containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Metal containers do not include containers that are produced to be sold at retail as empty reusable containers, such as pots and pans, or metal containers made for transporting other products.

((11)) (k) Plastic or fiber containers made of synthetic material ((means articles which)). Plastic or fiber containers made of synthetic material will be referred to as plastic or fiber containers for purposes of this subsection (4)(k). Plastic or fiber containers are articles that can be, or are, used to hold other things within themselves and ((which)) that are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials. ((#)) Plastic or fiber containers

include((s)) containers made of paper, pasteboard, or cardboard in which the container materials consist((s)) of fibrous substances synthesized with other materials. Synthetic material ((means)) is material that is produced by synthesis, which is the process of making or building up by a composition or union of simpler parts or elements as distinguished from the process of extraction or refinement. Plastic or fiber containers include only those containers that are sold with, and that contain, another product or products otherwise subject to litter tax, or containers that are produced so that they can later contain and be sold with another product or products otherwise subject to litter tax. Plastic or fiber containers do not include containers that are produced to be sold at retail as empty reusable containers.

((12)) (l) **Cleaning agents** ((means)). Cleaning agents are all soaps, detergents, solvents, or other cleansing substances used for cleaning buildings, places, persons, animals, or other things. Cleaning agents include packaged products and products sold in bulk form, as well as products sold in recyclable containers.

(m) **Toiletries** ((means)). Toiletries are all substances such as soap, powder, shampoo, cologne, perfume, cosmetics, toothpaste, ((etc.)) and the like, used in connection with personal dressing or grooming.

((13)) (n) **Nondrug drugstore sundry products** ((means)). Nondrug drugstore sundry products are all products(, goods, or articles, except drugs,) sold by persons in ((a place of)) the business of selling drugs, ((but excluding)) except: Drugs, building materials, clothing, furniture, and appliances. For purposes of this section, "drug" has the same meaning as defined in RCW 82.08.0281.

((Place of business" for purposes of this rule means any location, department, or division even though it be a part of a larger business operation provided it is separate from such other or additional business physically, operationally, and in its books and records. Thus, a department store which consists of a grocery department and a clothing department, each with its own space and having separate employees, cash registers, and accounting records would not be subject to the groceries litter tax on the sales of its clothing department merely because it was located in the same building and under the same ownership as the grocery department.

"Gross proceeds of the sales of the business" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered without any deduction for costs or expenses. In the case of publishers of newspapers and magazines the measure of the litter tax is the same as specified in WAC 458-20-143 for business and occupation tax; i.e., gross income from the publishing business including advertising income.

The law intends that the tax be limited to sales within this state and therefore there may be deducted from the measure of the tax sales to persons in other states or transfers to points outside the state without sale. Out-of-state firms making sales in or into Washington will be subject to the litter tax under the principles set out for business and occupation tax in WAC 458-20-193B.

Persons operating drugstores may report and pay the litter tax measured by 50% of total sales in lieu of separately accounting for sales of drugstore sundry products. Persons

~~operating grocery stores may report and pay the litter tax measured by 95% of total sales in lieu of separately accounting for grocery and nongrocery products sold.)~~ (5) **Exemptions.** This subsection provides information about products listed under subsection (4) of this section that are exempt from litter tax as provided by RCW 82.19.050:

(a) **Products for use and consumption out-of-state.** The manufacture or sale of products for use and consumption outside the state;

(b) **Agricultural products exempt from B&O tax.** The value of products or gross proceeds of the sales by farmers exempt from tax under RCW 82.04.330;

(c) **Certain wholesale sales by qualified grocery distribution cooperatives.** The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298;

(d) **Food or beverages sold for indoor consumption.** The sale of food or beverages by retailers that are sold solely for immediate consumption indoors at the seller's place of business or at a deck or patio at the seller's place of business, or indoors at an eating area that is contiguous to the seller's place of business; or

(e) **Certain retail sales by caterers.** Effective July 24, 2005, the sale of prepared food or beverages by caterers where the food or beverages are to be served for immediate consumption in or on individual nonsingle use containers at premises occupied or controlled by the customer. For the purposes of this section, "prepared food" has the same meaning as provided in RCW 82.08.0293. "Nonsingle use container" and "caterer" have the meanings given in RCW 82.19.050.