

WSR 07-04-006
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed January 24, 2007, 3:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17 [06-17-163].

Title of Rule and Other Identifying Information: WAC 181-82A-202 Certificate endorsements.

Hearing Location(s): Semiahmoo, 9565 Semiahmoo Parkway, Blaine, WA 98230, on March 14, 2007, at 8:30 a.m.

Date of Intended Adoption: March 14, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 725-6238, by March 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by March 10, 2007, TTY (360) 644-3631 or (360) 725-6275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Change the name of the "earth science" endorsement to "earth and space science" endorsement.

Reasons Supporting Proposal: Better reflects the broad content of the revised endorsement competencies.

Statutory Authority for Adoption: RCW 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 42736, Olympia, WA 98504, (360) 725-6275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 42736, Olympia, WA 98504, phone (360) 725-6275, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

January 24, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-82A-202 Certificate endorsements.

Teacher certificates shall be endorsed as follows:

(1) **All levels:**

- (a) Bilingual education.
- (b) Designated arts: Dance.
- (c) Designated arts: Theatre arts.
- (d) Designated arts: Music: Choral, instrumental or general.
- (e) Designated arts, visual arts.

- (f) Designated world languages.
- (g) English as a second language.
- (h) Health/fitness.
- (i) Library media.
- (j) Reading.
- (k) Special education.

(2) **Early childhood:**

- (a) Early childhood education.
- (b) Early childhood special education.

(3) **Elementary education.**

(4) **Middle level:**

- (a) Middle level—Humanities.
- (b) Middle level—Math/science.

(5) **Secondary level:**

- (a) Designated science: Biology.
- (b) Designated science: Chemistry.
- (c) Designated science: Earth and space science.
- (d) Designated science: Physics.
- (e) Designated career and technical education: Agriculture education, business education, family and consumer sciences education, marketing education, and technology education.
- (f) English language arts.
- (g) History.
- (h) Mathematics.
- (i) Science.
- (j) Social studies.
- (k) Traffic safety.

WSR 07-04-037

WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed January 30, 2007, 9:13 a.m.]

WAC 230-02-412, proposed by the gambling commission in WSR 06-15-024 appearing in issue 06-15 of the State Register, which was distributed on August 2, 2006, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-04-038

WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed January 30, 2007, 9:14 a.m.]

WAC 230-12-050 and 230-30-070, proposed by the gambling commission in WSR 06-15-025 appearing in issue 06-15 of the State Register, which was distributed on August 2, 2006, is withdrawn by the code reviser's office under RCW

34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-04-054

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 06-14—Filed January 31, 2007, 4:13 p.m.]

Continuance of WSR 06-23-076.

Preproposal statement of inquiry was filed as WSR 06-20-126.

Title of Rule and Other Identifying Information: This proposal will consolidate air quality program fees into a new chapter, chapter 173-455 WAC, Air quality fee rule, as well as add two new fees. The two new fees will be for air pollution standards variance and portable/temporary source permits. Ecology is proposing to move fee sections, without change, from chapter 173-400 WAC, General regulations for air pollution sources; chapter 173-407 WAC, Carbon dioxide mitigation program for fossil-fueled thermal electric generating facilities; chapter 173-433 WAC, Solid fuel burning devices; chapter 173-491 WAC, Emission standards and controls for sources emitting gasoline vapors; and chapter 173-495 WAC, Weather modification.

Hearing Location(s): Department of Ecology, Eastern Regional Office, 2nd Floor Large Conference Room, 4601 North Monroe Street, Spokane, WA 99205, on March 13, 2007, at 2:00 p.m.

Date of Intended Adoption: April 20, 2007.

Submit Written Comments to: Leigh Fielder, P.O. Box 47600, Olympia, WA 98504-7600, e-mail lfie461@ecy.wa.gov, fax (360) 407-7534, received by 5:00 p.m., March 20, 2007.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6800, by March 6, 2007, TTY 1-800-833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is filing this CR-102 to announce that the hearing on January 8 was cancelled. Ecology is announcing a new public hearing, comment period, and intended adoption date.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Leigh Fielder, Department of Ecology, (360) 407-7530; and Enforcement: Sarah Rees, Department of Ecology, (360) 407-6823.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule meets the exemptions "rules that set or adjust fees or rates pursuant to legislative standards," pursuant to chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. This rule meets the exemption "rules that set or adjust fees or rates pursuant to legislative standards," pursuant to RCW 34.05.328 (5)(b)(vi).

January 31, 2007

Polly Zehm

Deputy Director

WSR 07-04-066

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Child Support)

[Filed February 1, 2007, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-014.

Title of Rule and Other Identifying Information: **Note:** The DSHS division of child support (DCS) has adopted emergency rules under WSR 07-02-070, effective January 1, 2007, so that we would have rules in effect while going through the regular rule-making process.

This filing amends sections of chapter 388-14A WAC to bring division of child support rules into compliance with chapter 26.21A RCW, which is effective January 1, 2007. There are eleven new rules and nine amended rules in this filing.

Amending WAC 388-14A-2105 Basic confidentiality rules for the division of child support, 388-14A-3304 The division of child support may serve((s)) a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-5300 How does the division of child support recover a support payment which has already been distributed?, 388-14A-6100 The division of child support accepts oral requests for hearing or conference board, 388-14A-7100 The division of child support may register an ((An)) order from another state ((may be registered in Washington)) for enforcement or modification, 388-14A-7110 The division of child support may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state and 388-14A-7200 DCS can serve notices in other states under the Uniform Interstate Family Support Act; and new WAC 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-7125 What happens at a hearing on a notice of support debt and registration?, 388-14A-7135 What is the effect of confirmation of a registered order on the finality of the support debt calculation?, 388-14A-7305 How do I ask DCS to do a determination of con-

trolling order?, 388-14A-7315 When might DCS deny a request for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties of its determination of the controlling order?, 388-14A-7335 What happens if someone objects to DCS' proposed determination of controlling order?, 388-14A-7345 What is the effect of a determination of controlling order on the finality of the debt calculation?, 388-14A-7400 What can I do if I want to contest an interstate order to withhold income served on my employer?, and 388-14A-7500 What can I do if I am concerned about the release of my personal information in an interstate referral?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on March 27, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 23, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature has adopted the updated Uniform Interstate Family Support Act (UIFSA) as chapter 26.21A RCW, effective January 1, 2007. DCS anticipates that new and amended rules will be required in order to allow the Washington child support program to comply with UIFSA under our state plan under Title IV-D of the federal Social Security Act.

Reasons Supporting Proposal: Clarify procedures, conform with new statute.

Statutory Authority for Adoption: RCW 34.05.220(2), 43.20A.550, 74.04.055, 74.08.090, 74.20.040, 74.20A.310.

Statute Being Implemented: Chapter 26.21A RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of

dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

January 30, 2007

Jim Schnellman, Chief

Office of Administrative Resources

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 07-05 issue of the Register.

WSR 07-04-070

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed February 2, 2007, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-10-064.

Title of Rule and Other Identifying Information: Cemeteries, Title 98 WAC: Amends WAC 98-11-010, 98-12-020, 98-12-040, 98-14-010, 98-14-020, 98-14-080, 98-14-090, 98-14-100, 98-60-040, 98-70-010, 98-80-010, 98-80-020, 98-80-030 and 98-80-070; moves and renumbers WAC 98-15-020 to chapter 98-12 WAC; and repeals WAC 98-11-005 and 98-16-020.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard S.W., Room 2209, Olympia, WA 98507, on March 15, 2007, at 1:30 p.m.

Date of Intended Adoption: May 3, 2007.

Submit Written Comments to: Dennis McPhee, P.O. Box 9012, Olympia, WA 98507, e-mail dmcphoe@dol.wa.gov, fax (360) 664-1495, by March 1, 2007.

Assistance for Persons with Disabilities: Contact Joe Vincent Jr. by March 1, 2007, TTY (360) 586-2788 or (360) 664-1555.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments bring existing rules into uniformity with SSB 5752, update existing rules for clarity and to bring rules of procedure for cremation into uniformity with chapter 308-47 WAC, Funeral directors and embalmers. The proposal repeals two rules, WAC 98-11-005 and 98-16-020, which are outdated.

Reasons Supporting Proposal: These amendments are needed to bring rules into uniformity with SSB 5752, clarify existing rules and to bring rules of procedure for cremation into uniformity with chapter 308-47 WAC, Funeral directors and embalmers.

Statutory Authority for Adoption: RCW 68.05.105 and chapter 34.05 RCW.

Statute Being Implemented: Title 68 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule proposal has no fiscal impact. The amendments are needed to bring rules into uniformity with SSB 5752.

Name of Proponent: Department of licensing, cemetery board, governmental.

Name of Agency Personnel Responsible for Drafting: Dennis McPhee, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1555; Implementation and Enforcement: Joe Vincent Jr., 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1555.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Proposal has no economic impact.

February 1, 2007

Joe Vincent Jr.

Administrator

AMENDATORY SECTION (Amending Order PM 830, filed 3/31/89)

WAC 98-11-010 Financial responsibility requirements for nonendowment care cemeteries. Any cemetery authority ~~((as))~~ defined in RCW 68.04.190 ~~((which desires))~~ desiring to obtain a certificate of authority to operate a cemetery (as required by RCW 68.05.115, 68.05.210, and 68.05.215), ~~((but which))~~ that does not deposit ~~((in an endowment care fund))~~ the minimum sum required by RCW 68.40.010 ~~((of))~~ in an endowment care ~~((cemetery))~~ fund shall be required by the cemetery board ~~((, in the exercise of the powers conferred upon it by RCW 68.05.210, as a condition precedent to the granting of such certificate of authority,))~~ to present ~~((to the cemetery board))~~ satisfactory proof that the cemetery authority has ~~((, at the time of its application for such certificate of authority or within a reasonable time prior thereto,))~~ a corporate net worth, determined by ~~((commonly accepted accounting standards and criteria))~~ generally accepted accounting principles, in excess of one hundred thousand dollars ~~((, Provided further, That nothing herein shall)).~~ This section does not apply to ((any corporation, association, society or municipal corporation)) cemeteries referred to in RCW 68.05.400 ~~((, Provided further, That)).~~ Any cemetery authority which is denied a ((certification)) certificate of authority ((under the provisions hereof,)) shall have the right to appeal ((from such)) the denial to the superior court of the county in which the cemetery authority is located or proposed to be located ((, such appeal to)). Appeals must be taken within thirty days after the denial of the certificate of authority.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 98-11-005 Definition—Section.

AMENDATORY SECTION (Amending Order 104, filed 3/9/81)

WAC 98-12-020 Improved commercial or real estate income. In determining the trust fund income for the purpose of RCW 68.44.020 and 68.44.170, an allowance for depreciation on the improved real estate will be used as a determining factor in computing fund income. ~~((The trustee shall~~

~~deduct depreciation from the gross rents and transfer the amount into a fund for depreciation account. The fund may be reinvested with other endowment investments, or may be used to create a sinking fund within the endowment fund.))~~ The cemetery authority must document how depreciation is determined.

AMENDATORY SECTION (Amending Order 106, filed 1/5/83)

WAC 98-12-040 Records of endowment care funds.

Any cemetery authority maintaining an endowment care fund shall ~~((, at all times,))~~ maintain a current accounting system in accordance with generally accepted accounting ~~((standards and))~~ principles. The system shall ~~((include, but not be limited to, all))~~ track sales, receipts, and disbursements and include the following:

(1) ~~((A general journal for journal entries: All original documents must be numbered with a reference number, check number, or contract number.~~

~~((2))~~ An individual contract or agreement with each individual purchasing a right of interment with reference numbering.

~~((3))~~ A sales register or journal showing the recording of all individual sales including date of sale, gross sales price of the interment right, consumer name, reference number to the original document, general ledger account number for postings, and amount payable to the endowment care fund.

~~((4))~~ An individual account ~~((2))~~ A record ~~((which records the amount of the gross sales price of the right of interment,))~~ of:

• Payments received and the amount due or paid to the endowment care fund.

~~((5))~~ A check register or cash disbursements journal which shall show payments to the endowment care fund by date and amount, name and reference number, and check number. In addition, a file of cancelled checks and/or money order receipts shall be maintained.

~~((6))~~ Schedules or documentation reconciling to and showing the detail of each payment to the endowment care fund including date of payment, individual customer name, account and reference number of original document.

~~((7))~~ A cash receipts journal which shall show receipts from individual customers as well as receipts from the endowment care fund and their proper disbursements to the maintenance accounts.

~~((8))~~ Records of maintenance expenses.

~~((9))~~ Where the directors of the cemetery authority act as trustees for its endowment care fund, the records of the endowment care fund shall be kept as separate records (reconciled quarterly) and shall consist of, but not be limited to, the following:

(a) A general ledger with all accounts numbered.

(b) Minute book.

~~((c))~~ A separate account designated as the endowment care fund account through which receipts to the fund, disbursements to the investments of the fund and disbursements to the cemetery authority are transmitted.

~~(d) A portfolio listing of all investments or cash holdings of the fund.)~~ • Reconciliation of payments to and from the fund.

- All supporting bank and investment statements.

All records required to be maintained pursuant to this rule and Title 68 RCW, whether maintained manually or by computer, shall:

- Be retained and available for inspection for a period of seven years ((and shall)).
- Be ((in such form as to be)) understandable to the cemetery board examiner or other persons reasonably having cause to access them.

NEW SECTION

WAC 98-12-050 Endowment care trust fund contribution for additional rights of interment, entombment or inurnment. A cemetery authority not exempt from this chapter must make a deposit to the endowment care fund, for additional rights of interment, entombment or inurnment, as required in RCW 68.40.010.

AMENDATORY SECTION (Amending Order CB 101, filed 10/17/75)

WAC 98-14-010 Definitions. All definitions of chapter 68.46 RCW apply to this chapter of WAC. In addition, the following definition applies:

"Direct cost" for the purpose of chapter 68.46 RCW, direct cost includes actual labor cost and other costs associated with delivery of the service. For example: Direct cost of providing an opening and closing may include labor, materials, fuel, equipment maintenance, and a share of overhead including benefits and insurance.

AMENDATORY SECTION (Amending Order CB 101, filed 10/17/75)

WAC 98-14-020 Itemization of charges. In addition to all other requirements of the law relating to consumer contracts, ~~((all))~~ prearrangement contracts must have:

- A specific itemization of charges and descriptions for each merchandise or service to be furnished or delivered ((including, but not limited to,)).
- An itemization of services to be performed on delivered merchandise such as((- but not limited to,)) marker installation and care. ((There shall be a special))
- An itemization of charges and descriptions for each grave niche or crypt sold ((in connection with any prearrangement contract)).

AMENDATORY SECTION (Amending WSR 02-19-018, filed 9/9/02, effective 10/10/02)

WAC 98-14-080 Development plan for unconstructed, undeveloped property. Any cemetery authority selling undeveloped graves, unconstructed crypts or niches in accordance with chapter 68.46 RCW must make available to the purchaser at the time the prearrangement contract is signed((-)).

- A statement of estimated time schedule of the development or construction.

~~((Such))~~ Estimated time schedule((s, or modifications of them, will also)) must:

- Be submitted to the cemetery board annually with the financial reports required by RCW 68.46.090 ((and)).
- Be made available to holders of prearrangement contracts affected by the development or construction in the offices of the cemetery authority.

A cemetery authority must maintain an equivalent inventory of constructed crypts, niches and developed graves, equal to ten percent of the unconstructed crypts, niches and undeveloped graves sold through prearrangement contracts. The equivalent inventory must be located within the cemetery or an adjacent cemetery under common ownership.

Trust fund deposits required for the prearrangement contract sales of undeveloped property, will be in accordance with RCW 68.46.030.

AMENDATORY SECTION (Amending Order PM 830, filed 3/31/89)

WAC 98-14-090 Records of prearrangement trust funds. Any cemetery authority maintaining a prearrangement trust fund shall~~((, at all times,))~~ maintain a current accounting system in accordance with generally accepted accounting ~~((standards and))~~ principles. The system shall track sales, receipts and disbursements and include~~((, but not be limited to, all of))~~ the following:

- (1) An individual contract or agreement with each individual establishing a prearrangement trust agreement.
- (2) ~~((A sales register or journal showing the recording of all individual sales including date of sale, gross sales price, and detail of items sold.~~
- (3) ~~An individual account))~~ A record ((which records the amount of the prearrangement agreement, all)) of payments received((-) and the amount due or paid to the prearrangement trust fund ((and the distribution of payments received to the prearrangement trust fund or the cemetery authority in accordance with the method then allowed by the cemetery authority's prearrangement license.
- (4) ~~A cash receipts journal which shall show each payment received from individual customers.~~
- (5) ~~Schedules or documentation reconciling to and showing detail of each payment to and withdrawal from the prearrangement trust fund including date of payment, individual customer name, and amounts.~~
- (6) ~~Schedules and documentation showing detail of prearrangement trust fund asset management, renewal (roll-over), and earnings. When assets are held in instruments that return a mix of principal and earnings throughout the period of holding, schedules shall be maintained reconciling principal to opening deposit)).~~

(3) Reconciliation of payments to and from the fund.

(4) All supporting bank and investment statements.

All records required to be maintained pursuant to this rule and Title 68 RCW, whether maintained manually or by computer, shall:

- Be retained and available for inspection for a period of seven years ((and shall)).

• ~~Be ((in such form as to be))~~ understandable to the cemetery board examiner or other persons reasonably having cause to access them.

AMENDATORY SECTION (Amending Order PM 830, filed 3/31/89)

WAC 98-14-100 Qualifications of applicant for prearrangement sales license. To qualify as an applicant for a prearrangement sales license as set forth in RCW 68.05.155 and 68.46.150, applicant must hold a valid(~~(-subsisting,))~~ and unsuspended certificate of authority to operate a cemetery (~~(in this state))~~ issued by the Washington state cemetery board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 98-15-020	Endowment care trust fund contribution for additional rights of interment, entombment or inurnment.
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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 98-16-020	Hybrid unit as funeral merchandise or services.
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AMENDATORY SECTION (Amending WSR 93-07-040, filed 3/12/93, effective 4/12/93)

WAC 98-60-040 Records and documentation. (1) Permit and endorsement holders must provide a Certificate of Disposition of Cremated Remains to the person authorizing the cremation or disposition. The certificate shall identify:

- The name of the deceased(~~(;))~~;
- The location and date of the disposition of the cremated remains(~~(;))~~;
- The manner of disposition (boat, air, or other)(~~(;))~~;
- The name of the authorizing agent(~~(, and, if applicable,))~~;
- The name of the funeral home, crematory, or cemetery arranging the service, if applicable.

(2) Permit and endorsement holders must:

- Maintain copies of records required under subsection (1) of this section for seven years from the date of disposition (~~(and such))~~;
- Make records (~~((shall be subject to))~~) available for inspection by the board.

(3) Permit and endorsement holders shall report the number of dispositions performed in the previous year (~~(in the space provided))~~ on the annual renewal form supplied by the department. Failure to provide such a report shall automatically suspend the permit or endorsement. Such permit or endorsement may be restored by making the proper report to the department.

AMENDATORY SECTION (Amending WSR 03-11-020, filed 5/12/03, effective 6/30/03)

WAC 98-70-010 Fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Certificate of authority	
Application	\$300.00
Renewal	\$3.20
Charge per each interment, entombment and inurnment during preceding calendar year	
Crematory license/endorsement	
Application	\$140.00
Renewal	
\$3.20 per cremation performed during the preceding calendar year	
Prearrangement sales license	
Application	\$140.00
Renewal	\$70.00
Exemption from prearrangement sales license	
Application	\$70.00
Renewal	\$35.00
Cremated remains disposition permit or endorsement	
Application	\$70.00
Renewal	\$35.00

AMENDATORY SECTION (Amending WSR 02-19-018, filed 9/9/02, effective 10/10/02)

WAC 98-80-010 Definitions. (1) "Authorizing agent" means the person(s) legally entitled to control the disposition of the human remains.

(2) (~~("Crematory" the building or area of a building that houses a cremation chamber, to be used for the cremation of human remains.~~)

(~~3))~~ "Crematory authority or endorsement" the legal entity and their authorized representatives, licensed to perform cremations.

(~~(4))~~ (3) "Cremation chamber" means the enclosed space in a crematory in which the cremation process takes place.

(~~(5))~~ (~~"Cremation" means the reduction of human remains to bone fragments, in a crematory, by means of incineration.~~)

(~~6))~~ (~~"Cremated human remains" means the end products of cremation.~~)

(~~7))~~ (4) "Pulverization" is the reduction of identifiable bone fragments to unidentifiable dimensions by manual or mechanical means following cremation.

(~~(8))~~ (5) "Processing" is the removal of foreign objects from cremated human remains and may include pulverization.

(~~(9))~~ (6) "Cremation container" means the container in which the human remains must be enclosed before being

placed in the cremation chamber for cremation. A cremation container must:

- Be composed of a combustible material. If the remains are delivered to a crematory in a noncombustible container, the authorizing agent must be informed of the disposition of the container, if the container is not actually used in the cremation process. Any transfer of human remains to combustible containers at the crematory must be in accordance with chapter 18.39 RCW, Title 308 WAC, and applicable public health laws.

- Be rigid enough for placement into the cremation chamber.

- Assure protection to the health and safety of the crematory operators and others.

- Provide a proper covering for the human remains.

- Be resistant to leakage or spillage of body fluids.

~~((10))~~ **(7) "Sealable container"** means any container in which cremated human remains can be placed and closed to prevent leakage or spillage of cremated human remains.

~~((11))~~ **(8) "Holding facility"** means an area designated for the care, storage and holding of human remains prior to disposition. A holding facility must:

- Comply with any applicable public health laws.

- Preserve the dignity of the human remains.

- Recognize the personal integrity, health and safety of employees and others.

- Be secure from access by anyone other than authorized personnel.

~~((12))~~ **"Human remains"** means the body of a deceased person:

~~((13))~~ **(9) "Cadaver"** means ~~((the body of a deceased person.))~~ human remains or any part thereof, which has been donated to science for medical research purposes.

~~((14))~~ **(10) "Body parts"** means limbs and other portions of human anatomy that have been removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy or medical research.

~~((15))~~ **(11) "Commingling"** means the mixing of cremated human remains of more than one deceased person.

~~((16))~~ **(12) "Residue"** means the cremation products that may unavoidably remain in the cremation chamber after manual sweeping techniques are performed.

AMENDATORY SECTION (Amending WSR 02-19-018, filed 9/9/02, effective 10/10/02)

WAC 98-80-020 Identification of human remains. A crematory must not take custody of unidentified human remains. Before accepting human remains, the crematory must verify that identification is attached to the cremation container. Upon accepting human remains for cremation, the crematory must make a permanent record of the following:

- Name of deceased.
- Date of death.
- Place of death.
- Name and relationship of authorizing agent.
- Name of firm engaging crematory services.
- Description of the cremation container to be consumed with the human remains.

- An identification number assigned each human remains and inscribed on a metal disc or metal tag. The metal identification disc or tag must identify the crematory and accompany the human remains through each phase of the cremation, processing and packaging. The disc or tag identification number must be recorded on all paperwork regarding a human remains ~~((and in the crematory log))~~.

AMENDATORY SECTION (Amending WSR 02-19-018, filed 9/9/02, effective 10/10/02)

WAC 98-80-030 Holding human remains for cremation. (1) A crematory must not accept and hold human remains for cremation unless the human remains are contained in a cremation container.

(2) A crematory must not accept human remains in a cremation container having evidence of body fluid leakage.

(3) Human remains that are not embalmed must be held only within a mechanically or commercially acceptable refrigerated facility of adequate capacity, with a maximum temperature of 48 degrees Fahrenheit, or in compliance with applicable public health regulations.

AMENDATORY SECTION (Amending WSR 02-19-018, filed 9/9/02, effective 10/10/02)

WAC 98-80-070 Disposition of cremated human remains. (1) A crematory must keep a permanent record of all cremations performed and the disposition or release of the cremated human remains. The record must include the following information:

- Date of death.

- Date burial transit permit was issued.

- Date of delivery of human remains to the crematory.

- Date of cremation.

- Name of crematory operator performing the cremation.

- Name of person performing packaging, and date of packaging.

- Date of release ~~((or date of disposition))~~ of the cremated human remains and the name of the individual(s) to whom the cremated human remains were released; or

- Date of disposition of the cremated human remains.

(2) When cremated human remains have been in the possession of a crematory, funeral establishment or cemetery for a period of ~~((two years))~~ ninety days or more, the entity holding the cremated human remains may arrange for disposition in any legal manner, provided the entity:

- Attempts to contact the authorizing agent for disposition instructions by registered mail.

- Informs the authorizing agent(s) of the procedures that will be followed if disposition instructions are not received.

- Informs the authorizing agent(s) that disposition will take place if disposition instructions are not received within sixty days of initiation of the contact process.

- Informs the authorizing agent(s) that recovery of the cremated human remains, after the disposition, may or may not be possible.

- Maintains a permanent record of the location of the disposition.

(3) No entity making disposition of cremated human remains under subsection (2) of this section will be liable for

the disposition or nonrecoverability of cremated human remains.

WSR 07-04-071
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 2, 2007, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-01-050.

Title of Rule and Other Identifying Information: WAC 220-52-001 Shellfish—Geographical definitions.

Hearing Location(s): Fish and Wildlife Commission Office, 5th Floor, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA, on March 16, 2007, at 8:30 a.m.

Date of Intended Adoption: April 20, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2944, by March 14, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by March 2, 2007, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provide house-keeping change to bring rule definition into alignment with previously defined marine fish-shellfish management and catch reporting areas. The effect will be to define the Pacific Ocean shellfish catch areas off the Washington coast using actual existing catch areas.

Reasons Supporting Proposal: This change will reduce potential confusion over what statistical catch areas are in the definition for Pacific Ocean waters off the Washington coast for commercial shellfish landings.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

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

Name of Agency Personnel Responsible for Drafting: Morris W. Barker, 1111 Washington Street, Olympia, (360) 902-2826; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impacts to small business will occur as a result of this rule change.

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

February 2, 2007
Loreva M. Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 84-24, filed 3/27/84)

WAC 220-52-001 Shellfish—Geographical definitions. (1) "Puget Sound" means Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 23D, 24A, 24B, 24C, 25A, 25B, 25C, 25D, 25E, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, 28D, and 29.

(2) "Grays Harbor" means Marine Fish-Shellfish Management and Catch Reporting Area 60B.

(3) "Willapa Harbor" means Marine Fish-Shellfish Management and Catch Reporting Area 60C.

(4) "Columbia River" means Marine Fish-Shellfish Management and Catch Reporting Area 60D.

(5) "Coastal Waters" means Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 59B, ((and)) 60A-1, and 60A-2.

WSR 07-04-073
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed February 2, 2007, 3:29 p.m.]

Continuance of WSR 06-20-128 and 06-23-062.

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

Title of Rule and Other Identifying Information: The Washington state wine commission petitioned the Washington state department of agriculture to proceed with a proposal to increase the ceiling, or top range, of the winery and grape grower mandatory assessment rate.

Date of Intended Adoption: April 2, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends the winery and grape grower mandatory assessment by increasing the top end of the assessment range as follows: For vinifera grapes grown in this state, the assessment shall not be less than three dollars per ton nor more than twelve dollars per ton; and the proposed assessment rate for wine producers shall not be less than \$0.02 per gallon nor more than \$0.08 per gallon.

This continuation will extend the adoption date as additional time is necessary to conduct a referendum. Wine producers and grape growers must approve the proposed increase in assessments prior to any adoption.

Reasons Supporting Proposal: The Washington wine commission has developed a five-year strategic plan for marketing and developing the Washington wine industry. Amending the range off [of] the assessment paid by wineries and grape growers will allow the flexibility needed to implement and fund the activities approved by the Washington wine commission in its plan.

Statutory Authority for Adoption: RCW 15.88.110 and 66.24.215.

Statute Being Implemented: Chapter 15.88 RCW.

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

Name of Proponent: Washington wine commission,
public.

January 30, 2007
Robert W. Gore
for Valoria H. Loveland
Director

WSR 07-04-074
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed February 2, 2007, 4:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-01-013.

Title of Rule and Other Identifying Information: WAC 180-105-020 and 180-105-060.

Hearing Location(s): Department of Natural Resources, 1111 Washington Street, Room 172, Olympia, WA 98504, (360) 902-1000, on March 13, 2007, at 9:00 a.m.

Date of Intended Adoption: March 13, 2007.

Submit Written Comments to: Edie Harding, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail edie.harding@k12.wa.us, fax (360) 586-2357, by February 26, 2007.

Assistance for Persons with Disabilities: Contact Pat Eirish, Program Manager, by February 26, 2007, TTY (360) 664-3631 or (360) 725-6030.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Technical amendments necessitated to note updated WAC references.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 28A.305.130.

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Edith Harding, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

February 2, 2007
Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 05-15-036, filed 7/11/05, effective 7/11/05)

WAC 180-105-020 Reading and mathematics. (1) Each school district board of directors shall by December 15, 2003:

(a) Adopt district-wide performance improvement goals using the federal requirements to determine the increase in the percentage of students who meet or exceed the standard

on the Washington assessment of student learning for reading and mathematics in grades four, seven, and ten; and

(b) Direct each school in the district that administers the Washington assessment of student learning for grade four, seven, or ten to adopt performance improvement goals using the federal requirements to determine the increase in the percentage of students meeting the standard for its fourth, seventh, or tenth grade students in reading and mathematics.

(2) School districts and schools shall establish separate district-wide and school reading and mathematics improvement goals using the federal requirements to determine the increase in requirements under subsection (1) of this section for each of the following groups of students:

- (a) All students;
- (b) Students of each major racial and ethnic group;
- (c) Economically disadvantaged students;
- (d) Students with disabilities; and
- (e) Students with limited English proficiency.

(3) School districts and schools are not required to publish numerical improvement goals in a grade level for reading and mathematics for 2004 or in any year thereafter for any student group identified in subsection (2) of this section in which there were fewer than ten students eligible to be assessed on the Washington assessment of student learning in the prior year. However, this subsection shall not be construed to affect WAC 180-16-220 (2)(b) or any other requirements for school and school district improvement plans.

(4) Annual performance improvement goals for both school districts and schools shall be determined:

(a) By using the starting point and annual goals established using the federal requirements for determining starting points in the 2003 Washington State No Child Left Behind (NCLB) Accountability Plan.

(b) If the performance improvement goals established by using the federal requirements to determine the increase for assessments administered in the spring of 2003 and each year thereafter through and including assessments administered in the spring of 2013 are not met, but the other indicator is met [the other indicator for high schools is the graduation goal (WAC ((~~3-20-300~~)) 180-105-040(4)) and the other indicator for elementary and middle schools is the unexcused absences goal (Washington State Accountability System under NCLB 2001)] then a substitute calculation may be made. That substitute calculation representing satisfactory progress shall not be less than the sum of:

(i) The percentage of students meeting standard on the assessments administered in the spring of the preceding year for the relevant student group, grade level and subject; and

(ii) The percentage of students who did not meet standard on the assessments administered in the spring of the preceding year for the relevant student group, grade level and subject, multiplied by ten percent.

(c) The performance improvement goals for assessments administered in the spring of 2014 shall be that all students eligible to be assessed meet standard on the Washington assessment of student learning.

(5) School districts and schools shall be deemed to have met the performance improvement goals established pursuant to this chapter if the school district or school achieves the minimum improvement goal required under subsection (4) of

this section, even if the school district or school does not achieve the performance improvement goals established by using the federal requirements to determine the increase.

(6) No performance improvement goal for a group in a subject and grade established pursuant to this section shall be used for state or federal accountability purposes if fewer than thirty students in the group for a subject and grade are eligible to be assessed on the Washington assessment of student learning.

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 WSR 05-15-036, filed 7/11/05, effective 7/11/05)

WAC 180-105-060 High school graduation. (1) Each school district board of directors shall by December 15, 2005, revise district-wide graduation rate goals for 2006 and each year thereafter and shall direct each high school in the district to revise graduation rate goals for 2006 and each year thereafter, subject to approval by the board.

(2) The minimum graduation rate goals through 2013 shall be as follows for each of the nine groups of students listed in WAC ((3-20-200(2))) 180-105-040(4):

(a) Sixty-six percent in 2005, one percentage point above the previous year's goal from 2006 through 2009, and three percentage points above the previous year's goal in 2010 through 2013; or

(b) For any student group whose graduation rate falls below sixty-six percent in 2005, the minimum goal for 2005 is two percentage points above that group's graduation rate in 2004, an additional two percentage points per year above the previous year's goal in 2006 through 2009, and an additional four percentage points per year above the previous year's goal in 2010 through 2013, until the rate for that group meets or exceeds the goal described in (a) of this subsection.

(3) Graduation rate goals in 2014 and each year thereafter for each group of students listed in WAC ((3-20-200(2))) 180-105-040(4) shall be not less than eighty-five percent.

(4) School district boards of directors are authorized to adopt district-wide graduation rate goals and to approve high school graduation rate goals that exceed the minimum level required under this section. However, district-wide and high school graduation rate goals that exceed the minimum level required under this section shall not be used for federal or state accountability purposes.

WSR 07-04-076

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed February 5, 2007, 9:49 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 4.03 (Asbestos Notification Requirements).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on March 22, 2007, at 9:15 a.m.

Date of Intended Adoption: March 22, 2007.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by March 21, 2007.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by March 15, 2007, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To allow submittal of asbestos notifications and payments on-line, rather than on paper forms by mail or fax.

Reasons Supporting Proposal: Agency customers have requested this change for the sake of convenience and simplicity. The change would also save the agency paper processing and data entry time, it would allow agency field staff to remotely access asbestos project and demolition information in real-time, and it would enable the customer to submit and amend notifications and make payments on-line at any time. After implementation, the agency program costs are anticipated to decrease, resulting in the lowering of asbestos fees in the future.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Rose Busterna, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4021; Implementation and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

February 2, 2007

Rosemary Busterna

Compliance Specialist II

AMENDATORY SECTION

REGULATION III SECTION 4.03 ASBESTOS NOTIFICATION REQUIREMENTS

(a) General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the appropriate nonrefundable ((required)) fee and any additional information requested by the Control Officer, has been submitted to the Agency ((~~on approved forms, in accordance with the advance notification period~~)) in accordance with the waiting period and fee requirements ((~~contained~~)) in Section 4.03(d) of this

~~((R))~~regulation. Except for the annual notification requirements in Section 4.03 (a)(8) of this regulation, the notification must be submitted on approved forms through the Agency website.

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects involving less than 10 linear feet of friable, asbestos-containing material on pipes and/or 48 square feet of friable, asbestos-containing material on other components (per structure, building, or vessel, per calendar year).

(3) Notification is not required for removal and disposal of nonfriable, asbestos-containing material.

(4) Notification is required for all demolitions involving structures with a projected roof area greater than 120 square feet, even if no asbestos-containing material is present.

~~((The written notification shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this Regulation unless prior arrangements for payment have been made with the Agency.))~~ All demolitions require a 10-day waiting period unless waived under Section 4.03 (c)(1) of this regulation.

(6) A printout (~~((copy))~~) of the notification, all amendments to the notification, and the asbestos survey shall be available for inspection at all times at the asbestos project or demolition site.

(7) A ~~((property owner may file))~~ notification for multiple asbestos projects or demolitions may be submitted on one form if ~~((all the following criteria are met:~~

~~((A) The work will be performed continuously by the same contractor;~~

~~((B) The))~~ the structures are located in a contiguous area,~~((; and~~

~~((C) A work plan is submitted that includes: a map of the structures involved in the project including the site address for each structure; the amount and type of friable, asbestos-containing material in each structure; and the schedule for performing asbestos project and demolition work. For projects where a detailed work schedule cannot be provided, the asbestos contractor and/or the demolition contractor shall participate in the Agency's work schedule fax program and will continue to participate in the program throughout the duration of the project.))~~

(8) Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(A) The annual notification shall be filed with the Agency before commencing work on any asbestos project included in an annual notification;

(B) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes and/or less than 160 square feet on other components; and

(C) The property owner submits quarterly written reports to the Control Officer on Agency-approved forms within 15 days after the end of each calendar quarter.

(b) Amendments

(1) ~~((Mandatory Amendments))~~

An amendment shall be submitted to the Control Officer ~~((for the following changes))~~ in a notification through the Agency website for the following changes and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this ~~((R))~~regulation ~~((unless prior arrangements for payment have been made with the Agency))~~:

(A) Changes between asbestos and demolition project types;

~~((A))~~ (B) Increases in the ~~((project type or))~~ job size category that increase the fee;

~~((B) Changes in the type of friable, asbestos-containing material that will be removed;))~~ or

(C) Changes in the start date, completion date, or work schedule, including hours of work. ~~((Asbestos contractors or property owners participating in the Agency work schedule fax program are not required to submit amendments for work schedule changes occurring between the start and completion dates.))~~

(2) Amendments may not be used to add or change project site addresses listed on a previously submitted notification.

~~((2))~~ Optional Amendments

~~((A) An amendment may be submitted to the Control Officer for any other change in a notification and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this Regulation unless prior arrangements for payment have been made with the Agency.~~

~~((B) Contractors and property owners participating in the Agency work schedule fax program may, within 45 days after the last completion date on record, submit an amendment to the Control Officer for the removal of additional, friable, asbestos-containing material not identified during the asbestos survey. If more than 45 days have lapsed since the last completion date on record, the requirements of Section 4.03(a), including notification periods and fees, shall apply.~~

~~((3) Additional structures may not be added to a notification by amendment.))~~

(c) Emergencies

~~((The Control Officer may waive the advance notification period, if the property owner submits a written request that demonstrates to the Control Officer that))~~

(1) The waiting period may waived if an asbestos project or demolition must be conducted immediately because of any of the following:

~~((1))~~ (A) There was a sudden, unexpected event that resulted in a public health or safety hazard;

~~((2))~~ (B) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

~~((3))~~ (C) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

~~((4))~~ (D) The project must proceed to avoid imposing an unreasonable burden.

(2) The waiting period and fees may be waived for disposal of abandoned (without the knowledge or consent of the property owner) friable, asbestos-containing material by written approval of the Control Officer.

~~((d) Notification Period and Fees~~

Project	Notification Period	Non-Refundable Fee	Demolition Surecharge**
Single-Family Residence			
—Asbestos Project*	prior notice	\$25	
—Demolition (with or without asbestos project)	10 days	\$50	
All Other Demolitions (without asbestos project)	10 days	\$50	
All Other Asbestos Projects			
—10 - 259 linear ft* and/or	prior notice (asbestos only)	\$50	
—48 - 159 square ft	10 days (demolition)		\$50
—260 - 999 linear ft and/or			
—160 - 4,999 square ft	10 days	\$200	\$50
—1,000+ linear ft and/or			
—5,000+ square ft	10 days	\$600	\$50
		applicable fees	
Emergency—4.03(c)***	prior notice	+\$50	
Amendment—4.03(b)	prior notice	\$25	
Annual Notice—4.03 (a)(8)	prior notice	\$1,000	

*Contractors participating in the Agency work schedule fax program are not required to file a Notice of Intent for asbestos removals in this project category and no fee will be assessed.

**Additional fee for demolitions. All demolitions require a Notice of Intent and a 10-day notification period unless waived per Section 4.03(e).

***The 10-day notification period may be waived per Section 4.03(c) and with payment of the applicable fees + \$50. Single-family residences are exempt from the emergency fee; however, property owners must still provide a written request per Section 4.03(e.)

(d) Waiting Period and Fees

Project	Waiting Period	Asbestos Fee	Demolition Fee
<u>Single-Family Residence:</u>			
• Asbestos Project	prior written notification	\$25	
• Demolition (with or without asbestos project)	10 days	\$0	\$50
<u>Other than Single-Family Residence:</u>			
• less than 10 linear ft and/or	10 days for demolition	\$0	\$50
• less than 48 square ft			
• 10 - 259 linear ft and/or	prior written notification for asbestos	\$50	
48 - 159 square ft	10 days for demolition		\$50
• 260 - 999 linear ft and/or	10 days	\$200	\$50
160 - 4,999 square ft			
• 1,000 + linear ft and/or	10 days	\$600	\$50
5,000 + square ft			
Emergency - 4.03(c)*	prior written notification	applicable fees + \$50	
Amendment - 4.03(b)	prior written notification	applicable fees + \$25	
Annual Notice of Intent - 4.03 (a)(8)	prior written notification	\$1,000	

*Single-family residences are exempt from the emergency fee.

~~((The Control Officer may waive the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) friable, asbestos-containing material.))~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-04-083
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed February 5, 2007, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-164.

Title of Rule and Other Identifying Information: Amending WAC 390-17-400 Time limit to solicit or accept contributions, 390-17-030 Sample ballots and slate cards and 390-18-025 Identification of "top five contributors;" new rules WAC 390-16-320 Candidates in small political subdivisions—Reporting and 390-05-275 Definition—Party organization.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on March 22, 2007, at 9:30 a.m.

Date of Intended Adoption: March 22, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by March 19, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule amendments are designed to conform (1) with 2006 legislative changes impacting RCW 42.17.710; (2) with reporting date changes for out-of-state committees; and (3) with the electioneering communications statutes. The new rules define "party organization" in RCW 42.17.510 and "receives or expects to receive" in RCW 42.17.405.

Reasons Supporting Proposal: To provide guidance and clarification to the general public and persons subject to the disclosure law.

Statutory Authority for Adoption: RCW 42.17.370.

Statute Being Implemented: Chapter 42.17 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule amendments and new rules are designed to conform with 2006 legislative changes and provide guidance and clarification to persons subject to the disclosure law.

Name of Proponent: [Public disclosure commission (PDC)], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule amendment has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date,

JARRC has not made section 201 application [applicable] to the adoption of these rules.

February 5, 2007
 Vicki Rippie
 Executive Director

AMENDATORY SECTION (Amending WSR 98-23-016, filed 11/6/98, effective 12/7/98)

WAC 390-17-400 Time limit to solicit or accept contributions. The purpose of this rule is to clarify and implement RCW 42.17.710.

(1) **"Campaign debt,"** as used in RCW 42.17.710 and this rule, means any debt incurred by a candidate seeking election to a nonfederal public office, including campaigns for state, county, city, town, school district, special district or other state political subdivision elective office.

(2) **"Known candidates"** means individuals who are, or who become, candidates for state or local office during a legislative session freeze period.

(3) **"Legislative session freeze period"** means the period of time in RCW 42.17.710 within which contributions shall not be solicited or accepted by a state official or a person employed by or acting on behalf of a state official.

(a) The freeze period begins at 12:01 a.m. on the thirtieth day before the start of the regular legislative session and ends at 11:59 p.m. on the ~~((thirtieth day following))~~ day of adjournment of the regular legislative session.

(b) If a special session is held immediately following the end of the regular legislative session, the freeze period ends on the day the special session adjourns ~~((or at 11:59 p.m. on the thirtieth day following adjournment of the regular legislative session, whichever is later)).~~

(c) If a special session is held other than within ~~((30))~~ thirty days before ~~((or after))~~ a regular legislative session, the freeze period begins at 12:01 a.m. on the first day of the special session and ends at 11:59 p.m. on the final day of the special session.

(4) A successful candidate for state office who does not already hold a state office is not required to comply with RCW 42.17.710 until sworn into office.

(5) A state official must comply with RCW 42.17.710 until he or she no longer holds state office.

(6) **"Person employed by or acting on behalf of a state official"** includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

(7) **State officials may do the following.** During a legislative session freeze period, the activities in which state officials may engage include, but are not limited to:

(a) Soliciting or accepting contributions to assist his or her own campaign for federal office;

(b) Accepting gifts or other items permitted under chapter 42.52 RCW, so long as the gift or other item is not

- A contribution to an incumbent state official or known candidate,
- A contribution to a public office fund,
- Used to pay a nonreimbursed public office related expense, or

- Used to retire a campaign debt;

(c) Attending and speaking at a fund raising event held by or on behalf of a bona fide political party, so long as the contributions raised are not earmarked or otherwise designated for any incumbent state official or known candidate;

(d) Transferring their own personal funds, as defined in WAC 390-17-305, or their own surplus funds, as defined in RCW 42.17.020, to their own campaign account, so long as the funds are properly reported;

(e) Soliciting or accepting contributions on behalf of a nonprofit charity; or

(f) Soliciting or accepting contributions on behalf of any political committee, including a caucus political committee, a bona fide political party or a ballot measure committee, so long as the political committee does not spend the contributions for the benefit of incumbent state officials or known candidates.

(8) State officials may not do the following. During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a state official, may not solicit or accept contributions that:

- (a) Go to an incumbent state official or known candidate;
- (b) Go to a public office fund;
- (c) Are used to pay a nonreimbursed public office related expense;

(d) Are used to retire a campaign debt;

(e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or

(f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

(9) Caucus political committees. During a legislative session freeze period, a caucus political committee

(a) May solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own surplus funds, as defined in RCW 42.17.020;

(b) May not solicit or accept contributions for any of the purposes specified in subsection (8) of this rule.

(10) Persons acting on behalf of state officials. During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection (8) of this rule.

(11) Bona fide political parties. During a legislative session freeze period, a bona fide political party may not solicit or accept contributions that are

- Used for a public office fund,
- Used for a state official's nonreimbursed public office related expenses,
- Used for retiring a state official's campaign debt, or
- Earmarked contributions to specific incumbent state officials or known candidates.

However, a bona fide political party may solicit or accept contributions for its own fund raising purposes.

(12) Segregating session freeze funds. During a legislative session freeze period, if a state official, a caucus polit-

ical committee, or another person employed by or acting on behalf of a state official solicits or accepts contributions to

- A caucus political committee,
- A bona fide political party, or
- Any political committee that supports or opposes state or local office candidates, the contributions are presumed to violate RCW 42.17.710, unless the contributions are
 - Deposited into a separate bank account and
 - Not spent for the benefit of incumbent state officials or known candidates.

However, nothing in this subsection authorizes a state official, a caucus political committee or any person employed by or acting on behalf of a state official to take any of the actions prohibited by subsections (8) or (9)(b) of this rule.

(13) Session freeze solicitations. If a person is solicited for a contribution during the legislative session freeze period

- By a state official, a caucus political committee, or another person employed by or acting on behalf of a state official, and
- The contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or opposes candidates for state or local office, and
- The person makes a contribution during or after the freeze period in response to this solicitation, the contribution is subject RCW 42.17.710 and subsection (12) of this rule.

(14) Spending contributions to benefit incumbents or known candidates. For purposes of complying with subsections (7)(f), (8)(e) and (f), and (12) of this rule, contributions are considered spent for the benefit of incumbent state officials or known candidates if the contributions are used at any time for one or more of the following purposes.

(a) Contributions to incumbent state officials or known candidates.

(b) Independent expenditures supporting incumbent state officials or known candidates, or opposing their opponents, whether or not the opponents are themselves known candidates during a legislative session freeze period.

(c) Payments to staff, consultants or advisors for performing activities that directly assist or promote the election of incumbent state officials or known candidates.

(d) Polls or surveys that relate to incumbent state officials, known candidates or their districts, or to general voter attitudes or preferences, unless

- A poll or survey is produced, conducted, tabulated and analyzed according to the terms of a written confidentiality agreement and, if the agreement is breached, all reasonable steps are taken to enforce it, and
- The results of a poll or survey are not provided by the spender, or with the spender's permission or prior knowledge, to incumbent state officials, known candidates or their agents.

However, candidate recruitment poll or survey results may be provided to an individual who later becomes a known candidate without the expenditure being considered as benefiting a known candidate so long as the poll

or survey does not constitute a contribution to the individual or does not otherwise support or promote his or her election to state or local office. For purposes of this subsection, a "candidate recruitment poll or survey" is a poll or survey that is conducted for the sole purpose of recruiting candidates to run for public office and only determines

- The respondent's party preference,
- The level of support the incumbent currently has and how strong that support is, but not why he or she has that support,
- Whether respondents recognize the names of individuals who may decide to seek that elective office,
- Whether respondents currently hold a favorable opinion about these individuals, their abilities or fitness for elective office, but not why such opinions are held,
- Whether respondents would likely vote for one or more of these individuals were they to seek office, but not why respondents would vote in the manner they indicated or whether they could be persuaded to change their vote, and
- The validity of the poll or survey results.

(e) Any other expenditure that directly benefits or promotes the election to state or local office of incumbent state officials or known candidates.

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-17-030 Sample ballots and slate cards. (1)

Intent. The commission finds that, under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW 42.17.640 ~~((14))~~ (15)(a) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter 42.17 RCW and subject to the political advertising provisions of the law.

The purpose of this exemption from the contribution limits is to allow political parties and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements by undertaking any degree of significant campaigning on behalf of candidates.

(2) For purposes of RCW 42.17.020(21) and 42.17.640 ~~((14))~~ (15)(a), "**sample ballots**" means slate cards, or other candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

(3) Sample ballots constitute political advertising for a slate or list of candidates and must be properly identified and otherwise in compliance with the provisions of RCW 42.17.510 through 42.17.550.

(4)(a) **A bona fide political party** may use contributions it receives pursuant to RCW 42.17.640 ~~((14))~~ (15) to produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not

required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(5) **Any person**, as defined by RCW 42.17.020, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

(6) **An in-state political committee**, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(7) **An out-of-state committee**, when disclosing expenditures for sample ballots on a C-5 report, is not required to allocate a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due no later than the ~~((20th))~~ 10th day of the month following the month in which the expenditure was made.

(8) If a **lobbyist or lobbyist employer** makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be allocated to individual candidates listed on the sample ballot.

(9) **The candidates listed on a sample ballot** are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

(10) **Qualifying criteria for sample ballots, slate cards and other candidate listings.** In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17.640 ~~((14))~~ (15), a sample ballot must satisfy **all** of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, web sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);

- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments. On web sites, electronic bulletin boards or electronic billboards, the sample ballot must be a separate document.

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-18-025 Advertising—Identification of "top five contributors." (1) For purposes of RCW 42.17.510 (2), (4) and (5), "top five contributors" means the five persons, as defined in RCW 42.17.020, giving the largest aggregate contributions exceeding seven hundred dollars during the twelve-month period preceding the date on which the advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding seven hundred dollars and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

(2)((a)) For independent expenditure advertisements or electioneering communications, the "top five contributors" identification requirement of RCW 42.17.510 applies to all political committees that make independent expenditures, including continuing political committees and out-of-state political committees subject to chapter 42.17 RCW other than a bona fide political party committee.

~~((b) For electioneering communications, the "top five contributors" identification requirement of RCW 42.17.510 applies to all political committees that make electioneering communications including continuing political committees and out-of-state political committees subject to chapter 42.17 RCW.))~~

(3) If a political committee keeps records necessary to track contributions according to the use intended by contributors, and the committee subsequently makes independent expenditures for advertisements supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose, as opposed to identifying the overall top five contributors to the committee as is otherwise required by RCW 42.17.510 and this section.

However, a contributor's contributions earmarked for independent expenditures supporting or opposing a specific

candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used with respect to a different candidate or slate of candidates without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure.

NEW SECTION

WAC 390-16-320 Candidates in small political subdivisions—Reporting. (1) According to RCW 42.17.030 and 42.17.405(7), a candidate for election in any political subdivision must report pursuant to chapter 42.17 RCW and Title 390 WAC if the candidate receives five thousand dollars or more in contributions or expects to receive five thousand dollars or more in contributions during an election cycle.

(2) It is presumed the candidate "expects to receive" five thousand dollars or more when any one of the following first occurs:

(a) The candidate or candidate's authorized committee receives at least five thousand dollars in aggregate contributions, including contributions from the candidate;

(b) The candidate is seeking the same office last sought, the candidate's election is in the current calendar year, and his or her campaign contributions in the previous election for the same office were five thousand dollars or more in the aggregate;

(c) The contributions received on or before March 31 of the election year total one thousand two hundred fifty dollars or more;

(d) The contributions received on or before June 30 of the election year total two thousand five hundred dollars or more;

(e) The contributions received on or before September 30 of the election year total three thousand seven hundred fifty dollars or more; or

(f) The candidate otherwise anticipates that five thousand dollars or more will be received during the election cycle.

(3) Surplus funds carried over from a candidate's previous campaign are not contributions to the candidate's new campaign and do not count toward the five thousand dollar reporting threshold.

(4) A candidate or candidate's authorized committee that receives, or expects to receive, five thousand dollars or more shall:

(a) Within two weeks of the date the reporting obligation begins under subsection (1) or (2) of this section, file:

(i) A candidate registration, PDC form C1;

(ii) A personal financial affairs statement, PDC form F1 and, if relevant, the F1 Supplement; and

(iii) Contribution and expenditure reports, PDC forms C3 and C4 with appropriate attachments and schedules; and

(b) Otherwise comply with the campaign finance reporting and other provisions of chapter 42.17 RCW and Title 390 WAC.

NEW SECTION

WAC 390-05-275 Definition—Party organization. "Party organization," as that term is used in chapter 42.17 RCW and Title 390 WAC, means a bona fide political party as defined in RCW 42.17.020.

WSR 07-04-089
PROPOSED RULES
EVERETT COMMUNITY COLLEGE

[Filed February 6, 2007, 12:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-048.

Title of Rule and Other Identifying Information: Chapter 132E-120 WAC, Student rights and responsibilities, updating Everett Community College student rights and responsibilities general policies. Academic, disclosure of information, conduct codes, hearing and grievance procedures, discrimination and sexual harassment, drug-free and tobacco use policies.

Hearing Location(s): Everett Community College Campus, Parks Building, Conference Room A, 2000 Tower Street, Everett, WA 98201, on March 13, 2007, at 12:30 p.m.

Date of Intended Adoption: March 15, 2007.

Submit Written Comments to: Juli Boyington, 2000 Tower Street, Everett, WA 98201, e-mail jboyington@everettcc.edu, fax (425) 388-9228, by March 9, 2007.

Assistance for Persons with Disabilities: Contact Kathy Cook by March 9, 2007, TTY (425) 388-9438.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide current and updated rules related to student rights and responsibilities.

Statutory Authority for Adoption: Chapters 28B.50 and 28B.10 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rich Haldi, Parks Building on the Everett Community College campus, (425) 388-9588.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. No costs apply.

January 30, 2007
 Juli Boyington
 Records Officer

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-120 Academic affairs. Students' scholastic performance shall be evaluated on the basis of educational performance, not on opinions or conduct in matters unrelated to scholastic standards.

(1) Protection of freedom of expression.

Students shall be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course for which they are enrolled.

(2) Right to pursue educational goals.

Students are free to pursue appropriate educational goals from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(3) Protection against improper academic evaluation.

Students shall have protection, through orderly procedures, against prejudice or capricious academic evaluation. At the same time, they are responsible for maintaining the standards of academic performance established for each course in which they are enrolled (see academic grievance procedure in the student handbook, WAC 132E-120-360).

(4) ~~(Protection against improper disclosure.~~

~~Information about student views, beliefs, and political associations acquired by faculty members in the course of their work as instructors, advisers, and counselors will be considered as privileged and confidential.)~~ Rights and responsibilities regarding final examinations.

Students have the right to have course comprehensive final examinations scheduled per the college's final exam schedule and are expected to take these examinations as scheduled by the final exam schedule. The exception to this rule applies during summer quarter when there is not a scheduled final examination week.

(5) Right to attend classes as regularly scheduled.

Students have the right to expect classes to be held as regularly scheduled and are expected to attend such classes ~~((as scheduled))~~ per the class instructor's attendance expectations as stated in the syllabus for the course.

(6) Rights and responsibilities regarding course syllabi.

Students have the right to expect the class instructor to follow his/her course syllabus and if any changes are made to the grading system and/or course requirements during the quarter, the students must be promptly notified. If a different instructor is assigned to the class during the quarter, the original course syllabus shall be followed; however, if the new instructor determines a need to modify the syllabus for the portion of the course he/she is teaching, the students must be promptly notified. The students are responsible for reading and understanding the information provided in the course syllabus and any changes made to it during the quarter.

(7) Protection against improper disclosure.

Information about student views, beliefs, and political associations acquired by faculty members in the course of their work as instructors, advisers, and counselors will be considered as privileged and confidential.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-130 Students as research subjects.

(1) Permission may be granted for conduct of research involving students for such purposes as the pursuit of advanced degrees, classroom research, independent student research, and research for off-campus individuals and agencies. Participation therein is the choice of the individual stu-

dent. Persons planning research utilizing students as subjects must secure permission in advance of the project from the vice-president for student services. Minimally such approval will entail:

- (a) Assurance that the project does not conflict with examinations or require a major loss of classroom time;
 - (b) Assurance that students know they have the alternative of choosing to participate or not;
 - (c) Explanation of the purpose of the research and disclosure of any possible negative consequence of any procedure to which students might be exposed in the research;
 - (d) Provision for students to have the opportunity to see the results of the research;
 - (e) Evidence that the research method is appropriate for the subject to be studied;
 - (f) Guarantee of confidentiality of student records and responses.
- (2) Prior to the initiation of such a project, the researcher shall submit a report of the research covering the points listed above to the vice-president for student services. Written permission may be given with or without college endorsement of the project. In such instances where the vice-president for student services deems appropriate, assistance may be sought from others with related knowledge before permission to proceed is granted or denied.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-150 Student affairs. (1) Freedom of association - Students are free to organize and join associations to promote their common interests, provided such organizations or associations do not disrupt or interfere with the mission of the college.

(a) The membership, policies, and actions of a student organization will be determined by vote of only those persons who hold bona fide membership in the student body as determined by current enrollment in the college.

(b) Affiliation with an extramural organization shall not of itself disqualify a student organization from institutional recognition.

(c) An organization is free to nominate its own adviser from the campus faculty and staff. Campus advisers shall advise organizations in the exercise of the rights and responsibilities as an organization, but they will not have authority to control the policies of such organizations.

(d) Student organizations shall be required to submit a constitution to the office of student activities which includes a statement of purpose, criteria for membership, rules or procedures, and a current list of officers to the student government recognized by the college.

(e) Campus organizations, including those affiliated with an extramural organization, shall be open to all students.

(2) Right of assembly.

(a) Students have the right to conduct or may participate in any assembly on facilities that are generally available to the public provided that such assemblies:

(i) Are conducted in an orderly manner;

(ii) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or regular functions of the college;

(iii) Do not unreasonably interfere with pedestrian or vehicular travel; or

(iv) Do not cause destruction or damage to college property.

(b) Any student group or student organization/club which wishes to schedule an assembly must reserve the college facilities per the appropriate procedures (see commercial and promotional activities in the student handbook).

(c) Assemblies which violate these rules and other college policies and rules may be ordered to disperse by the college.

(d) A nonstudent who violates any provision of the rule will be referred to civilian authorities.

(3) Student participation in institutional government - As constituents of the educational community, students shall be free, individually and collectively, to express their views on issues of institutional policy and matters of general interest to the student body. The student body shall have a clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs. The role of student government will be made explicit. The actions of the student government within the areas of jurisdiction shall be reviewed by the director of student activities and by the vice-president for student services through orderly procedures.

(4) Right of ownership of works - Employees of the college shall not use students' published and unpublished works for personal gain without written consent of the student.

(5) Right to be interviewed.

(a) Every student has the right to be interviewed on campus by any organization that is legal desiring to recruit at the college.

(b) Any student, student group, or student organization/club may assemble in protest against any such organization provided that such protest does not interfere with any other student's rights to have such an interview, and provided that such protest is in accordance with subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-160 Disclosure of student information. (1) Unless the student has provided the office of enrollment services with written notice which specifically requests otherwise, designated officials~~((*)~~) of the college ~~((with))~~ may routinely respond to requests for the following directory information about a student:

(a) Student's name;

(b) Major field of study;

(c) Extracurricular activities;

(d) Height and weight of athletic team members;

(e) ~~((Dates))~~ Quarters of attendance;

(f) Degrees and awards received;

(g) The most recent previous educational agency or institutions attended;

(h) Date of birth;

(i) E-mail address.

(2) ~~((Pursuant to FERPA (Family Educational Rights and Privacy Act) regulations, information from student's educational record may also be released to schools to which the student is seeking enrollment, and to appropriate college officials. The college may also release information to the military pursuant to the Solomon Amendment.))~~ Recognized college student organizations, such as scholastic and service clubs, may obtain information relating to a student's academic record and status; requests of this nature are handled on an individual basis and only through the organization's appointed advisor. Pursuant to the National Defense Authorization Act for Fiscal Year 1995, the college must release directory information to military recruiters unless the student specifically denies permission. The college shares selected records with organizations with which the college has a contractual agreement for services. The college may also release enrollment data for loan processing, enrollment and degree verification, and records archiving purposes through contractual arrangements, and to another school in which a student seeks or intends to enroll. The college releases Social Security and enrollment data to the Federal Government for Financial Aid and Veterans' eligibility evaluation and for Hope Scholarship/Lifetime Learning tax credit programs. The college may release records following the receipt of a lawfully issued subpoena, attempting to notify the student beforehand. The college does not disclose records to family members without student consent.

(3) No other information is to be given without the prior consent of the student or parent/guardian as appropriate. The vice-president for ~~((student services))~~ enrollment management will be responsible for reviewing unusual requests for information and assisting in the interpretation of the provisions of the Federal Family Education Rights and Privacy Act/Buckley Amendment. See Family Educational Rights and Privacy Act of 1974 in the Student Handbook for more information on confidentiality of student information and records.

((^{*} Designated officials of the college are those employees designated by the president to serve in this capacity.))

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-170 Everett Community College distribution of literature procedures. In order to insure an atmosphere in which the discussion of diverse points of view and ideas may exist, the following policy with regard to the distribution of printed matter will be implemented.

(1) Printed matter may be distributed in an orderly and nonforceful manner in only such areas as may be designated by the vice-president for student services or ~~((his/her))~~ designee except that:

(a) Noninstructional printed matter shall not be distributed in the classroom during regularly scheduled class time unless otherwise approved by the class instructor. Exceptions to this procedure may be made for special educational purposes and/or emergencies by the president, vice-president for instruction or designee, and/or vice-president for student services or designee. If and when this occurs, the class

instructor, appropriate academic dean, and students in the class shall be notified in a timely fashion;

(b) Printed matter shall not be distributed in ~~((Olympus Hall, the library, (i) college buildings~~ other than in specifically designated areas~~((j))~~) or in any area where the distribution of printed matter would restrict the physical passage of students or interfere with the instructional program and administrative and student support functions unless otherwise approved on a temporary basis for a specific informational purpose by the vice-president for student services or designee;

(c) Printed matter shall not be placed on any vehicle parked on the campus;

(d) Posters and advertising bulletins must be approved by the office of student activities before they may be posted on campus. In general, material concerning off-campus activities will not be approved unless it is determined to be special service to EvCC students;

(e) In addition, designated points of distribution will be made available on campus.

(2) As to content of printed matter, the college will be guided by ~~((both adherence to the First Amendment of the Federal Constitution and existing laws regarding libel, slander and obscenity))~~ state and federal laws and principles regarding free speech.

(3) A system of prior censorship is to be avoided if at all possible. Therefore, maximum cooperation of students, faculty and administration will be necessary. Matters of interpretation regarding these procedures and questions as to content of any displayed material will be handled by the vice-president for student services.

(4) Printed matter originating with an off-campus individual(s) or organization must be registered with the director of student activities before distribution will be permitted.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-190 Everett Community College—General policies concerning student conduct. (1) Everett Community College distinguishes its responsibility for student conduct from the control functions of the wider community. When a student has been apprehended for the violation of a local, state or federal law, the college will not request or agree to special consideration for the student because of his/her status as a student. The college will cooperate fully, however, with the law enforcement agencies.

(2) Everett Community College may apply sanctions or take other appropriate action only when student conduct directly and significantly interferes with the college's:

(a) Primary educational responsibility of ensuring the opportunity of all members of the college's community to attain their educational objectives,

(b) Subsidiary responsibilities of protecting the health and safety of persons in the college community, maintaining and protecting property, keeping records and other services, and sponsoring nonclassroom activities such as lectures, cultural events, concerts, athletic and other recreational activity events, social functions, and other special activities/events, or

(c) When a student commits any of the offenses listed in WAC 132E-120-220.

(3) Procedural fairness is basic to the proper enforcement of all college rules. In particular, no disciplinary sanction as serious as expulsion, suspension, summary suspension or disciplinary probation, written warning, or restitution shall be imposed unless the student has been notified in writing of the charges against him/her and has had the opportunity:

(a) To appear alone or with ~~((an advocate))~~ another to advise and assist him/her as he/she appears before an appropriate college official and/or the student conduct committee. ~~((The advocate's function is to provide support to the student but may not address the college official or the student conduct committee.))~~ Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official or student conduct committee. An accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the vice-president for student services or designee.

(b) To know the nature and source of the evidence against him/her and to present evidence in his/her behalf(✓); and

(c) To have his/her case reviewed by the student conduct committee.

(4) Students shall have an opportunity to participate fully in the formulation of all policies and rules pertaining to student conduct.

(5) Rules and sanctions affecting the conduct of students shall be based on principles of equal treatment, including like penalties for like violations.

(6) The general policies, violations and sanctions shall be printed and made available to students of the college.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-210 Everett Community College student conduct—Authority and responsibility. (1) The board of trustees acting in accordance with RCW 28B.050.140(14) does by written order delegate to the president of the college authority to administer disciplinary action.

(2) The vice-president for student services is directed by the president to represent the college with regard to student affairs including discipline. He/she is responsible for assembling facts regarding incidents referred to his/her office, making provisions for suitable hearings, convening the designated student conduct committee when requested, notifying students and others concerned, determining and imposing appropriate disciplinary action, keeping confidential files and reports regarding incidents following each disciplinary case until it is closed, and destroying out-of-date files related to student disciplinary cases as may be permitted under state law.

(3) The instructor is responsible for the management of student conduct in the classroom. Instructors may remove a

student from class on a daily basis if the student is being disruptive to the learning environment for students and/or the teaching environment for the instructor and fails to abide by the instructor's behavioral expectations. The vice-president for student services or designee may through the appropriate disciplinary proceedings as set forth in this chapter permanently remove a student from a class for disruptive behavior.

The student has the right to appeal any disciplinary action taken against him/her by the vice-president for student services or designee in accordance with the procedures set forth in this chapter.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-220 Student conduct code—Violations. (1) As members of Everett Community College, students are expected to abide by all college rules and regulations. Students shall be subject to disciplinary action as provided for by this code who, either as a principal actor, aider, abettor, or accomplice interferes with the personal rights or privileges of others or the educational process of the college; violates the provisions as set forth in this chapter; or commits any of the offenses as defined in this section.

(2) No sanction or other disciplinary action shall be imposed on a student by or in the name of the college except in accordance with this chapter.

(3) Disciplinary actions and/or sanctions may be imposed on a student for the commission of any of the following offenses:

(a) Academic cheating or plagiarism.

(b) Furnishing false information to the college with the intent to deceive including but not limited to the filing of a formal complaint that falsely accuses another student of violating the student conduct code or a college employee with violating college rules/procedures.

(c) Forgery, alteration, or misuse of college documents, records or identification cards.

(d) Verbal abuse, physical abuse, sexual misconduct, sexual harassment, sexual assault, reckless endangerment, intimidation, or interference of another person in the college community on college owned or controlled property or at functions sponsored or supervised by the college or its student organizations/clubs.

(e) Unlawful discrimination including hate crimes and/or bias incidents. A hate crime includes but is not limited to a criminal offense committed against a person who is motivated, in whole or in part, by the offender's bias against a race, religion, disability, age, status, ethnicity/national origin, sex, or sexual orientation. A bias incident includes but is not limited to an act of conduct, speech, or expression to which a bias motive is evident as a contributing factor, such as racist leaflets or offensive printed materials that exhibit a bias against a race, religion, disability, age, status, ethnicity/national origin, sex, or sexual orientation; verbal, written, cyber/electronic, or physical contact resulting or intending to result in intimidation, harassment, fear, personal assault and/or other violence.

(f) Vandalism of college property, theft or conversion of another's property on college owned or controlled property or

at functions sponsored or supervised by the college or its student organizations or clubs.

~~((f))~~ (g) Lewd or indecent conduct occurring on college owned or controlled property or at functions sponsored or supervised by the college or its student organizations or clubs.

~~((g))~~ ~~Furnishing alcoholic beverages without authorization and proper licenses or illegal drugs on property owned or controlled by the college or at functions sponsored or supervised by the college or its student organizations/clubs.)~~

(h) Possession or ~~(consumption of alcoholic beverages except at authorized and properly licensed functions while on property owned or controlled by the college or at functions sponsored or supervised by the college or its student organizations/clubs))~~ consuming any form of liquor or alcoholic beverage on college property or at off-campus college events is prohibited except as a participant of legal age at a college sponsored program which has the special written permission of the college president.

(i) Illegal possession, ~~((or))~~ consumption, selling, or distributing, or being demonstrably under the influence of any narcotic or controlled substance ~~((identified as prohibited by federal law))~~ as defined by RCW 69.50.101 as now or hereafter amended on property owned or controlled by the college or at functions sponsored or supervised by the college ~~((or its student organizations/clubs))~~ except when the use or possession of a drug is specifically prescribed as medication by an authorized doctor or dentist. For the purpose of this rule, "sale" shall include the statutory meaning defined in RCW 69.50.410 as now or hereafter amended.

(j) Disorderly ~~((or))~~ or abusive ~~((or both))~~ conduct, including conduct resulting from ~~((drunkenness or drug influence))~~ being under the influence of drugs or alcohol on college owned or controlled property or at functions sponsored or supervised by the college ~~((or its student organizations or clubs))~~. Disorderly or abusive ~~((behavior))~~ conduct also includes interfering with the right of others or obstructing or disrupting teaching, research, or administrative functions including failure to abide by the directive(s) of a member of the college faculty, or exempt, administrative, or classified staff who is acting in their capacity as an agent of the college.

(k) Gambling on property owned or controlled by the college or at functions sponsored or supervised by the college or its student organizations/clubs.

(l) Violation of any condition imposed by the vice-president for student services or ~~((his/her))~~ designee or recommended by the student conduct committee for an infraction of which sanctions may be imposed under this code.

(m) Refusal to provide positive identification (e.g., valid driver's license or state identification card) in appropriate circumstances to any college employee in the lawful discharge of said employee's duties.

(n) Entering any administrative or other employee office that is normally not accessible to the public or any locked or otherwise closed college facility in any manner, at any time, without permission of the college employee or agent in charge thereof.

(o) Smoking in or on any college facility except those areas which have been identified as designated smoking areas.

(p) Failure to comply with the following rules governing firearms and weapons on campus or at college sponsored events in facilities leased or rented by the college:

(i) Carrying, exhibiting, displaying, or drawing any weapon, such as a slung shot, ~~((and))~~ slung shot, and club, metal knuckles, dagger, sword, or swing blade knife, or any knife of which is automatically released by a spring mechanism or other mechanical ~~((device))~~ device, or any knife having a blade which opens, or falls, or is ejected into position by force of gravity, or by outward, downward, or centrifugal thrust or movement, or any other cutting or stabbing instrument or club or any other weapon apparently capable of inflicting bodily harm and/or property damage is prohibited.

(ii) Explosives, incendiary devices, or any weapon facsimile are prohibited ~~((in or on college facilities))~~.

(iii) Carrying firearms ~~((on college facilities))~~ is prohibited ~~((except and unless the firearm is registered with campus safety and security for a designated period of time that the firearm is carried on campus))~~.

(iv) The regulations in (p)(i) through (iii) of this subsection shall not apply to equipment or material owned, ~~((used))~~ or maintained by the college ~~((or))~~ nor will they apply to law enforcement officers.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-230 Everett Community College—Student conduct code—Sanctions for violations. Sanctions which may be imposed for the commission of college offenses shall include the following ~~((or))~~:

(1) Expulsion or disciplinary dismissal from the college: Termination of student status for an indefinite period of time. Disciplinary dismissal may be placed on the student's transcript indefinitely at the discretion of the vice-president for student services. Conditions, if any, of restitution ~~((and))~~ readmission, ((if any,)) and/or removal of disciplinary dismissal from the student's transcript shall be stated in the order of expulsion.

(2) Suspension from the college: Suspension from student status for a definite period of time.

(3) Summary suspension: Exclusion from classes or other privileges, services or activities.

(4) Disciplinary probation with or without loss of designated privileges for a definite period of time. The violation of the terms of disciplinary probation or the infraction of any college rule during the period of disciplinary probation may be grounds for suspension or expulsion from the college. The parents of any student under 18 years of age who is placed on disciplinary probation, suspended, or expelled shall be so notified.

(5) Restitution: Reimbursement for damage to or misappropriation of property. The restitution may be in the form of appropriate service or monetary compensation.

(6) Warning: Notice in writing that continuation or repetition of conduct deemed wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action.

(7) Admonition: An oral admonition shall not be considered a formal disciplinary action, and shall not be subject to appeal to the student conduct code.

(8) The parents of any student under eighteen years of age who is placed on disciplinary probation, suspension, or expulsion may be notified at the discretion of the vice-president for student services pursuant to FERPA guidelines.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-240 Student conduct—Initial disciplinary procedures. Allegations of misconduct shall be filed in the vice-president for student services office in writing. Upon investigation, the vice-president for student services shall initiate action as described below.

(1) Students alleged to have committed an act of misconduct shall be notified to meet with the vice-president for student services or ((his/her)) designee for possible disciplinary action. The notice must be given at least one school day prior to the scheduled appointment. The notice will be delivered to the student on-campus and/or by first class mail to the student's last known address. The notice shall identify the provision or provisions of the student conduct code that he/she is alleged to have violated, and the range of penalties, if any, which might result from the disciplinary proceedings.

(2) After a careful review of the circumstances surrounding the alleged misconduct and after interviewing the accused student, if he/she appears at the initial meeting, the vice-president for student services or ((his/her)) designee may take one of the following actions:

(a) Take no further action and terminate the proceeding, exonerating the student or students;

(b) Provide whatever counseling and/or advice may be appropriate;

(c) Impose verbal admonition to the student directly which is not subject to the student's right of appeal as provided in this chapter; or

(d) Impose appropriate disciplinary action, subject to the student's right of appeal as described in this chapter. The student shall be notified in writing of such an action.

(3) The student may be placed on summary suspension pending the commencement of disciplinary action, pursuant to the conditions set forth in WAC 132E-120-250.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-250 Summary suspension—Purpose and proceedings. (1) As defined in WAC ((132E-120-040)) 132E-120-230, summary suspension is exclusion from classes or other privileges, services and activities. A student shall be summarily suspended if the vice-president for student services or ((his/her)) designee has cause to believe that the student:

(a) Has violated any provision of this chapter; and/or

(b) Presents an imminent danger either to himself or herself, other persons on the campus, or to the educational process.

(2) Summary suspension is appropriate only where subsection (1)(b) of this section can be shown, either alone or in

conjunction with subsection (1)(a) of this section. The vice-president for student services or ((his/her)) designee shall enter an order as provided by law if the student is to be suspended. Written notice shall be served by certified and regular mail at the student's last known address, or shall be personally served on the student.

(3) The procedures for a summary suspension hearing shall be considered an emergency adjudicative proceeding and shall be conducted as soon as possible and, if feasible, within five working days. The vice-president for student services may, upon the request of the student, schedule the hearing at a time later than five working days. The vice-president for student services and/or his/her designee shall preside over the meeting. The student may appear alone or with another to advise and assist him/her as he/she appears before the appropriate college official(s). Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official. An accommodation of a spokesperson (a person who would address the college official(s)) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the vice-president for student services or designee. The vice-president for student services or ((his/her)) designee shall, at the summary suspension proceeding, determine whether there is probable cause to believe that continued suspension is necessary and/or whether other disciplinary action is appropriate.

(4) The vice-president for student services or ((his/her)) designee may continue to enforce the suspension of the student from the college and/or may impose other disciplinary action if, after the summary suspension hearing, the vice-president for student services or ((his/her)) designee finds that the student against whom the specific violations are alleged has in fact committed one or more of said violations and:

(a) Summary suspension is necessary for the safety of the student, other campus community members, or to restore order to the campus; and

(b) The violation(s) by the student are grounds for disciplinary action per WAC 132E-120-020 and 132E-120-040.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-260 Notice of summary suspension.

(1) If, after the summary suspension hearing a student's summary suspension is upheld or if the student is disciplined in another way, the vice-president for student services or ((his/her)) designee will provide to the student written findings of fact and conclusions which lead the vice-president for student services or ((his/her)) designee to conclude that the summary suspension of the student should be affirmed.

(2) The student shall be served a copy, if applicable, of the findings and conclusions by certified and regular mail to the student's last known address or by personal services within three working days following the summary suspension hearing. The notice shall state the terms for which the student

is suspended and any conditions imposed on the student's return.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-270 Summary suspension for failure to appear. The vice-president for student services or ((his/her)) designee has the authority to enforce the suspension of a student if the student fails to appear at the time designated for the summary suspension hearing.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-290 Student conduct committee. (1) The college's student conduct committee will hear and make recommendations on all disciplinary cases referred to it by the vice-president for student services or ((his/her)) designee or appealed to it by students who have been disciplined by the vice-president for student services or ((his/her)) designee.

(2) The student conduct committee will be comprised of the following members:

(a) A chair designated by the president of the college for a period of one year. The chair will be a nonvoting member, except in the case of a tie vote by committee members, and will normally be a faculty member. It shall be his/her responsibility to ensure that all procedures prescribed in this chapter are followed. The chair will also take appropriate action to ensure that the hearing is conducted in a safe and orderly manner, advise the committee members of the precedents and guidelines concerning the case, and inform the student in writing of the action taken/recommended by the committee following the hearing.

(b) Three faculty members appointed by the president. Three alternates shall also be appointed by the president in the event an appointee(s) is unable to complete his/her term or unable to serve on a particular case.

(c) Three full-time (at least ten credits) student representatives shall be recommended by the associated students' executive council to the president of the college. Three alternates will also be appointed to serve in the event that a member(s) is unable to complete his/her term or is unable to serve on a particular case.

(d) A quorum shall consist of at least two of the above named faculty, and two of the above named students and the chair.

(e) Committee members will be appointed to serve for one year but are eligible to serve as many as three consecutive terms.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-300 Appeals of disciplinary action—General. (1) Disciplinary action imposed by the vice-president for student services or ((his/her)) designee may be appealed to the student conduct committee.

(2) An appeal by a student of disciplinary action must meet the following conditions:

(a) The appeal must be in writing and must clearly state the student's position and errors in fact, if any, and compelling reasons which support the appeal; and

(b) The appeal must be filed in the president's office within twenty-one working days from the date that the student was served notice that disciplinary action had been taken or recommended against him/her.

(3) All recommendation(s) from the student conduct committee shall include the signature of the chair. Copies of the committee's recommendation(s) shall be sent to the student, vice-president for student services or ((his/her)) designee, and president.

(4) Recommendations made by the student conduct committee may be appealed by the student to the president of the college. The president shall review the report of the proceedings which give rise to the appeal and the disciplinary action taken by the vice-president for student services or ((his/her)) designee and the recommendation(s) of the student conduct committee. The president's decision shall be final.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-310 Student conduct committee hearing procedures. (1) The student conduct committee shall conduct a hearing within fourteen working days after disciplinary action has been referred to it. Proceedings shall be governed by chapter 34.05 RCW.

(2) Proceedings before the student conduct committee shall be conducted in a manner that will bring about a prompt and fair resolution.

(3) The student has a right to a fair and impartial hearing before the student conduct committee on any allegation of violating the student conduct code and shall be provided notice of the hearing at least seven days in advance. If the student fails to attend the hearing held by the student conduct committee, the committee may proceed with the findings of fact, conclusions and recommendations.

(4) The student may appear with ((an advocate)) another to advise and assist him/her as he/she appears before the student conduct committee. ((The advocate's function is to provide support to the student but may not address the student conduct committee.)) Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official or student conduct committee. An accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the vice-president for student services or designee.

(5) The student may have a duly licensed attorney, admitted to practice in the state of Washington, present at the hearing to advise the student in the presentation of his/her appeal. The attorney may not address the student conduct committee unless he/she is called as a material witness in the case. An accommodation of the student's attorney addressing the college official, or assisting the person in addressing the

college official may be approved if the student's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson will be considered by the vice-president for student services or designee. If the student chooses to have an attorney present to advise him/her, the student shall notify the chair at least five days prior to the hearing.

(6) The vice-president for student services or designated representative(s) shall make the first presentation. Each witness may be cross-examined by the student; and after cross-examination is completed, any committee member who wishes may ask questions of the witness but only after both direct examination and cross-examination of the witness have been completed. Upon completion of the presentation by the student, both sides shall then be permitted to make any closing arguments after which the committee may ask questions.

(7) The hearing will then be closed and the committee will retire to executive session for deliberation. ~~((When a recommendation has been reached, the committee will reconvene and announce its recommendation within one school day. The proceeding will then be adjourned.))~~ At the conclusion of the executive session, the proceeding will be adjourned and the student conduct committee shall, within seven working days, make findings of facts, conclusions, and recommend disciplinary action/sanctions as appropriate, if any.

(8) The record in a formal hearing shall consist of all documents as required by law and as specified in RCW 34.05.476.

(9) All records of disciplinary proceedings shall be maintained in the appropriate administrative office and shall be available only during the course of the disciplinary proceedings to the student conduct committee, the student, and his/her attorney, and any other college official designated by the president.

(10) Following the conclusion of the disciplinary proceedings, access to records of the case and the hearing files will be limited to the student and to those designated by the college president.

(11) The time of the hearing may be advanced by the student conduct committee at the request of the student or continued for good cause.

(12) If at any time during the hearing a visitor disrupts the proceedings, the chair of the student conduct committee may exclude that person from the hearing room.

(13) A recorder shall be present at the hearing to record the proceedings.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-340 Final appeal. (1) Any student who disagrees with the findings, conclusions and recommendation(s) of an appeal to the student conduct committee may appeal the same in writing to the president of the college within twenty-one working days of being served notice of the recommendation(s) made by the committee. The president may, at his/her discretion, suspend any disciplinary action pending determination of the merits of the findings, conclusions and any disciplinary action imposed. In consideration

of such an appeal, the president shall base his/her findings and decision only on the official written record of the case.

(2) If no appeal is requested within twenty-one working days of service on the student, the findings, conclusions and recommendations of the student conduct committee shall become final, and shall not be subject to further review or appeal.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-350 Readmission after dismissal.

Any student expelled from the college may submit a written petition to the vice-president for student services requesting readmission. Such petition must include how any conditions imposed by the vice-president for student services or student conduct committee have been met. Decisions by the vice-president for student services regarding a petition for readmission shall be reviewed by the president.

If the vice-president for student services suspends or expels a student from a college program that has a readmission policy and procedure, the program's readmission policy and procedures will be followed and the readmission committee will review, as part of their deliberations, the vice-president for student services' recommendation/conditions of readmission concerning the student's readmission to the program.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-360 Academic grievance procedure.

(1) Definition of an academic grievance - If a student has evidence that he/she has been: Unfairly treated in matters related to grading, course policies or expectation; falsely accused of cheating; or inappropriately penalized for alleged cheating, he/she may be said to have an academic grievance. Students who feel that such unfair treatment has transpired should feel free to raise the question of how such a grievance may be resolved with the office of the vice-president of ~~((educational services))~~ instruction or ~~((his/her))~~ designee which will provide information (without judgment) regarding the procedure for filing an academic grievance. Students should also feel free to contact any member of the campus community who they trust who may assist the student and/or refer the student to the appropriate resource. In addition to the office of the vice-president for instruction, the offices/centers that can generally be of the most assistance in terms of advice, support, and referral regarding these matters are the office of the vice-president for student services, the offices of the academic deans, the office of the vice-president for human resources, diversity and equity center, counseling/advising and career center, center for disability services, Rainier learning center, student activities office, student support services program, and campus safety and security.

(2) Informal procedure resolution - Informal complaints should be made to the appropriate division dean or other supervising administrator. Upon receipt of a student complaint by the division dean, the following steps ~~((may))~~ should be taken:

(a) The student will be encouraged to discuss the alleged problem with the involved instructor; or if the complaint involves a program, the student will be encouraged to speak to the director/dean of the involved program.

(b) If the student is not satisfied as a result of such discussion, he/she should then meet with the director/dean or supervising administrator to resolve the complaint.

(c) If the complaint is not resolved at this level, the student, the instructor and the director/dean should meet with the vice-president of ~~((educational services or his/her))~~ instruction or designee to attempt resolution.

(d) If the complaint is not resolved at this level the student may institute formal grievance procedures.

(e) During any meetings that occur in (a) through (c) of this subsection, the student may invite another person or two to be with them in the meeting. The other person(s) are present to assist and advise the student although an accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the director/dean or supervising administrator facilitating the meeting.

(3) Formal grievance procedure - To assure an atmosphere free from unfair treatment in academic matters, the following procedures are established to respond to an unresolved academic complaint registered by a student. It is understood, however, that this procedure ~~((will))~~ should be employed only after efforts have been made by the student to resolve the issue through the previously described informal procedure. A student who feels an academic grievance has not been resolved through the informal resolution process may file a formal grievance with the vice-president of ~~((educational services))~~ instruction prior to the tenth (10th) day of the quarter following the alleged grievance. Within ten working days of the receipt of the signed written grievance, the vice-president of ~~((educational services or his/her))~~ instruction or designee will appoint a grievance committee for the purpose of reviewing the complaint and recommending a resolution.

(4) The grievance committee will be composed of seven voting members including:

(a) An administrator who will serve as the chair but will only vote in the event of a tie vote.

(b) ~~((Four))~~ Three faculty members, including one from the division of the involved faculty member.

(c) ~~((Two))~~ Three students to be selected as provided for in the associated students constitution and by-laws. All matters shall be discussed in closed meetings and shall be treated with strict confidence by committee members.

(d) A quorum of the grievance shall be four members.

(5) Formal resolution.

(a) Parties affected by the grievance will provide the grievance committee with all requested information in order to bring about full understanding and a speedy resolution to the grievance.

(b) In order to ensure due process, the aggrieved student shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(c) The instructor against whom the grievance is filed shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any members of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(d) Once the aggrieved student and the faculty member have had sufficient opportunity to present their points of view, the grievance committee will deliberate and reach a decision by a simple majority vote. The committee will provide the vice-president of ~~((educational services or his/her))~~ instruction or designee its written recommendation within ten working days of its organizational meeting. The vice-president or ~~((his/her))~~ designee will notify the parties in the grievance of his/her decision, and the resolution within forty-eight hours of having received the committee recommendation.

(e) If the grievance committee establishes that an aggrieved student has been treated unfairly, the committee will recommend corrective steps to the vice-president of ~~((educational services or his/her))~~ instruction or designee.

(f) Either party shall have the right to present a written appeal of the decision of the vice-president of ~~((educational services or his/her))~~ instruction or designee to the president of the college. Within one week of having received the appeal, the president shall review the case and render a decision which will be transmitted to both parties.

(g) An accommodation of a spokesperson (a person who would address the grievance committee, or assist the person in addressing the grievance committee) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the administrator chairing the committee.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-370 Student affairs grievance procedure. (1) Definition of a student affairs grievance - If a student has evidence that he/she has been: Unfairly treated in matters related to student services/student auxiliary services, policies, procedures, or expectations, he/she may be said to have a student affairs grievance. Students who feel that such unfair treatment has transpired should feel free to raise the question of how such a grievance may be resolved with the associated student executive council which will provide information (without judgment) regarding the procedure for filing a grievance. Students should also feel free to contact any member of the campus community who they trust that may assist the student and/or refer the student to the appropriate resource. In addition to the office of the vice-president for student services, the offices/centers that can generally be of

the most assistance in terms of advice, support, and referral regarding these matters are the office of the vice-president for instruction, the offices of the academic deans, and the office of the vice-president for human resources, diversity and equity center, counseling/advising and career center, center for disability services, Rainier learning center, student activities office, student support services program, and campus safety and security.

(2) Informal procedure for resolution - Informal complaints should be made to the appropriate administrator. Upon receipt of a student complaint by the administrator, the following steps will be taken:

(a) The student will be encouraged to discuss the alleged problem with the party concerned; or if the complaint involves a program, the student will be encouraged to speak to the appropriate supervisor.

(b) If the student is not satisfied as a result of such discussion, he/she should then meet with the immediate administrator to resolve the complaint.

(c) If the complaint is not resolved at this level, the student, the respondent and the administrator should meet with the vice-president for student services or the vice-president under which the program/service is administratively aligned to attempt resolution.

(d) If the complaint is not resolved at this level, the student may institute formal grievance procedures.

(3) Formal grievance procedure - To assure an atmosphere free from unfair treatment, the following procedures are established to respond to an unresolved complaint registered by a student. It is understood, however, that this procedure ~~((with))~~ should be employed only after efforts have been made by the student to resolve the issue through the previously described informal procedure. A student who feels a grievance has not been resolved through the informal resolution process may file a formal grievance with the appropriate vice-president ~~((for student services))~~ or designee prior to the tenth (10th) instructional day of the quarter following the alleged grievance. Within ten working days of the receipt of the signed written grievance, the appropriate vice-president ~~((for student services))~~ or designee will appoint a grievance committee for the purpose of reviewing the complaint and recommending a resolution.

(4) The grievance committee will be composed of seven voting members including:

(a) An administrator~~(:)~~ (other than the appropriate vice-president ~~((for student services))~~ who shall serve as chair and vote only in the case of a tie;

(b) One faculty and ~~((one))~~ two from classified staff;

(c) ~~((Four))~~ Three students to be selected randomly and not active members of student activities, or the involved program. All matters shall be discussed in closed meetings and shall be treated with strict confidence by committee members~~(:)~~;

(d) A quorum consists of four members of the grievance committee.

(5) Formal resolution.

(a) Parties affected by the grievance will provide the grievance committee with all requested information in order to bring about full understanding and a speedy resolution to the grievance.

(b) In order to ensure due process, the aggrieved student shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response.

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(c) The party against whom the grievance is filed shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(d) Once the aggrieved student and the respondent have had sufficient opportunity to present their points of view, the grievance committee will deliberate and reach a decision by a simple majority vote. The committee will provide the appropriate vice-president ~~((for student services))~~ or designee its written recommendation within ten working days of its organizational meeting.

(e) The appropriate vice-president ~~((for student services))~~ or designee will notify the parties in the grievance of the resolution within two school days of having received the committee recommendation. If the grievance committee establishes that aggrieved student has been treated unfairly, the committee will recommend corrective steps to the appropriate vice-president ~~((for student services))~~.

(f) Either party shall have the right to present a written appeal of the decision to the president of the college. Within one week of having received the appeal, the president shall review the case and render a decision which will be transmitted to both parties.

(g) During any meetings that occur in (a) through (f) of this subsection, the student may invite another person or two to be with them in the meeting. The other person(s) are present to assist and advise the student although an accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the director/dean or supervising administrator facilitating the meeting.

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-380 ~~((Discrimination/sexual harassment))~~ Illegal discrimination and sexual harassment policy statement. ~~((1))~~ The following laws and documents relate to prohibition of discrimination on the basis of race, religion, color, age, sex, or national origin and are applicable to the affirmative action program at Everett Community College.

~~((a))~~ Title IV, Civil Rights Act of 1964 (prohibits discrimination on the basis of race and national origin in federally assisted programs).

~~(b) Title IX of Educational amendments of 1972 (prohibits sex discrimination on the basis of race and national origin in federally assisted programs).~~

~~(c) Federal Age Discrimination Act of 1975 (prohibits discrimination based on age in federally assisted programs).~~

~~(d) Office of Federal Contract Compliance Sex Discrimination guidelines CRF 20.~~

~~(e) Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 and state of Washington Laws of 1994, chapter 105.~~

~~(2) Everett Community College must provide a learning environment free from unlawful discrimination and sexual harassment of its students and those who apply for student status. All students should be aware that the college is concerned and will take action to eliminate such actions and that those who so act are subject to disciplinary action.~~

~~(3) Informal procedure:~~

~~(a) The complainant(s) should initially discuss any grievance with the respondent(s), if feasible.~~

~~(b) If not resolved, the complainant(s) may elect to contact the vice president for student services or affirmative action officer for assistance. The vice president for student services or affirmative action officer will:~~

~~(i) Inform the respondent of the complaint.~~

~~(ii) Conduct a preliminary investigation of the grievance.~~

~~(iii) Inform the complainant(s) and respondent(s) of the findings of the preliminary investigation.~~

~~(iv) Act as mediator in attempting to resolve the grievance at the informal level.~~

~~(v) If not resolved, advise the complainant(s) of the formal procedure.~~

~~(4) Formal procedure – If so requested in writing by the complainant(s), the vice president for student services will forward the written complaint, as signed by the student, along with the vice president's findings from the preliminary investigation, to the affirmative action officer for formal action as described in the college affirmative action program.)~~ Everett Community College affirms its commitment to equal educational opportunity for all its students, and its commitment to assure that there is no discrimination against any student, or those who apply for student status, on the basis of race, religion, creed, color, national origin, age, sex, sexual orientation, marital status, the presence of any physical, sensory or mental disability, or status as a disabled or Vietnam era veteran in accordance with state and federal laws.

Everett Community College is also committed to maintaining an educational environment that is free of sexual harassment and all forms of sexual intimidation and exploitation. Sexual harassment is a form of illegal sex discrimination and as such will not be tolerated. All staff, faculty and students should be aware that the college is prepared to take action to prevent and correct such behavior, and that individuals who engage in such behavior are subject to disciplinary action. The determination of what constitutes sexual harassment, sexual intimidation, and sexual exploitation will vary with the particular circumstances, but it may be described generally as repeated and unwanted/uninvited sexual behavior, such as physical contact, cyber/electronic communication, and verbal comments or suggestions, which adversely affects the learning environment.

NEW SECTION

WAC 132E-120-385 Illegal discrimination and sexual harassment complaint procedures. (1) Informal complaints.

Discrimination and/or sexual harassment may take many forms and the perpetrator may not understand that his/her behavior is being perceived as discriminatory or that it constitutes sexual harassment. Therefore, any student who feels that she/he is being subjected to discriminatory behavior and/or sexual harassment is encouraged to discuss the offensive behavior directly with the person involved. If direct communication is either impractical or feels too intimidating to the complainant, there are others on campus who can either intercede or assist with this conversation. Students may contact any member of the campus community who they trust that may assist the student and/or refer the student to the appropriate resource. Generally, the offices/centers that can be of the most assistance in terms of advice, support, and referral regarding these matters are the offices of the vice-president for student services, and vice-president for human resources, the office of the vice-president for instruction and the offices of the academic deans, diversity and equity center, counseling/advising and career center, center for disability services, Rainier learning center, student activities office, student support services program, and campus safety and security.

If the situation cannot be settled informally, the complainant may file a formal internal complaint. Students are not required to utilize informal procedures, but may go directly to the following formal internal complaint procedure.

(2) Formal internal complaints.

(a) Without feeling constrained by specific definitions of discrimination, or by reporting relationships, written complaints concerning allegations of discrimination may be directed to the vice-president for student services or the vice-president of human resources. The two vice-presidents will confer and determine who will act as the investigator on the complaint.

(b) Complaints will be held in confidence to the extent possible, however, discrimination is an illegal activity requiring an active response from the college. Parties to the complaint will become directly involved, and any subsequent legal actions may result in discovery or public disclosure requests. Complainants have the right to bring an advocate to all subsequent meetings with college officials.

(c) The investigator shall assure that both the person making a formal complaint, and the accused, have been provided copies of the *Sexual Harassment* and/or the *Equal Opportunity/Anti-Discrimination* policies and this procedure.

(d) The investigator will determine the extent of the investigation. Since discrimination represents an illegal activity, the college may elect to investigate even those cases where the complainant has withdrawn the complaint, or otherwise refuses to cooperate in the investigation.

(e) A draft or preliminary report shall be produced at the end of the investigation and copies provided to the accused, and to the complainant. The two parties shall each have ten calendar days to prepare a response to the report before any action is taken. Once responses have been received, the investigator shall, within five days, produce a final report.

Copies will be distributed to the complainant, the accused, and the college president.

(f) The investigator shall make a recommendation for action based on the final report to the president within ten days of its completion.

(g) If the complainant, the accused, and the investigator agree, informal meetings may be held in lieu of an investigation. Any such informal meetings shall occur with the investigator present, who will subsequently make a written recommendation for action on the complaint to the president within ten days following the last meeting regarding the complaint.

(h) The decision regarding what action to take on the complaint, including appropriate corrective or discipline measures, shall be made by the president in conjunction with the vice-president of human resources, and the vice-president for student services.

(i) If any disciplinary action is imposed, the disciplined student may appeal the action through established grievance or appeal channels.

(3) External complaints.

Inquiries or appeals beyond the institutional level may be filed with the following agencies, or any other agency with the jurisdiction to hear such complaints:

Equal Employment Opportunity Commission (a federal agency)

909 First Avenue
Seattle, WA 98104
800-669-4000

Human Rights Commission (a state agency)

1511 Third Avenue
Seattle, WA 98101
206-464-6500

Department of Education (a federal agency)

Office for Civil Rights
915 - 2nd Ave., Room 3310
Seattle, WA 98174
206-220-7900

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-390 Antihazing policy. (1) Hazing is prohibited on Everett Community College (EvCC) property and at all EvCC functions, including club and organization activities, whether on EvCC property or not.

(2) Hazing is defined as any method of initiation into a student organization, club or association, or any pastime or amusement engaged in with respect to such an organization, club or association that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Excluded from this definition are customary athletic events or other similar contests or competitions.

(3) Any allegations of hazing shall be submitted to the vice-president for student services or designee and action shall be taken as appropriate per Article IV (Disciplinary Procedures) (~~of the Statement~~) of Student Rights and Responsibilities with the following additional disciplinary provisions:

(a) Any EvCC student organization, club or association that knowingly permits hazing shall be denied recognition by EvCC as an official organization, club or association. Any group so disbarred may apply to be reinstated as an official organization, club or association after waiting a period of one quarter and providing a written statement of their intent to follow hazing policies as set forth herein. Repeat offenses by student organizations/clubs will be submitted to the vice-president for student services or designee for possible further action under the guidelines for disciplinary procedures.

(b) A person who participates in the hazing of another shall forfeit any entitlement to state funded grants, scholarships or awards for one full quarter for a first-time offense, and for a period to be determined via the processes for disciplinary procedures for repeat violations. Additional sanctions which may include expulsion from the college may be recommended by the vice-president for student services or designee per the guidelines for disciplinary procedures.

(c) Hazing violations are misdemeanors punishable under state criminal law (RCW 28B.10.901 and 9A.20.021).

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-400 Drug-free campus policy. Everett Community College's board of trustees have adopted a policy for the maintenance of a drug-free campus. The provisions of this policy as it relates to students are as follows:

(1) Students who report to class or work must do so unimpaired due to the use of alcohol or other drugs.

(2) Unlawful use, possession, delivery, dispensation, distribution, manufacture or sale of drugs on college property, in state vehicles or on official business is strictly prohibited. Documented evidence of illegal drug involvement will be given to law enforcement agencies.

(3) Possession (~~of alcohol is prohibited on college property and in state vehicles~~) or consuming any form of liquor or alcoholic beverage on college property or at off-campus college events is prohibited except as a participant of legal age at a college sponsored program which has the special written permission of the college president.

(4) Students found in violation of this policy will be subject to formal disciplinary action, which could include completion of an appropriate rehabilitation program up to and/or including dismissal/expulsion.

(5) Students needing assistance with problems related to alcohol or drug abuse are encouraged to seek referral from a counselor in the counseling, advising and career center and/or appropriate off campus substance abuse agencies.

(6) Students must report any criminal drug (~~abuse or alcohol~~) statute conviction to the vice-president for student services within five school days after such conviction.

(7) The college will report the conviction to the appropriate federal or state agency within ten working days after having received notice that a student employed under a federally funded grant or contract or receiving grant funds has any drug statute conviction occurring on campus.

(8) All students, regardless of status, shall comply with this policy regarding a drug-free campus.

WSR 07-04-090
PROPOSED RULES
EVERETT COMMUNITY COLLEGE

[Filed February 6, 2007, 12:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-048.

Title of Rule and Other Identifying Information: Chapter 132E-400 WAC, Loss of eligibility—Student athletic participation, updating Everett Community College (EvCC) student athletic participation general policies.

Hearing Location(s): Everett Community College Campus, Parks Building, Conference Room A, 2000 Tower Street, Everett, WA 98201, on March 13, 2007, at 12:30 p.m.

Date of Intended Adoption: March 15, 2007.

Submit Written Comments to: Juli Boyington, 2000 Tower Street, Everett, WA 98201, e-mail jboyington@everettcc.edu, fax (425) 388-9228, by March 9, 2007.

Assistance for Persons with Disabilities: Contact Kathy Cook by March 9, 2007, TTY (425) 388-9438.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide current and updated rules related to student athletic participation.

Statutory Authority for Adoption: Chapters 28B.50 and 28B.10 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rich Haldi, Parks Building on the EvCC campus, (425) 388-9588.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. No costs apply.

January 30, 2007

Juli Boyington

Records Officer

AMENDATORY SECTION (Amending WSR 01-02-043, filed 12/28/00, effective 1/28/01)

WAC 132E-400-020 Suspension procedure—Right to informal hearing. Any student notified of a claimed violation of WAC 132E-400-010 shall have the right to a brief adjudicative hearing if a written request for such a hearing is received by the vice-president for student services or designee within three days of receipt of a declaration of further athletic ineligibility. If no written request is received within three days after receipt of the declaration of athletic ineligibility, the student will be deemed to have waived any right to a brief adjudicative hearing and will be declared ineligible from further participation in school-sponsored athletic events for the remainder of the school year.

AMENDATORY SECTION (Amending WSR 01-02-043, filed 12/28/00, effective 1/28/01)

WAC 132E-400-030 Hearing. If a timely written request for a hearing is made, the vice-president for student services or designee shall designate a hearing officer who

shall be a college officer who is not involved with the athletic program to conduct the brief adjudicative hearing. The hearing officer shall promptly conduct the hearing and permit affected parties to explain both the college's view of the matter and the student's view of the matter. The brief adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act, RCW 34.05.482 through 34.05.494.

WSR 07-04-091
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 6, 2007, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-22-055.

Title of Rule and Other Identifying Information: Amends the following rules in Chapter 388-106 WAC, Long-term care services, WAC 388-106-0070 Will I be assessed in CARE?, 388-106-0095 How does the CARE tool measure clinical complexity?, and 388-106-0213 How are my needs assessed if I am a child applying for MPC?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 13, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 14, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on March 13, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 9, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making:

(1) Clarifies the age guidelines and clinical complexity classifications, within the comprehensive assessment reporting evaluation (CARE) tool algorithm, to evaluate a child's needs when the child is comatose or has pain daily related to his/her disability. The algorithm within the CARE tool used to establish children's eligibility for personal care services was developed based upon self-performance codes, taking into account normal childhood milestones and typical care parents provide to their children at certain ages. For example, a child who has pain daily as a result of teething, a normal childhood milestone not related to a disability, should not be placed in a clinically complex classification based solely on teething pain. This rule making further clarifies and strengthens

ens these guidelines to avoid placing children in incorrect classifications.

(2) Clarifies eligibility language for Medicaid personal care (MPC) and waiver services to ensure that a client has unmet or partially met needs that make the client eligible for assistance with personal care tasks.

(3) Clarifies that clients will be assessed by the department's CARE tool when applying for or receiving long-term care services as part of a managed care benefit under the Washington Medicaid integration program (WMIP) and the Medicare Medicaid integration program (MMIP).

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bev Lord, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2536.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt, per RCW 34.05.328 (5)(b) (vii), rules of the department of social and health services relating only to client medical or financial eligibility.

January 31, 2007

Jim Schnellman, Chief

Office of Administrative Resources

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

WAC 388-106-0070 Will I be assessed in CARE? You will be assessed in CARE if you are applying for or receiving COPES, MNIW, MNRW, MPC, chore, respite, adult day health, GAU-funded residential care, PACE, ((Ⓢ)) Private Duty Nursing, or long-term care services within the MMIP or WMIP programs. You may not be assessed by forms previously used by the department once you have been assessed under CARE.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

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

WAC 388-106-0095 How does the CARE tool measure clinical complexity? The CARE tool places you in the clinically complex classification group only when you have one or more of the following criteria and corresponding ADL scores:

Condition	AND an ADL Score of
ALS (Lou Gehrig's Disease)	>14
Aphasia (expressive and/or receptive)	>=2
Cerebral Palsy	>14
Diabetes Mellitus (insulin dependent)	>14
Diabetes Mellitus (noninsulin dependent)	>14
Emphysema & Shortness of Breath (at rest or exertion) or dizziness/vertigo	>10
COPD & Shortness of Breath (at rest or exertion) or dizziness/vertigo	>10
Explicit terminal prognosis	>14
Hemiplegia	>14
Multiple Sclerosis	>14
Parkinson Disease	>14
Pathological bone fracture	>14
Quadriplegia	>14
Rheumatoid Arthritis	>14
You have one or more of the following skin problems: <ul style="list-style-type: none"> ■ Pressure ulcers, with areas of persistent skin redness; ■ Pressure ulcers with partial loss of skin layers; ■ Pressure ulcers, with a full thickness lost; ■ Skin desensitized to pain/pressure; ■ Open lesions; and/or ■ Stasis ulcers. AND You require one of the following types of assistance: <ul style="list-style-type: none"> ■ Ulcer care; ■ Pressure relieving device; ■ Turning/reposition program; ■ Application of dressing; or ■ Wound/skin care. 	>=2
You have a burn(s) and you need one of the following: <ul style="list-style-type: none"> ■ Application of dressing; or ■ Wound/skin care 	>=2
You have one or more of the following problems: <ul style="list-style-type: none"> ■ You are frequently incontinent (bladder); ■ You are incontinent all or most of the time (bladder); ■ You are frequently incontinent (bowel); or ■ You are incontinent all or most of the time (bowel). AND One of the following applies: <ul style="list-style-type: none"> ■ The status of your individual management of bowel bladder supplies is "Uses, has leakage, needs assistance"; ■ The status of your individual management of bowel bladder supplies is "Does not use, has leakage"; or ■ You use any scheduled toileting plan. 	>10
You have a current swallowing problem, and you are not independent in eating.	>10
You have Edema.	>14
You have Pain daily.	>14
You need and receive a Bowel program.	>10
You need Dialysis.	>10
You require IV nutritional support or tube feedings; and Your total calories received per IV or tube was at least 25%; and Your fluid intake is greater than 2 cups.	>=2
You need Hospice care.	>14

Condition	AND an ADL Score of
You need Injections.	>14
You need Intravenous medications.	>10
You need management of IV lines.	>10
You need Ostomy care.	>=2
You need Oxygen therapy.	>10
You need Radiation.	>10
You need and receive Passive range of motion.	>10
You need and receive Walking training.	>10
You need Suction treatment.	>=2
You need Tracheostomy care.	>10
You need a Ventilator/respirator	>10
You are <18 and you have pain related to your disability and you complain of pain or show evidence of pain daily. (If you are under eighteen and do not have pain related to your disability, you may be placed in the clinically complex classification based on other factors above.)	>14

Condition	AND an ADL Score of
Key: <means less than. >means greater than. >= means greater than or equal to.	

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

WAC 388-106-0213 How are my needs assessed if I am a child applying for MPC services? If you are a child applying for MPC services, the department will complete a CARE assessment and:

(1) Consider and document the role of your legally responsible natural/step/adoptive parent(s).

(2) ~~((Code))~~ The CARE tool will determine your needs as met based on the guidelines outlined in the following table:

Activities of Daily Living (ADLs)

Ages	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
■ = Code status as Met																		
Medication Management																		
Independent, ((supervision, limited, extensive, or total)) self-directed, administration required, or must be administered	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Locomotion in Room ^{Note}																		
Independent, supervision, limited or extensive	■	■	■	■														
Total	■	■																
Locomotion Outside Room ^{Note}																		
Independent or supervision	■	■	■	■	■	■												
Limited or extensive	■	■	■	■														
Total	■	■																
Walk in Room ^{Note}																		
Independent, supervision, limited or extensive	■	■	■	■														
Total	■	■																
Bed Mobility																		
Independent, supervision, limited or extensive	■	■	■															
Total	■	■																
Transfers																		
Independent, supervision, limited, extensive or total & under 30 pounds (Total & ((over)) 30 pounds or more = no age limit)	■	■	■															
Toilet Use																		
Support provided for nighttime wetting only (independent, supervision, limited, extensive)	■	■	■	■	■	■	■	■										
Independent, supervision, limited, extensive	■	■	■	■	■	■												
Total	■	■	■	■														

Activities of Daily Living (ADLs)

Ages

■ = Code status as Met

Eating

Independent, supervision, limited, extensive, or total

Bathing

Independent or supervision
Physical ((assistance all/part))
help/transfer only or physical help/part of bathing

Total

Dressing

Independent or supervision
Limited or extensive

Total

Personal Hygiene

Independent or supervision
Limited or extensive

Total

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Eating	■	■	■															
Bathing	■	■	■	■	■	■	■	■	■	■	■	■						
Bathing	■	■	■	■	■	■	■	■										
Bathing	■	■	■	■	■													
Dressing	■	■	■	■	■	■	■	■	■	■	■	■						
Dressing	■	■	■	■	■	■	■	■										
Dressing	■	■	■	■	■													
Personal Hygiene	■	■	■	■	■	■	■	■	■	■	■	■						
Personal Hygiene	■	■	■	■	■	■	■	■										
Personal Hygiene	■	■	■	■	■													

Instrumental Activities of Daily Living

Ages

■ = Code status as Met

Telephone

Independent, supervision, limited, extensive, or total

Transportation

Independent, supervision, limited, extensive, or total

Shopping

Independent, supervision, limited, extensive, or total

Wood Supply

Independent, supervision, limited, extensive, or total

Housework

Independent, supervision, limited, extensive, or total

Finances

Independent, supervision, limited, extensive, or total

Meal Preparation

Independent, supervision, limited, extensive, or total

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Telephone	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Transportation	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Shopping	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Wood Supply	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Housework	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Finances	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Meal Preparation	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

NOTE: If the activity did not occur, the department codes self performance as total and status as met.

	Ages																	
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Additional guidelines based on age																		
<u>Diagnosis</u>	■	■	■	■	■	■												
<u>Is client comatose?= No</u>	■	■	■	■	■	■												
<u>Pain Daily= No</u>	■	■	■	■	■	■												
Any foot care needs																		
Status= Need met	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Any skin care (other than feet)																		
Status= Need met	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

	Ages																	
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Speech/Hearing																		
Score comprehension as understood	■	■	■															
MMSE can be administered = no	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Memory																		
Short term memory ok	■	■	■	■	■	■	■	■	■	■	■	■						
Long term memory ok	■	■	■	■	■	■	■	■	■	■	■	■						
Depression																		
Select interview = unable to obtain	■	■	■	■	■	■	■	■	■	■	■	■						
Decision making																		
Rate how client makes decisions = independent	■	■	■	■	■	■	■	■	■	■	■	■						
Bladder/Bowel																		
Support provided for nighttime wetting only - Individual management = Does not need/use	■	■	■	■	■	■	■	■	■	■	■	■						
Support provided for daytime wetting - Individual Management = Does not need/use	■	■	■	■	■	■												
Treatment																		
Passive range of motion Need= No	■	■	■	■														

(3) In addition, determine that the status and assistance available are met or partially met over three-fourths of the time, when you are living with your legally responsible natural/step/adoptive parent(s).

(4) Will not code mental health therapy, behaviors, or depression if you are in foster care.

10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on March 13, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 9, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-436-0015 and 388-436-0030 in order to allow a one-time emergency benefit to families who have had their cash grant terminated under the noncompliance sanction policy. The department is proposing to repeal WAC 388-436-0025 Eligibility conditions for CEAP—Job refusal, because the policy has not produced the desired outcomes for the temporary assistance for needy families (TANF) program on a consistent basis.

Reasons Supporting Proposal: Under the new noncompliance sanction (NCS) policy, some families may have their full TANF cash grant terminated starting in March 2007. A one-time emergency cash benefit will be available to families who have had their cash grant terminated under the noncompliance sanction policy. The emergency cash benefit would assist families with meeting their basic needs such as food, shelter, clothing, utilities and transportation. We anticipate no impacts from repealing WAC 388-436-0025 because this policy has not produced the desired outcomes for the TANF program on a consistent basis.

Statutory Authority for Adoption: RCW 74.040.050 [74.04.050], 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.040.050 [74.04.-050], 74.04.055, 74.04.057, 74.08.090.

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

WSR 07-04-092
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed February 6, 2007, 12:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-24-114.

Title of Rule and Other Identifying Information: WAC 388-436-0015 Consolidated emergency assistance program (CEAP), 388-436-0030 Eligibility for CEAP depends on other possible benefits, and 388-436-0025 Eligibility conditions for CEAP—Job refusal.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 13, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 14, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jenny Grayum, 1009 Col-lege Street S.E., Lacey, WA 98504, (360) 725-4583.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefits programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning for care of dependents."

February 1, 2007

Jim Schnellman, Chief

Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 04-05-013, filed 2/6/04, effective 3/8/04)

WAC 388-436-0015 Consolidated emergency assistance program (CEAP). (1) CEAP is available to the following persons:

(a) A pregnant woman in any stage of pregnancy; or

(b) Families with dependent children, including, within available funds, families who have stopped receiving their TANF grant within the last six months under WAC 388-310-1600.

(2) Applicants must be residents of Washington state as defined in WAC 388-468-0005.

(3) Applicants must demonstrate a financial need for emergency funds for one or more of the following basic requirements:

(a) Food;

(b) Shelter;

(c) Clothing;

(d) Minor medical care;

(e) Utilities;

(f) Household maintenance supplies;

(g) Necessary clothing or transportation costs to accept or retain a job; or

(h) Transportation for a minor, not in foster care, to a home where care will be provided by family members or approved caretakers.

(4) Payment under this program is limited to not more than thirty consecutive days within a period of twelve consecutive months.

AMENDATORY SECTION (Amending WSR 99-24-130, filed 12/1/99, effective 1/1/00)

WAC 388-436-0030 Eligibility for CEAP depends on other possible cash benefits. (1) Before the department approves CEAP benefits, we must determine that all household members are ineligible for benefits from any of the following programs:

(a) Temporary assistance for needy families (TANF) or state family assistance (SFA), unless the family has had its cash grant terminated under WAC 388-310-1600 within the last six months;

(b) ~~((State family assistance (SFA);~~

~~((Refugee cash assistance (RCA);~~

~~((Diversion cash assistance (DCA).~~

(2) To receive CEAP, the applicant must take any required action to receive benefits from the following programs:

(a) TANF(~~(;)) or SFA, ~~((and RCA)) unless the family has had its case grant terminated under WAC 388-310-1600 within the last six months;~~~~

(b) RCA

(c) Supplemental security income (SSI);

~~((Medical assistance for those applicants requesting help for a medical need;~~

~~((Food assistance for those applicants requesting help for a food need;~~

~~((Housing assistance from any available source for those applicants requesting help for a housing need;~~

~~((Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.~~

(3) The department may not authorize CEAP benefits to any household containing a member who is ~~((under a grant penalty)) receiving reduced cash benefits~~ for failure to comply with program requirements of TANF/SFA(~~(;)) or RCA(~~(; or WorkFirst under chapter 388-310-WAC)). This restriction does not apply to families who have stopped receiving TANF cash benefits under WAC 388-310-1600 within the last six months.~~~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-436-0025

Eligibility conditions for CEAP—Job refusal.

WSR 07-04-106

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed February 7, 2007, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-052.

Title of Rule and Other Identifying Information: State ferries and toll bridges, WAC 468-300-010, 468-300-020, 468-300-040, and 468-300-220. Based on the annual review of Washington state ferries' (WSF) farebox revenue needs, the proposed rules revise the subject WACs by increasing passenger tolls, vehicle tolls and ferry charter rates.

Hearing Location(s): Puget Sound Regional Council, 1011 Western Avenue, 5th Floor, Seattle, WA, on March 22, 2007, at 1:00 p.m. - 3:00 p.m.

Date of Intended Adoption: March 22, 2007.

Submit Written Comments to: Raymond G. Deardorf, WSF Planning Director, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, e-mail Deardorf@wsdot.wa.gov, fax (206) 515-3499, by March 22, 2007.

Assistance for Persons with Disabilities: Contact Transportation Commission Office by March 22, 2007, TTY (360) 705-7070 or (206) 515-3460.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to raise the ferry tolls within the specified WACs. The revisions follow the annual review of WSF's farebox revenue needs.

No major effects are anticipated.

Reasons Supporting Proposal: WSF's need for additional farebox revenue.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.326.

Statute Being Implemented: RCW 47.56.030 and 47.60.326.

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

Name of Proponent: Washington state department of transportation, Washington state ferries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Raymond G. Deardorf, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3491.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered this rule and determined that it does not affect more than 10% of one industry or 20% of all industry.

A cost-benefit analysis is not required under RCW 34.05.328. WSF is anticipated to take in more farebox revenue from the proposed fare increase at the rate of approximately \$4,100,000 per year. Ridership dropoff stemming from the fare increase will not cause a net reduction in farebox revenues. Previous experience with fare hikes has shown that WSF gains more money in fare increases than it loses from reduced ridership, if any.

February 6, 2007

Reema Griffith, Administrator
Transportation Commission

AMENDATORY SECTION (Amending WSR 06-08-036, filed 3/29/06, effective 5/1/06)

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. May 1, ((2006)) 2007

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Multiride Media 20 Rides ¹	Monthly Pass ⁵	Bicycle Surcharge ^{2,6}
Via Passenger-Only Ferry						
*Seattle-Vashon	((8.50)) 8.80	((4.25)) 4.40	((7.20)) 7.45	((72.00)) 74.40	((115.20)) 119.05	1.00
Via Auto Ferry						
*Fautleroy-Southworth	((5.00)) 5.25	((2.50)) 2.60	((4.00)) 4.20	((40.00)) 42.00	((65.00)) 67.20	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island						
*Edmonds-Kingston	((6.50)) 6.80	((3.25)) 3.40	((5.20)) 5.45	((52.00)) 54.40	((84.20)) 87.05	1.00
Port Townsend-Keystone	((2.50)) 2.65	((1.25)) 1.30	((2.00)) 2.15	((40.00)) 42.00	((65.00)) 67.20	0.50
*Fautleroy-Vashon						
*Southworth-Vashon						
*Pt. Defiance-Tahlequah	((4.20)) 4.35	((2.10)) 2.15	((3.40)) 3.50	((33.60)) 34.80	((54.80)) 55.70	1.00
*Mukilteo-Clinton	((3.85)) 4.05	((1.90)) 2.00	((3.10)) 3.25	((30.80)) 32.40	((50.30)) 51.85	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sunday-Tuesday	((9.60)) 10.00	((4.80)) 5.00	((7.70)) 8.00	((69.25)) 72.15	N/A	2.00 ⁷
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wednesday-Saturday	((10.65)) 11.10	((5.30)) 5.55	((8.55)) 8.90	((69.25)) 72.15	N/A	2.00 ⁷
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((15.60)) 16.25	((7.80)) 8.10	((12.50)) 13.00	N/A	N/A	4.00 ⁸
From Lopez, Shaw, Orcas and Fri- day Harbor to Sidney@	((5.85)) 6.10	((2.90)) 3.05	4.90	N/A	N/A	1.00 ⁹
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	((21.45)) 22.35	((10.70)) 11.15	((17.20)) 17.90	N/A	N/A	5.00 ¹⁰

All fares rounded to the next multiple of \$0.05.

* These routes operate as a one-point toll collection system.

¹MULTIRIDE MEDIA - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. Subsequent to the implementation of the Electronic Fare System (EFS) in the fall of 2005, this will be replaced by a

20 ride card valid for 90 days from the date of purchase. For mail order deliveries, WSF may add additional days to allow for delivery times. Starting on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of system-wide implementation of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where

kiosks are available, except for customers paying with commuter vouchers made available through local transit agencies or qualifying for the senior/disabled and youth fares.

- ²BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.
- ³ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.
- ⁴INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.
- ⁵PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass. A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount. The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.
- ⁶BICYCLE PERMIT - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.
- ⁷BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 until the second Sunday in October).
- ⁸BICYCLE SURCHARGE - This becomes \$6.00 during peak season.
- ⁹BICYCLE SURCHARGE - This becomes \$2.00 during peak season.
- ¹⁰BICYCLE SURCHARGE - This becomes \$8.00 during peak season.
- CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 80% of full fare rounded to the next multiple of \$0.10.
- SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.
- PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.
- BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.
- MEDICARE CARD HOLDERS - Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a ~~((volume-based back-end))~~ monthly discount to ~~((match frequent user policies and))~~ approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. ~~((On a monthly basis, discount credits for each account will be calculated based on equivalent multiride media level of usage.))~~ The credits will be approximately based on the discount ~~((policies and))~~ rates offered to ~~((frequent))~~ multiride media users applicable on the date of travel. This program will expire after April 30, ~~((2007))~~ 2008.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect. Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiride media as a customer convenience. This media shall be valid only until the first of May following the date of purchase, after which time the coupons shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

PEAK SEASON SURCHARGE - A 20% surcharge shall be applied to passengers from May 1 to the second Sunday in October, except those using frequent user fare media, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

AMENDATORY SECTION (Amending WSR 06-08-036, filed 3/29/06, effective 5/1/06)**WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.****EFFECTIVE 03:00 A.M. May 1, ((2006)) 2007**

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	Multiride Media 20 Rides ²
Fauntleroy-Southworth Port Townsend/Key-stone	((8.70)) <u>9.00</u>	((7.45)) <u>7.65</u>	((8.70)) <u>9.00</u>	((139.20)) <u>144.00</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((11.25)) <u>11.70</u>	((9.60)) <u>10.00</u>	((11.25)) <u>11.70</u>	((180.00)) <u>187.20</u>
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((14.40)) <u>15.00</u>	((12.30)) <u>12.80</u>	((14.40)) <u>15.00</u>	((115.20)) <u>120.00</u>
Mukilteo-Clinton	((6.65)) <u>6.90</u>	((5.65)) <u>5.85</u>	((6.65)) <u>6.90</u>	((106.40)) <u>110.40</u>
10 Rides - 5 Round Trips				
*Anacortes to Lopez - Sunday-Tuesday	((23.35)) <u>24.25</u>	((18.55)) <u>19.25</u>	((23.35)) <u>24.25</u>	((97.15)) <u>101.10</u>
*Lopez - Wednesday-Saturday	((25.90)) <u>26.95</u>	((20.55)) <u>21.40</u>	((25.90)) <u>26.95</u>	((97.15)) <u>101.10</u>
*Shaw, Orcas - Sunday-Tuesday	((27.95)) <u>29.10</u>	((23.15)) <u>24.10</u>	((27.95)) <u>29.10</u>	((116.45)) <u>121.15</u>
*Shaw, Orcas - Wednesday-Saturday	((31.05)) <u>32.30</u>	((25.70)) <u>26.75</u>	((31.05)) <u>32.30</u>	((116.45)) <u>121.15</u>
*Friday Harbor - Sunday-Tuesday	((33.25)) <u>34.60</u>	((28.45)) <u>29.60</u>	((33.25)) <u>34.60</u>	((138.40)) <u>144.00</u>
*Friday Harbor - Wednesday-Saturday	((36.90)) <u>38.40</u>	((31.55)) <u>32.85</u>	((36.90)) <u>38.40</u>	((138.40)) <u>144.00</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((15.45)) <u>16.85</u>	((15.45)) <u>16.85</u>	((15.45)) <u>16.85</u>	((61.80)) <u>67.40</u>
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all desti- nations	((41.90)) <u>43.60</u>	((34.10)) <u>35.45</u>	((41.90)) <u>43.60</u>	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	((26.90)) <u>28.60</u>	((19.10)) <u>20.45</u>	((41.90)) <u>43.60</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((12.45)) <u>12.95</u>	((9.50)) <u>9.90</u>	((12.45)) <u>12.95</u>	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁷	((5.45)) <u>5.95</u>	((2.50)) <u>2.90</u>	((12.45)) <u>12.95</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((54.35)) <u>56.55</u>	((43.60)) <u>45.35</u>	((54.35)) <u>56.55</u>	N/A

EFFECTIVE 03:00 A.M. May 1, ((2006)) 2007

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ¹ One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹ One Way	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Commuter 20 Rides ²
Fauntleroy-Southworth Port Townsend/Key-stone	((3.75)) <u>3.90</u>	((2.50)) <u>2.55</u>	((1.25)) <u>1.30</u>	((60.00)) <u>62.40</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((4.85)) <u>5.10</u>	((3.20)) <u>3.40</u>	((1.60)) <u>1.70</u>	((77.60)) <u>81.60</u>
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((6.25)) <u>6.50</u>	((4.15)) <u>4.30</u>	((2.05)) <u>2.15</u>	((50.00)) <u>52.00</u>
Mukilteo-Clinton	((2.90)) <u>3.00</u>	((1.90)) <u>1.95</u>	1.00	((46.40)) <u>48.00</u>
*Anacortes to Lopez - Sunday-Tuesday	((12.35)) <u>12.90</u>	((7.55)) <u>7.90</u>	((2.75)) <u>2.90</u>	((102.75)) <u>107.25</u>
*Lopez - Wednesday-Saturday	((13.70)) <u>14.30</u>	((8.35)) <u>8.75</u>	((3.05)) <u>3.20</u>	((102.75)) <u>107.25</u>
*Shaw, Orcas - Sunday-Tuesday	((13.30)) <u>13.85</u>	((8.50)) <u>8.85</u>	((3.70)) <u>3.85</u>	((110.65)) <u>115.15</u>
*Shaw, Orcas - Wednesday-Saturday	((14.75)) <u>15.35</u>	((9.40)) <u>9.80</u>	((4.10)) <u>4.25</u>	((110.65)) <u>115.15</u>
*Friday Harbor - Sunday-Tuesday	((14.35)) <u>14.95</u>	((9.55)) <u>9.95</u>	((4.75)) <u>4.95</u>	((119.25)) <u>124.50</u>
*Friday Harbor - Wednesday-Saturday	((15.90)) <u>16.60</u>	((10.55)) <u>11.05</u>	((5.25)) <u>5.50</u>	((119.25)) <u>124.50</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((4.40)) <u>4.80</u>	((4.40)) <u>4.80</u>	((4.40)) <u>4.80</u>	N/A

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ¹ One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹ One Way	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Commuter 20 Rides ²
Anacortes to Sidney and Sidney to all destinations	((20.90)) <u>21.75</u>	((13.10)) <u>13.60</u>	((5.30)) <u>5.50</u>	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((7.20)) <u>7.50</u>	((4.25)) <u>4.45</u>	((1.35)) <u>1.40</u>	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁷	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((28.40)) <u>29.25</u>	((17.35)) <u>18.05</u>	((6.65)) <u>6.90</u>	N/A

All fares rounded to the next multiple of \$0.05.

* These routes operate as a one-point toll collection system.

¹SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay an overheight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or any vehicle licensed as a motorcycle with three or more wheels will pay an oversize motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

²MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for delivery time. Starting on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of system-wide implementation of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers paying with commuter vouchers made available through local transit agencies or qualifying for the senior/disabled and youth fares.

³INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

⁵ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁶RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

⁷RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable

reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from the first Sunday in May to the second Sunday in October except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a ~~((volume-based-back-end))~~ monthly discount to ~~((match frequent user policies and))~~ approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rides). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. ~~((On a monthly basis, discount credits for each account will be calculated based on equivalent multiride media level of usage.))~~ The credits will be approximate based on the discount ~~((policies and))~~ rates offered to ~~((frequent))~~ multiride media users applicable on the date of travel. This program will expire after April 30, ~~((2007))~~ 2008.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. This media shall be valid only until the first of May following the date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

RESERVATION FEE - If WSF implements a pilot vehicular reservation program applicable to any sailings on the Port Townsend-Keystone route, a nonrefundable fee of \$10.00 for vehicles under 20 feet in length will apply for each vehicle reservation in addition to the applicable vehicle fare.

AMENDATORY SECTION (Amending WSR 06-08-036, filed 3/29/06, effective 5/1/06)

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. May 1, (~~2006~~) 2007

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Fauntleroy-Southworth	((13.05))	((26.10))	((34.80))	((43.50))	((52.20))	((60.90))	((69.60))	
Port Townsend/Keystone	13.50	27.00	36.00	45.00	54.00	63.00	72.00	0.90
Seattle-Bainbridge Island								
Seattle/Bremerton	((16.90))	((33.75))	((45.00))	((56.25))	((67.50))	((78.75))	((90.00))	((1.15))
Edmonds-Kingston	17.55	35.10	46.80	58.50	70.20	81.90	93.60	1.20
*Fauntleroy-Vashon								
*Southworth-Vashon	((21.60))	((43.20))	((57.60))	((72.00))	((86.40))	((100.80))	((115.20))	((1.45))
*Pt. Defiance-Tahlequah	22.50	45.00	60.00	75.00	90.00	105.00	120.00	1.50
	((10.00))	((19.95))	((26.60))	((33.25))	((38.90))	((46.55))	((53.20))	
Mukilteo-Clinton	10.35	20.70	27.60	34.50	41.40	48.30	55.20	0.70
*Anacortes to Lopez - Sunday-Tuesday ²	((35.05))	((70.05))	((93.40))	((116.75))	((140.10))	((168.45))	((186.80))	((2.35))
	36.40	72.75	97.00	121.25	145.50	169.75	194.00	2.45
*Anacortes to Shaw, Orcas - Sunday-Tuesday ²	((41.95))	((83.85))	((111.80))	((139.75))	((167.70))	((195.65))	((223.60))	((2.80))
	43.65	87.30	116.40	145.50	174.60	203.70	232.80	2.95
*Anacortes to Friday Harbor - Sunday-Tuesday	((48.00))	((96.00))	((128.00))	((160.00))	((192.00))	((224.00))	((256.00))	((3.20))
	51.90	103.80	138.40	173.00	207.60	242.20	276.80	3.50
*Anacortes to Lopez - Wednesday-Saturday ²	((38.85))	((77.70))	((103.60))	((129.50))	((155.40))	((181.30))	((207.20))	((2.60))
	40.45	80.85	107.80	134.75	161.70	188.65	215.60	2.70
*Anacortes to Shaw, Orcas - Wednesday-Saturday ²	((46.60))	((93.15))	((124.20))	((155.25))	((186.30))	((217.35))	((248.90))	((3.15))
	48.45	96.90	129.20	161.50	193.80	226.10	258.40	3.25
*Anacortes to Friday Harbor - Wednesday-Saturday	((53.35))	((106.65))	((142.20))	((177.75))	((213.30))	((248.85))	((289.40))	((3.60))
	57.60	115.20	153.60	192.00	230.40	268.80	307.40	3.85
Between Lopez, Shaw, Orcas and Fri- day Harbor ³	((23.20))	((46.35))	((61.80))	((77.25))	((92.70))	((108.15))	((123.60))	N/A
	25.30	50.55	67.40	84.25	101.10	117.95	134.80	
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	((62.85))	((62.85))	((83.80))	((104.75))	((125.70))	((146.65))	((167.60))	((2.10))
	65.40	65.40	87.20	109.00	130.80	152.60	174.40	2.20
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	((62.85))	((125.70))	((167.60))	((209.50))	((251.40))	((293.30))	((335.20))	((4.20))
	65.40	130.80	174.40	218.00	261.60	305.20	348.80	4.40
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations - Recreational Vehicles and Buses	((47.85))	((47.85))	((68.80))	((89.75))	((110.70))	((131.65))	((152.60))	((2.10))
	50.40	50.40	72.20	94.00	115.80	137.60	159.40	2.20

ROUTES	Oversize Vehicle Ferry Tolls ¹ Overall Unit Length - Including Driver							Cost Per Ft. Over 80' @
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations ⁵ - Commercial Vehicles	((47.85)) 50.40	((110.70)) 115.80	((152.60)) 159.40	((194.50)) 203.00	((236.40)) 246.60	((278.30)) 290.20	((320.20)) 333.80	((4.20)) 4.40
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	((18.70)) 19.45	((18.70)) 19.45	((24.90)) 25.90	((31.15)) 32.40	((37.35)) 38.85	((43.60)) 45.35	((49.80)) 51.80	((1.25)) 0.65
- Commercial Vehicles	((18.70)) 19.45	((37.35)) 38.85	((49.80)) 51.80	((62.25)) 64.75	((74.70)) 77.70	((87.15)) 90.65	((99.60)) 103.60	((1.25)) 1.30
Travelers with advanced reservations (\$7 fee) from	((11.70)) 12.45	((11.70)) 12.45	((17.90)) 18.90	((24.15)) 25.40	((30.35)) 31.85	((36.60)) 38.35	((42.80)) 44.80	((1.25)) 0.65
Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁶ - Recreational Vehicles and Buses	((11.70)) 12.45	((30.35)) 31.85	((42.80)) 44.80	((55.25)) 57.75	((67.70)) 70.70	((80.15)) 83.65	((92.60)) 96.60	((1.25)) 1.30
- Commercial Vehicles	((81.55)) 84.85	((81.55)) 84.85	((108.70)) 113.10	((135.90)) 141.40	((163.05)) 169.65	((190.29)) 197.95	((217.40)) 226.20	((2.75)) 2.85
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴ - Recreational Vehicles and Buses	((81.55)) 84.85	((163.05)) 169.65	((217.40)) 226.20	((271.75)) 282.75	((326.10)) 339.30	((380.45)) 395.85	((434.80)) 452.40	((5.45)) 5.70
- Commercial Vehicles								

¹OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 20-30 feet in length and over 7'6" in height shall be charged the 20-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

²TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: May 1, ((2006)) 2007 - April 30, ((2007)) 2008, (((\$48.25)) \$57.25 base season, (((\$65.25)) \$77.50 peak season.

³INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁵RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

⁶RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.

PEAK SEASON SURCHARGE - A peak season surcharge ((of 25%)) shall apply to all oversize vehicles (~~except for Anacortes to Lopez, Shaw, Orcas, and Friday Harbor~~). The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. ~~((A 35% surcharge will apply to oversized vehicles traveling from Anacortes to Lopez, Shaw, Orcas and Friday Harbor.))~~

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

DISCOUNT FROM REGULAR TOLL - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include,

but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

RESERVATION FEE - If WSF implements a pilot vehicular reservation program applicable to any sailing on the Port Townsend-Keystone route, a nonrefundable fee of \$20.00 for vehicles 20 feet and over in length, will apply for each vehicle reservation in addition to the applicable vehicle fare.

AMENDATORY SECTION (Amending WSR 06-08-036, filed 3/29/06, effective 5/1/06)

WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system. Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from July 1, ((2005)) 2006, through June 30, ((2006)) 2007:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	\$ ((1,388.00)) <u>1,559.00</u>	\$ ((1,207.00)) <u>1,384.00</u>
Jumbo	((1,346.00)) <u>1,517.00</u>	((1,178.00)) <u>1,353.00</u>
Super	((1,278.00)) <u>1,428.00</u>	((1,117.00)) <u>1,274.00</u>
Evergreen	((903.00)) <u>1,027.00</u>	((769.00)) <u>884.00</u>
Issaquah	((977.00)) <u>1,073.00</u>	((843.00)) <u>943.00</u>
Steel	((752.00)) <u>818.00</u>	((645.00)) <u>711.00</u>
Rhododendron	((688.00)) <u>718.00</u>	((581.00)) <u>612.00</u>
Hiyu	((659.00)) <u>508.00</u>	((552.00)) <u>447.00</u>

The rate for an individual charter will be calculated by:

- (1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;
- (2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and
- (3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate

profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

**WSR 07-04-107
PROPOSED RULES
DEPARTMENT OF AGRICULTURE**

[Filed February 7, 2007, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-24-107.

Title of Rule and Other Identifying Information: WAC 16-301-220 Apply for a phyto-sanitary field inspection.

Hearing Location(s): Washington State Department of Agriculture, 821 East Broadway, Suite 4, Moses Lake, WA 98837, on March 19, 2007, at 6:30 p.m.

Date of Intended Adoption: April 19, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail tnorman@agr.wa.gov, fax (360) 902-2085, by 5 p.m. on March 19, 2007.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to modify the current phyto-sanitary field inspection application due dates to ensure there is adequate time to conduct a proper inspection in relation to the maturity of the seed crop. Also language will be modified to reflect current billing practices.

Reasons Supporting Proposal: This proposal is necessary to modify the due dates for phyto-sanitary field inspection applications for spring planted annual seed crops in eastern Washington. Currently there is a wide range of due dates for spring planted annual crops planted in eastern Washington. There has been a shift in planting dates with some early planted crops that see some fields established in late February and some late crops not planted until after the July 1 deadline. As a result it is increasingly difficult for fields to be inspected at the optimum time when disease symptoms are most evident. It is no longer practical to tie the due dates to the calendar. It is more feasible to have the due date correlated to the planting date. It is imperative that field inspections are conducted at the proper growth stage in order to protect the Washington seed industry from any potential plant disease outbreak.

As a housekeeping measure, language concerning the inclusion of fees with phyto-sanitary applications will be repealed. This is due to the fact that all services are invoiced at the time they are rendered.

Statutory Authority for Adoption: RCW 15.49.310 and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.49.310.

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

Name of Proponent: Washington state department of agriculture (WSDA) seed program, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no increased cost to seed producers or seed conditioners. The application process remains the same and there are no increased costs associated with this proposal. The only change is the timing of when applications must be submitted. There are no new reporting or compliance requirements in this proposal. Considering these facts there is no increased cost imposed on the seed industry and therefore a small business economic impact statement was not prepared.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed [agency] in RCW 34.05.328 (5)(a)(i).

February 2, 2007
Dennis Hannapel
Assistant Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-220 Apply for a phyto-sanitary field inspection. (1) On an application provided by the department seed program, a person requesting a phyto-sanitary field inspection must provide a list of the disease or diseases for which inspection is requested. Only one kind of crop is permitted on each application. Applications must be submitted to the department seed program before the due date ((along with the required fees)). Refer to chapter 16-303 WAC for the appropriate fees.

(2) Due dates for phyto-sanitary applications for field inspections are as follows:

Table with 2 columns: (a) Western Washington, (b) Eastern Washington. Rows include Fall plantings, Spring plantings, and specific crop types like Peas in Columbia Basin, Peas East Highway 395 (Palouse), Beans, and All other crops with their respective due dates.

(3) Phyto sanitary applications for crops requiring a fall inspection are due 30 days prior to inspection time and not later than September 15.

(4) To be eligible for Pseudomonas pisi, phyto-sanitary field inspection for peas or other diseases based on area surveillance, the applicant must file a report with the department seed program listing acreage and general location (such as block and unit if possible) prior to May 1.

(5) Applications received after the due date are assessed a late fee. Acceptance of a late application is at the discretion of the certifying agency.

(6) Each applicant must submit applications and/or required reports stating diseases for which inspection is to be made and the number of inspections required and/or requested.

WSR 07-04-109
PROPOSED RULES
SECRETARY OF STATE
(Elections Division)
[Filed February 7, 2007, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-01-103.

Title of Rule and Other Identifying Information: A variety of issues are addressed, such as vote by mail, ballots, filing fee petitions, and voter privacy during audits of direct recording electronic devices.

Hearing Location(s): 520 Union Avenue, Olympia, WA, on March 13, 2007, at 1:30 p.m.

Date of Intended Adoption: April 11, 2007.

Submit Written Comments to: Amber Cervantes, P.O. Box 40220, Olympia, WA 98504-0220, e-mail acervantes@secstate.wa.gov, fax (360) 586-5629, by March 13, 2007.

Assistance for Persons with Disabilities: Contact Amber Cervantes by March 12, 2007, TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules:

- Clarify who is eligible to sign a candidate's filing fee petition;
Outline procedures for protecting voters' privacy during audits of direct recording electronic devices;
Clarify the procedure when using abbreviations on ballots;
Eliminate the requirement to include a voters' pamphlet with each protected records voter ballot; and
Make technical changes to rules on other subjects including ballot applications, instructions to voters, return envelopes, definitions, and the preliminary abstract of votes.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Proponent: Office of the secretary of state, elections division, governmental.

Name of Agency Personnel Responsible for Drafting: Amber Cervantes, Legislative Building, Olympia, Washington, (360) 902-4165; Implementation and Enforcement:

Katie Blinn, Legislative Building, Olympia, Washington, (360) 902-4168.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

February 6, 2007

Steve Excell

Assistant Secretary of State

NEW SECTION

WAC 434-215-025 Declaration of candidacy—Filing fee petitions. When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24-091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

AMENDATORY SECTION (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

WAC 434-262-105 Audit of results of votes cast on direct recording electronic device. (1) The audits required by RCW 29A.60.185 must use the same three races or issues, randomly selected by lot, for every direct recording electronic device subject to the audit and utilized in the election. If there are not three countywide races or issues on the ballot, the county must select the maximum number of contests available but no more than three contests from each of the devices randomly selected for the audit.

(2) Only races and issues with more than ten votes cast on all direct recording electronic devices in the county may be selected for the audit. If the county does not have such a contest, it must not conduct the audit of paper records required by RCW 29A.60.185.

(3) Counties that utilized more than one direct recording electronic device in the primary or election must randomly select the devices until the aggregate total of votes cast in each selected contest is greater than ten. The devices must also be aggregated until the number of devices selected meets the minimum required by RCW 29A.60.185.

(4) Written procedures to perform audits of direct recording electronic devices as outlined in RCW 29A.60.185 must be promulgated by the county auditor.

(a) The procedures must provide for a process of randomly selecting by lot the direct recording electronic devices that will be audited.

(b) The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(i) A continuous paper record must be utilized in the audit; the paper record must not be cut into separate individual records; and

(ii) If a paper record indicates a ballot has been canceled, that ballot must be exempt from the audit((;)).

((;)) (5) The county auditor must compare the paper records with the electronic records. The county auditor may take any necessary actions to investigate and resolve discrepancies.

((;)) (6) Prior to certification, and in time to resolve any discrepancies, the county auditor must alert the county canvassing board of discrepancies identified during the audit.

(7) Procedures to resolve audit discrepancies must be promulgated by each county canvassing board in accordance with discrepancy guidelines published by the secretary of state.

(8) The aggregate total of paper records counted manually is subject to public disclosure.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-230-170 Ballot form. Each office on the ballot shall be identified, along with a statement designating how many candidates are to be voted on for such office (e.g., vote for , with the words, "one," "two," or a spelled number). The office term shall be included on the ballot if such term is other than a full term (e.g., short/full term, two-year unexpired term, etc.). Each office shall be listed on the ballot in the manner prescribed by law or administrative rule. Following the office designation the names of all candidates for that position shall be listed together with political party designation or abbreviation as certified by the secretary of state as provided in RCW 29A.36.011 or the word "nonpartisan," or "NP" as applicable. When choosing to use abbreviations, the county auditor must provide a legend on each ballot defining all abbreviations. Each office listed on the ballot shall be separated by a bold line. In a year in which a President of the United States is to be elected, the names of all candidates for President and Vice-President for each party shall be grouped together with one vote response position for each party, where the voter may indicate his or her choice.

Candidate names shall be printed in a type style and point size which is easily read. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include using a smaller point size, a different type style, or setting the name in upper/lower case letters, rather than upper case, if appropriate.

Each position, with the candidates running for that office, shall be clearly delineated from the following one by a bold line. Following each listing of candidates shall be a blank space for writing in the name of any candidate.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-230-180	Paper ballots and ballot cards—Numbering.
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AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

WAC 434-250-030 Applications. (1) As authorized by RCW 29A.40.040, requests for status as an ongoing absentee voter must be made in writing. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for

requests made in writing. The form must include, but not be limited to, the following:

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
- (b) The address to which the ballot is to be mailed; and
- (c) A space for the voter to sign and date the application.

A voter may request status as an ongoing absentee voter by indicating such on a standard voter registration form.

(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, or in writing, and may be made by a family member. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
- (b) The address to which the ballot is to be mailed;
- (c) A space for the voter to indicate for which election or elections the application is made; and
- (d) A space for the voter to sign and date the application.

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

- (a) A space for an out-of-state, overseas, or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; and
- (b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible ~~(; and~~
- ~~(c) The declaration required in WAC 434-250-050).~~

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

(5) If an application for an absentee ballot is received from a military or overseas voter who is not already registered, and the application does not contain sufficient address information to enable the auditor to issue the correct absentee ballot, the auditor shall ~~((notify))~~ contact the person ~~((and explain why the application is not accepted. If, in the judgment of the county auditor, enough time exists to correct the application, the county auditor must request the proper information from the voter in order to facilitate))~~ to clarify the application. If, in the judgment of the county auditor, insufficient time exists to correct the application, the auditor must issue the absentee ballot as if the voter had listed the county

auditor's office as his or her residence. Upon its return, the ballot must be referred to the county canvassing board, and the only offices or issues that may be tabulated are those common to the entire county ~~((and those for which it can be conclusively determined the voter is qualified to vote)).~~

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-250-040 Instructions to voters. (1) In addition to the instructions required by chapters 29A.36 and 29A.40 RCW, instructions for properly voting and returning an absentee ballot must also include:

- (a) How to correct a ballot by crossing out the incorrect vote and voting the correct choice;
- (b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an over-vote and no votes for that office or ballot measure will be counted;

(c) Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;

(d) How to complete and sign the affidavit on the return envelope;

~~((e))~~ (e) How to make a mark, witnessed by two other people, if unable to sign the affidavit;

~~((f))~~ (f) How to place the ballot in the security envelope and place the security envelope in the return envelope;

~~((g))~~ (g) How to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

~~((h))~~ (h) Notice that postage is required, if applicable; and

~~((i))~~ (i) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated place no later than election day, and providing the location, dates, and times for depositing the ballot as an alternative to mailing the ballot.

County auditors may use existing stock of absentee ballot instructions until January 1, 2008.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-050 Ballot materials. In addition to the instructions and in addition to materials required by chapters 29A.36 and 29A.40 RCW, each absentee ballot must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the ~~((words "OFFICIAL BALLOT - DO NOT DELAY" prominently on the front))~~ official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

I do solemnly swear or affirm under penalty of perjury that:

I am a legal resident of the state of Washington;

I am entitled to vote in this election;

I have not already voted in this election;

It is illegal to vote if I am not a United States citizen;

It is illegal to vote if I have been convicted of a felony and have not had my voting rights restored;

It is illegal to cast a ballot or sign an absentee envelope on behalf of another voter, except as otherwise provided by law; and

Attempting to vote when not entitled, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

The return envelope must conform to postal department regulations.

~~((County auditors may use existing stock of absentee envelopes until January 1, 2006.))~~

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of vote intent. Unreadable ballots

may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" for a registered voter eligible to vote in the election is ~~((the))~~;

~~((a))~~ A signature ~~((of a registered voter eligible to vote in the election as))~~ verified against the signature in the voter registration file~~((s))~~; or

~~((b))~~ On an absentee ballot envelope, a mark with two witnesses ~~((is a valid signature))~~.

AMENDATORY SECTION (Amending WSR 06-14-046, filed 6/28/06, effective 7/29/06)

WAC 434-262-020 Preliminary abstract of votes.

Following the election and prior to the official canvass, the county auditor shall prepare a preliminary abstract of votes, listing the number of registered voters and votes cast. Provisional ballot results must be combined with precinct results.

(1) The preliminary abstract of votes must list separately for each precinct:

~~((+))~~ ~~((a))~~ Votes cast by absentee or mail ballot and votes cast at the polls;

~~((+))~~ ~~((b))~~ Votes cast for and against measures;

~~((+))~~ ~~((c))~~ Votes cast for candidates; and

~~((+))~~ ~~((d))~~ Overvotes and undervotes.

(2) Pursuant to RCW 29A.60.230, the county auditor may aggregate results or take other necessary steps to maintain the secrecy of ballots.

(3) The county auditor shall inspect the preliminary abstract of votes for errors or anomalies that may affect the results of the election. Correction of any errors or anomalies discovered must be made prior to the official canvass.

AMENDATORY SECTION (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

WAC 434-840-340 Processing protected records voter ballot. (1) The ongoing absentee ballot for a protected records voter shall be prepared by county authorized personnel in the following manner:

(a) The ballot ~~((and corresponding voter's guide, shall be placed with))~~, ballot security envelope, and return envelope with oath must be placed in an envelope addressed to the substitute address;

(b) The voter's name, and authorization code shall be entered onto the return envelope to ensure that the returned ballot will be segregated and routed to authorized personnel for processing;

(2) The voted absentee ballot for a protected records voter shall be processed by county authorized personnel in the following manner:

(a) The authorized personnel shall compare the signature on the returned ballot envelope with the signature on the address confidentiality program ~~((ongoing absentee ballot))~~ voter registration application;

(b) If the signature does not correspond to the signature on file, indication of this discrepancy shall be entered onto the return envelope; and county authorized personnel shall notify the address confidentiality program.

(c) The address confidentiality program shall, upon receipt of a notice pursuant to (b) of this subsection attempt to

determine the cause of the discrepancy, and notify the appropriate county authorized personnel of any relevant information, that should be considered by the county canvassing board.

((4)) (3) If the protected records voter neglects to sign the affidavit on the return envelope, the county authorized personnel shall notify the protected records voter by first class mail of that fact. The authorized personnel may provide the voter with a copy of the return envelope affidavit and require the voter to sign the copy of the affidavit and mail it back to the auditor so that it arrives not later than the day before the certification of the primary or election. Authorized personnel shall keep a record of the date on which the notice was mailed to the protected records voter as well as the date on which the voter signed the return envelope or the copy of the return envelope affidavit.

WSR 07-04-111
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed February 7, 2007, 10:20 a.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-20-010, 220-20-021, 220-33-020, 220-36-031, and 220-40-031 from the proposal filed as WSR 07-03-115, filed on January 22, 2007. These sections will be refiled at a later date.

Loreva M. Preuss
 Rules Coordinator

WSR 07-04-114
PROPOSED RULES
DEPARTMENT OF ECOLOGY
 [Order 04-08—Filed February 7, 2007, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-08-061.

Title of Rule and Other Identifying Information: Amendment to chapter 173-532 WAC, Water resources program for the Walla Walla Basin, Water Resources Inventory Area (WRIA) 32.

Hearing Location(s): Dayton High School Auditorium, 614 South 3rd Street, Dayton, on March 14, 2007, at 7:00 p.m.; and at the Department of Transportation Conference Room, 1210 G Street, Walla Walla, on March 15, 2007, at 7:00 p.m.

Date of Intended Adoption: April 18, 2007.

Submit Written Comments to: Department of Ecology water resources web page at <http://www.ecy.wa.gov/programs/wr/instream-flows/wallawallabasin.html>, or to Travis Burns, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-7207, e-mail tbur461@ecy.wa.gov, fax (360) 407-6574, by March 23, 2007.

Assistance for Persons with Disabilities: Contact Judy Beitel by March 7, 2007, TTY (800) 833-6388 or (360) 407-6878.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amends the 1977 rule, chapter 173-532 WAC, Water resources program for the Walla Walla Basin, WRIA 32. In 2005 and consistent with the Watershed Planning Act, chapter 90.82 RCW, the Walla Walla watershed planning unit recommended ecology amends the existing rule to include instream flow levels, modify existing stream closures, and allow use of high flows for water storage projects that improve stream flows for salmon production. Other amendments include closure of the gravel aquifer and limitation on future permit-exempt groundwater use.

Reasons Supporting Proposal: The adoption of these rule amendments is needed to protect instream values within the Walla Walla Basin and to avoid injury of existing water rights from future appropriations of water.

Statutory Authority for Adoption: Chapter 90.82 RCW, Watershed Planning Act; chapter 90.54 RCW, Water Resources Act of 1971; chapter 90.22 RCW, Minimum Water Flows and Levels Act; chapter 90.03 RCW, Water code; and chapter 90.44 RCW, Regulation of public ground waters.

Statute Being Implemented: Chapters 90.22, 90.44, 90.54 and 90.82 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Hedia Adelsman, (360) 407-6222 or Travis Burns, (360) 407-7207, Headquarters, Department of Ecology; Implementation and Enforcement: Keith Stoffel, Eastern Regional Office, Department of Ecology, (509) 329-3464.

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

Small Business Economic Impact Statement

The Washington state department of ecology is amending chapter 173-532 WAC, Water resources program for the Walla Walla River Basin, WRIA 32. The key amendments include:

- Establishing instream flow water rights.
- Modifying seasonal surface water closures.
- Closing the gravel aquifers, which are directly connected to surface water sources.
- Limiting future withdrawals during high flow periods to projects resulting in net environmental benefits.
- Managing future permit-exempt groundwater withdrawals from the gravel aquifer, in "high density" areas by:
 - Limiting the total amount of water for domestic uses and irrigation of lawn and garden to 1,250 gallons per day for one residence and 5,000 gpd for multiple residences in one development.
 - Requiring water for water mitigation for outdoor watering.
 - Metering permit-exempt uses.

- Limiting stock watering.

The primary impact to business is the protection of businesses' existing water rights.

This small business economic impact statement (SBEIS) finds there are disproportionate impacts from the rule amendment. The dominant business cost impacts are the capital costs for new or expanding businesses associated with (1) accessing a permit-exempt well in the deep basalt aquifer, or (2) acquiring an existing water right. Cost minimizing features have been provided where it is legal and feasible to do so.

Ecology welcomes comments and data related to this SBEIS or this rule-making process.

1. Background: The Walla Walla Basin poses unique water management challenges. The basin as a whole covers portions of both Oregon and Washington. This rule applies to the Washington portion of the basin. The basin is overappropriated. That is, more water has been legally allocated, through existing water rights, than is naturally available.

Most of the summer flows in the Walla Walla have been diverted for irrigation. For the past hundred years, parts of the Walla Walla River have run dry in summer, seriously impacting salmon and other fish. In addition, during dry years, irrigators divert most of the low flows in late spring and early fall, threatening salmon in and out [of] migration in the Walla Walla and the Touchet rivers. The water supply is also unreliable for water users. Many adjudicated water right holders with senior rights (some as early as the 1890s) are unable to use their rights from July to October.

In 1977, ecology adopted the water resources program rule for the Walla Walla River basin, chapter 173-532 WAC, seasonally closing most streams and rivers because of unavailability of water and limiting future groundwater withdrawals. Ecology has issued no new surface water rights under the existing rule¹, except for uses that are nonconsumptive or those limited to the nonclosure periods.

The existing rule protects surface water rights from new appropriations of groundwater. The current section WAC 173-532-050 states in part: "New appropriators of ground water will be required to locate wells outside of the zone of hydraulic continuity between surface water and the ground water aquifer." Ecology evaluates applications for groundwater appropriation using the four legal tests set in chapter 90.03 RCW. One of the critical tests is a determination, by ecology, that the proposed appropriation will not impair existing water rights (both surface water and groundwater).

In the early 1990s, ecology developed methods to determine whether certain aquifers are connected to surface waters by assessing basin hydrology and historical water withdrawals. In the Walla Walla Basin, ecology determined that the gravel aquifers are connected to surface waters in the basin. Therefore, the continual use of the groundwater from those aquifers will impair existing surface water rights.

Since 1996, to protect existing water rights, ecology has issued no new surface water or groundwater rights in the basin. However, no restrictions have been imposed on permit-exempt groundwater withdrawals from the gravel and basalt aquifers.

By 1999, bull trout and steelhead were listed as threatened species under the federal Endangered Species Act

(ESA). In 2000, local agencies and the community created a planning unit and initiated the development of a watershed plan. The plan was to address the needs of the basin, including stream flow protection and restoration. The planning unit completed the watershed plan in May 2005, and Walla Walla and Columbia counties adopted the plan in June 2005.

For over twenty-five years (since the adoption of the rule in 1977), the basin has had limited growth. This has changed in the last five to seven years. The population and economic growth in Walla Walla County has significantly increased, especially in the urban growth areas and rural residential areas.

Planning unit members spent considerable time discussing the issue of permit-exempt groundwater withdrawals. While the planning unit did not make recommendations on the issue, members were concerned about the increase in permit-exempt wells-especially in areas where flows are very limited. Water right holders, the local community and ecology share these concerns about the potential cumulative impacts of permit-exempt wells on stream flows and existing water rights.

The basin has achieved some success in improving flows for ESA-listed species. Three irrigation districts have a negotiated settlement agreement with the United States Fish and Wildlife service to keep portions of their respective water rights in the river for fish. In addition, significant investment (over \$5 million) has been committed to restoring flows and increasing water reliability for users. A large number of permit-exempt groundwater withdrawals from the gravel aquifers could undermine these flow protection efforts. Some members of the community are also concerned about the equity issue where existing users must often stop their diversions and no new surface water rights are issued, but permit-exempt groundwater use from sources connected to those surface sources remains unregulated.

The planning unit made recommendations to ecology for the protection of instream flows and existing water rights, and the proper management of future water allocations. The watershed planning unit recommended ecology amend the existing rule to include: Instream flow levels, modification of existing stream closures, and the use of winter and spring high flows for water storage projects that improve stream flows for salmon production. Unresolved issues, such as future permit-exempt groundwater use, needed further discussion and negotiation. The proposed amendments to chapter 173-532 WAC are the result of a year-long negotiation between ecology and the planning unit.

1.1 Requirements of a Small Business Impact Analysis: Ecology is issuing this SBEIS under chapter 19.85 RCW as part of this rule adoption process. The objective of this SBEIS is to identify and evaluate the various requirements and costs that the proposal might impose on businesses. In particular, the SBEIS examines whether the rule amendment imposes a disproportionate impact on small businesses as compared to large businesses. The purpose and content of an SBEIS are contained in RCW 19.85.040.

1.2 Baseline: An SBEIS is limited to analyzing the changes the rule amendment creates, given the existing legal setting. The current legal structure is defined by the 1977 Walla Walla River Basin rule and other applicable adminis-

trative rules and laws. Therefore, this analysis evaluates the economic impact on small businesses from changes to how water would be managed through the proposed rule amendment.

2. Brief Description of the Rule Amendment and How Changes Affect Business: The proposed amendments to chapter 173-532 WAC² include:

- Establishing instream flow water rights, with the priority date being the effective date of this rule amendment.
- Modifying the existing seasonal surface waters closures.
- Closing the gravel aquifer, except for future permit-exempt withdrawals and nonconsumptive uses.
- Limiting future withdrawals during nonclosure periods, and at specific locations, to projects that would provide net environmental benefits with particular emphasis on salmon production.
- Limiting stock watering.
- Managing other future permit-exempt well withdrawals from the gravel aquifer in "high density" areas by:
 - Limiting the total amount of water for domestic uses and irrigation of lawn and garden to 1,250 gallons per day for one residence and 5,000 gpd for multiple residences.
 - Requiring water-for-water mitigation for outdoor use.
 - Metering many permit-exempt uses.

The rule changes that could have effects on small business are the closure of the gravel aquifers and the limits on future exempt well withdrawals. Small businesses with existing water rights will benefit greatly from these changes. The limits on exempt well use, within high density areas, could adversely impact new small businesses or existing businesses looking to expand their water use.

2.1. Establishing Instream Flows: There is no impact to small businesses from establishing instream flows.

The setting of instream flows does not affect existing water rights. Instream flows will only affect new consumptive uses. With the closure of all surface sources from May 1 or June 1 to November 30, only uses allowed during the non-closure periods will have instream flow conditions. Those uses are limited to storage projects designed to benefit the environment, particularly salmon populations.

The current regulatory framework does not allow new surface water rights. Under chapter 90.03 RCW proposed surface water applications would not meet the statutory tests - water supply would not be adequate and reliable for the intended purpose; future use may impair existing water rights; and it may not be in the public interest. Therefore, setting instream flows will not have an effect on small businesses.

Once established, instream flows are water rights and protected under existing regulations from impairment by all future changes and transfers of senior or junior water rights. Existing businesses proposing to change or transfer their water rights are subject to this provision. However, because of the overappropriated condition of the basin and the need to not impair any water right, their situation remains unchanged.

Businesses that provide guide services such as rafting, fishing, and bird watching, or those dependent on dilution for

waste removal, would not see any changes. Setting instream flows does not put water back into the streams and rivers.

2.2. Modifying Surface Closures and Closing the Gravel Aquifer: There may be some impact to small businesses relying on exempt wells. Otherwise, there is no impact from the surface water or gravel aquifer closures.

The amendment will modify the surface water closures in the basin. Streams and rivers will be closed to new consumptive uses from either May 1 to November 30, or June 1 to November 30. Overall, the closure will be one to two months longer than what it is under the current rule.

With the existing regulatory framework, set by statutes and the 1977 rule, ecology issues no new surface water rights for any purpose, except for storage projects. Water rights for storage projects for irrigation and commercial uses have not been issued because the water supply is unreliable. (Usable flows occur only once in ten years.) The only storage projects permitted are those that improve instream flows. Therefore, the modification of the surface waters closures will not have an effect on small businesses.

Under the proposed amendment the gravel aquifers, connected to surface waters in the basin, will be closed year-round. Under the existing regulatory framework set by statutes and the 1977 rule, ecology has not issued new groundwater rights from the gravel aquifer since 1996. Therefore, the closure of the gravel aquifer will not have an effect on small businesses that would require water right permits. However, the closure of the gravel aquifer may affect future new small businesses that could currently use the groundwater permit-exemption to meet their water supply needs.

The rule amendment provides exceptions for future non-consumptive uses (i.e., geothermal heat pump) and permit-exempt groundwater withdrawals. Section c. below, discusses how the exception applies to small businesses and how the conditions set are likely to impact them.

2.3. Exceptions for Future Permit-Exempt Groundwater Withdrawals: The exception does not help small businesses located in high density areas (areas with zoned density equal to or more dense than one residence per ten acres), except for builders/owners. Builders/owners can access the exception under new conditions-the amount of water for domestic use and irrigation of lawn and garden cannot exceed 1,250 gallons per day, water use must be metered and reported and outdoor use must be mitigated water-for-water before any water is put to use.

Currently, businesses that require a reliable water supply have the following options:

- Have an existing water right.
- Connect to a municipal water supply system, if available.
- Drill a well under the groundwater exemption.
- Obtain a water right through purchase or transfer of an existing valid water right.

These amendments will not affect businesses with existing water rights. These businesses may actually benefit from a more protected and reliable water supply.

As stated above, the proposed rule closes the gravel aquifer and provides an exception to the closure under certain strict conditions.

a) Hook-ups: There is no change in areas with timely water hook-ups to a municipal water supplier.

The city of Walla Walla requires hook-up to the public water system if the system is located within three hundred feet of the structure property line. Also any land division in the urban growth area which results in parcels less than five acres must connect to the city water supply. The city of College Place has similar hook-up requirements currently in place. The requirement to hook-up to a municipal water supply has no effect in these areas. Therefore, this requirement imposes no additional cost on small business.

The rule does not require the hook-up to a municipal water supplier unless the hook-up can be provided in a timely and reasonable manner. Where small business is not required but chooses to connect to a municipal supplier, additional costs from the connection or the delay cannot be attributed to the rule amendment. If a small business cannot access public water supply it will either need to drill in the basalt aquifer or purchase and transfer an existing water right.

b) High density areas: In areas with zoned density equal to or denser than one residence per ten acres (referred to as high density areas)³ the exception is limited to residences for domestic use and irrigation of lawn and garden (this outdoor use must be fully mitigated). The exception is not available to small businesses. In those areas, new small businesses will need to use one of these options:

- Connect to a public water supply, if available.
- Drill and withdraw water from the deep basalt aquifer.
- Obtain a water right through purchase or transfer of an existing valid water right.

County and city zoning ordinances, within the WRIA, generally prohibit business activities outside commercially zoned areas. With some small exceptions, commercially zoned areas fall within the city limits of Walla Walla and College Place. The municipal water service area currently covers the city limits and most of the urban growth areas. Additionally, the water suppliers plan to provide service to the entire urban growth area within the next twenty years.

c) Low density areas: In areas where the zoned density is less than one residence per ten acres, the use of permit-exempt groundwater by small businesses is unchanged from the current regulatory framework. Therefore, there are no additional costs incurred from this amended rule to any future businesses, in low density areas, wishing to use an exempt well.

3. Affected Industries: Ecology developed a list of permitted businesses in the high density areas based on data provided by the Washington state employment security department, the Walla Walla County zoning codes⁴, and others. New business development is likely to be similar.

Table 1. List of Potential Small Businesses in High Density Areas

County zoning in high density areas	North American Industry Classification System ⁵
Storage/packing agricultural produce	Code 1151
Horticulture nurseries	Code 1114
Produce stands	Code 1113
Commercial greenhouses	Code 1114
Hatcheries	Code 1129
Rock crushers	Code 21
Bed and breakfasts	Code 7211
Residential building construction	Code 2361
Nonresidential building construction	Code 2362

Produce stands: This type of business generally does not require water. Therefore, the rule amendment does not affect them.

Storage/packing agricultural produce: While these types of business do not require water for storage or packing, there may be a need to have water for employees and for fire protection. The effects of the rule are limited to those uses.

Hatcheries: Water use in hatcheries is nonconsumptive. Future hatcheries, therefore, qualify under the exemption for nonconsumptive water uses. Hatcheries may, however, require water for their employees.

Bed and breakfast: Businesses are usually remodeled homes or transformed existing structures. As long as the existing structure has a valid water right (permitted or permit-exempt) and the water use does not exceed the amount previously put to beneficial use, the future business will not be affected by the rule amendment. However, construction of a new structure for this type of business in a high density area may be affected, unless a municipal water supply is available.

Horticulture nurseries, commercial greenhouses, and rock crushers: Those proposed in the future will not be allowed to use the exception for permit-exempt groundwater from the gravel aquifer, if located in high density areas.

Residential and nonresidential building construction: Construction businesses are impacted only if they are builders/owners - meaning they own the land, build homes, and sell them, as distinguished from those who build for a homeowner or a business. *Builders/owners* are allowed to use the permit-exemption from the gravel aquifer under some restrictions. The amount of water is limited to 1,250 gallons per day, a water meter must be installed, and mitigation for outdoor use must be obtained prior to irrigating lawn or garden.

Those businesses that need water can:

- Connect to a public water supply, if available.
- Drill and withdraw water from the deep basalt aquifer.
- Obtain a water right through purchase or transfer of an existing valid water right.

4. Calculation of Business Benefits and Compliance Costs:

Costs: Costs of the different options listed below generally include costs for: Reporting and recordkeeping, professional services, equipment, supplies, labor, and any increased administrative costs.

Currently, small businesses are able to drill a well in the gravel aquifer. The average cost of drilling is \$35 per foot.⁶ The gravel aquifer depth varies. Recently drilled wells had a depth of one hundred to three hundred feet⁷, with an average of two hundred feet.

Average total costs for a gravel well is \$10,000, with \$7,000 for drilling (200 feet x \$35), and \$3,000 for the pump and other associated costs (e.g., electrical, connection to the home).

a). *Cost of drilling a basalt well:* The cost of drilling a well in the basalt aquifer is higher than drilling a well in the gravel aquifer. The depth to the basalt aquifer in the high density areas averages six hundred feet (based on ecology's well logs and a USGS study). According to well drillers in the basin, the average cost of drilling in the basalt in high density areas is about \$50 a foot.

The average total cost of a new well in the basalt is about \$40,000, with \$30,000 for the drilling (\$50 x 600 feet) and \$10,000 for a pump and other equipment⁸. Additional costs to businesses would be \$30,000 (calculated by subtracting the cost of a gravel well from the cost of a basalt well-or \$40,000 less \$10,000).

b). *Cost of purchasing existing water rights:* Businesses can purchase water rights in the high density areas so that they may drill a well accessing the gravel aquifer. The maximum allowed quantity, under the groundwater permit-exemption, is 5,000 gallons a day, which totals 1,825,000 gallons or 5.6 acre feet per year⁹.

Based on WestWater Research (a consultant specializing in water valuation and marketing) and ecology's valuation from past sales, water rights can be permanently purchased for \$600 to \$1000 an acre foot.¹⁰ On average, the total cost of purchasing 5.6 acre-feet could be \$5,000 (\$800 x 5.6 acre-

feet coming to \$4,480 and adding about \$520 for recording fees and professional services).

If the water right needs to be transferred, the water transfer processing cost will have to be included. This ranges from \$50 to \$500¹¹. These costs are added to the purchase cost. The total cost for purchasing and transferring a water right is about \$5,500.

A health requirement prohibits the use of surface water for domestic purposes unless it is extensively treated. Therefore, most, if not all, purchased surface water rights will have to be transferred to a groundwater right and the business will have to drill a well for domestic use. Purchasing and transferring a water right, and drilling a well would have an average total cost of \$15,500. So the additional cost to businesses will be \$5,500 (\$15,500 less the cost of a gravel aquifer well).

5. Calculation of Disproportionate Impacts: In this SBEIS, employment security's database for NAICS codes was used to find out the number of industries and number of employees per business that may be impacted by the amended rule - *horticulture nurseries, commercial greenhouses, rock crushers, bed and breakfasts, residential and commercial construction*. There were ninety-four small businesses in the potentially affected industries in the WRIA. For small businesses in these industries, the average number of employees is 3.4. For the top 10% of potentially affected businesses the average number of employees is 12.1.

Ecology estimates the highest cost to businesses would be the additional cost of drilling a basalt well, which is \$30,000. The lowest cost is the cost of purchasing and transferring water rights, which is \$5,500.

Using the highest and lowest cost figures, the cost per employee for small businesses, and for the top 10% of the large businesses, was calculated.

The lowest cost per employee for small business is \$1,618, and the smallest cost per employee for the top 10% [of] large businesses is \$455, see Table 2.

The highest cost per employee for small business is \$8,824, and for the top 10% of large businesses is \$2,480, see Table 2.

Table 2. Proportional Costs to Businesses

Options	Estimated Additional Costs	Average # of Employees		Cost Per Employee	
		Small Business	10% Largest	Small Business	10% Largest
Lowest (water right)	\$5,500	3.4	12.1	\$1,618	\$455
Highest (Basalt well)	\$30,000	3.4	12.1	\$8,824	\$2,480

These high and low costs per employee demonstrate that the proposed rule amendments have a disproportionate impact on small business. The primary impact of this amended rule is to protect existing water rights held by businesses in the basin.

6. Cost-Reducing Features: Ecology has reduced costs imposed on small businesses to the extent required by chapter 19.85 RCW. Ecology considered many methods to reduce costs:

Reducing, modifying, or eliminating substantive regulatory requirements: Eliminating substantive require-

ments is not legally acceptable. Current law requires ecology to protect existing water rights. Protection of those rights provides a benefit to businesses that own existing water rights. The amended rule reduces and limits the impacts to small businesses located in low-density areas and in areas where [where] the gravel aquifer does not exist and the basalt aquifer is the source of supply (i.e., Columbia County and a large portion of Walla Walla County). In addition, the amended rule exempts the Burbank area (groundwater in the area drains toward the Snake and Columbia rivers) from the restriction on small businesses in high density areas.

Simplifying, reducing, or eliminating record-keeping and reporting requirements: Businesses in low density areas are not required to meter and report their water use. Ecology is responsible for keeping a record of all future permit-exempt groundwater withdrawals from the gravel and the basalt aquifers. The agency will use the best available information on water use per sector, including metering information, where it is available. For those required to meter and report their water use this requirement was limited to the critical months in the basin - May 1 to November 30.

Reducing the frequency of inspections: The rule does not impose any additional requirements for inspections.

Delaying compliance timetables: Since 1977, no efforts have been made to control permit-exempt groundwater withdrawals. Recent population growth and development threaten existing water rights and efforts to restore stream flows for ESA listed species. Protection of existing water rights is a mandatory requirement that cannot be ignored or postponed. Protection of those rights provides a benefit to businesses that own existing water rights.

Reducing or modifying fine schedules for noncompliance: The amended rule does not impose any penalties that are not already in statutes.

Other mitigation techniques: Ecology will be working with the local community to assist future water users mitigate the impacts of their proposed uses.

7. Small Business Involvement in Developing the Amended Rule: Small business representatives were involved throughout the development of this rule. Ecology worked closely with the Walla Walla watershed planning unit and its water quantity/instream flow subcommittee to draft the rule revisions. The local planning unit comprises a wide cross-section of the Walla Walla Basin population, including small businesses. Representatives from sellers of produce, small real estate companies, professional partnerships, farm operators, and other small business were members of the planning unit and were involved at every stage of rule development. Ecology held public workshops in November 2006. Local chambers of commerce, drillers, developers, real estate companies and others received notice of the workshops and many small business owners participated.

8. Conclusions: The cost impacts of the amended rule are disproportionate for small businesses. Therefore, ecology has provided cost-minimizing features where it is legal and feasible to do so. The primary impact to business is the protection of existing businesses' water rights.

This rule amendment would affect very few businesses. Those affected – meaning they are unable to access water via the conventional method - a permit-exempt well drilled in the gravel aquifer due to the closure of that aquifer, may experience additional costs associated with drilling and operating a basalt well, or purchasing and transferring an existing water right.

¹ There are one hundred nineteen applications for new water rights currently pending in WRIA 32. See Appendix 1.

² Appendix 2 contains a summary of the proposed changes to chapter 173-532 WAC.

³ Appendix 3 shows a map of the high density areas within WRIA 32.

⁴ LexisNexis Walla Walla County, Title 17 Zoning, Chapter 17.16 Permitted Uses.

⁵ Ecology has used NAICS codes rather than standard industrial codes (SIC). It is a comparable system being used at the federal and state level and has replaced SIC codes in common use.

⁶ Based on a survey of well drillers and homeowners in the basin.

⁷ Ecology well logs.

⁸ Survey of costs from drillers in the Walla Walla area.

⁹ 1 acre foot = 325,851 gallons, the amount of water required to cover one acre with water one foot deep.

¹⁰ Shown in Appendix 4.

¹¹ \$50 ecology's application fee. \$500 Walla Walla conservancy board processing fee (includes all costs associated with a water transfer).

Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement does not contain the appendices that further explain ecology's analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request.

A copy of the statement may be obtained by contacting the department of ecology water resources web page at <http://www.ecy.wa.gov/programs/wr/instream-flows/wallawalla-basin.html>, or by contacting Travis Burns, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7207, fax (360) 407-6574, e-mail tbur461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting the department of ecology water resources web page at <http://www.ecy.wa.gov/programs/wr/instream-flows/wallawallabasin.html>, or by contacting Travis Burns, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7207, fax (360) 407-6574, e-mail tbur461@ecy.wa.gov.

February 6, 2007

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-010 Authority and purpose. (1) This ~~((regulation))~~ chapter is adopted in accordance with the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Regulation of public ground waters (chapter 90.44 RCW), Water code (chapter 90.03 RCW), and the water resources management regulation, chapter 173-500 WAC, which was ~~((promulgated))~~ adopted under the authority of the Water Resources Act of 1971, chapter 90.54 RCW.

(2) This chapter ~~((, including any amendments,))~~ applies to the management of all waters ((that lie)) within ((or contribute to)) the Walla Walla River drainage basin located in Washington state.

~~((This chapter sets forth the department's policies to manage the basin's water resources.))~~ (3) This chapter shall not affect existing water rights, unless otherwise provided for in the conditions of the water right in question. It shall also not affect federal Indian and non-Indian reserved rights.

(4) The department shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-020 Definitions. For purposes of this chapter, the following definitions shall be used.

(1) "Allocation" means the designating of specific amounts of the water resource for specific beneficial uses.

(2) (~~("Base flow" means a level of stream flow established in accordance with provisions of chapter 90.54 RCW required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values.~~) "Appropriation" means the process of legally acquiring the right to specific amounts of the public water resource for application to beneficial uses.

(3) "Consumptive use" means use of water whereby there is (~~(discernible)~~) diminishment of the water source.

(4) "Department" means the Washington state department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Domestic use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, (~~(irrigation of not over one-half acre of lawn and garden per dwelling,))~~ and other incidental household uses. Irrigation of lawn and garden under the permit exemption in RCW 90.44-.050 shall not exceed one-half acre.

(7) (~~("In-house domestic use" means use of water for drinking, cleaning, sanitation, and other uses in a residence, excluding irrigation of lawn and garden.~~) "Environmental enhancement project" means a water storage project, above or below ground, that would provide net environmental benefits, with particular emphasis on enhancing salmonids production. Projects that enhance instream flows directly or indirectly qualify under the definition. Projects proposed as mitigation for new consumptive water rights do not qualify under this definition.

(8) "Gravel aquifer" means any geologic formation generally under unconfined, or water table, conditions which consist of sand and gravel and may contain interbedded layers of silt and clay.

(9) "Instream flow" means a level of stream flow, established under chapters 90.54, 90.03, 90.22, and 90.82 RCW, required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term means "base flow" under chapter 90.54 RCW, a "minimum flow" under chapters 90.03 and 90.22 RCW, and

"minimum instream flow" under chapter 90.82 RCW. In the Walla Walla Watershed Plan, adopted in June 2005 by Walla Walla and Columbia counties, the term "new appropriation flows" has the same meaning as instream flows under this chapter.

~~(10) "Municipal water ((supply system)) supplier" ((means a set of facilities including source, treatment, storage, transmission and distribution facilities whereby water is furnished for commercial and/or industrial uses, and public water supplies with 10 or more connections)) and "municipal water supply purposes" are defined in RCW 90.03.015.~~

~~((9)) (11) "Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source ((body)), or where there is no ((discernible)) diminishment of the source.~~

~~((10)) (12) "Perennial stream" means a stream ((with a natural flow which is normally continuous at any given location)) that normally flows year-round.~~

~~((11) "Public water supply" means any water supply intended or used for human consumption and community uses.~~

~~(12)) (13) "Planning unit" means the Walla Walla watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Walla Walla watershed planning initiating governments. The initiating governments are Columbia and Walla Walla counties, city of Walla Walla, and Gardena Farms Irrigation District No. 13.~~

(14) "Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes.

~~((13) "Zone of direct hydraulic continuity" means that zone of inter action between the surface water stream and the adjacent ground water whereby a pumping well can effectively reduce the flow in the stream to the detriment of surface water users, as determined by the department.)~~ (15) "Withdrawal" means the extraction or use of ground water, or the diversion or use of surface water.

NEW SECTION

WAC 173-532-025 Establishment of stream management units. The department hereby establishes the following stream management units (Table I). The boundaries of the management units are shown in WAC 173-532-120.

Table I

Stream Management Unit Name; Management Point (MP) No.; Control Station Gage No.	Stream Management Unit Information Control Station by River Mile (RM); Section; Township and Range; Latitude (Lat.) and Longitude (Long.)	Stream Management Reach Description
Mill Creek MP 1 (Mill Creek at Kooskooskie) USGS Gage No. 14013000	RM 21.2; Section 12; T6N, R37E; 46°00.0'N, 118°07.1'W	Mill Creek at confluence with Walla Walla River (Walla Walla River, RM 33) to state line headwaters at Mill Creek, including tributaries.

Table I
Stream Management Unit Information
Control Station by River Mile (RM); Section; Township and Range; Latitude (Lat.) and Longitude (Long.)

Stream Management Unit Name; Management Point (MP) No.; Control Station Gage No.	Control Station by River Mile (RM); Section; Township and Range; Latitude (Lat.) and Longitude (Long.)	Stream Management Reach Description
Walla Walla River MP 5a (Walla Walla River at Detour Road) Department Gage No. 32A100	RM 32.4; Section 31; T7N, R35E; 46°2.6'N, 118°29.4'W	Walla Walla River, RM 32.4 (below confluence of Walla Walla River and Mill Creek) to state line at Walla Walla, including tributaries.
North Fork Touchet River MP 6a (North Fork Touchet above Dayton) Department Gage No. 32E050	RM 54.9; Section 32; T10N, R39E; 46°17.9'N, 117°57.2'W	Mouth of North Fork Touchet River to headwaters, including tributaries.
Touchet River MP 11 (Touchet River at Bolles) Department Gage No. 32B100	RM 40.1; Section 7; T9N, R37E; 46°16.4'N, 118°13.3'W	Touchet River, RM 40.1 to RM 54.9 (confluence of North Fork Touchet River and South Fork Touchet River), including tributaries, excluding North Fork Touchet River and its tributaries.

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-030 ((Base)) Establishment of instream flows. ((The establishment of base flows for surface streams will be deferred until such time as storage project or projects become a reality. At present, all surface streams are totally appropriated during the irrigation season and water is not available for protection of instream values. With the advent of future storage projects, the department may establish base flows which can be included as project benefits and maintained by storage releases.)) (1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the departments of fish and wildlife, agriculture, and community, trade, and economic development; the Confederated Tribes of the Umatilla Indian Reservation; and public input received during the rule-making process.

(2) Instream flows established here are water rights, which protect stream flows from future consumptive appropriations. In accordance with RCW 90.82.080 (2)(a), the planning unit determined by unanimous vote that the priority date of the instream flows is the effective date of this chapter.

(3) Instream flows are to be protected from impairment by junior water rights and by all future changes and transfers of senior and junior water rights.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the management points identified in WAC 173-532-025. For reaches that do not have management points, the flows established for the nearest management point or points (where a tributary with a management point contributes to such flow) apply to those reaches.

(5) Instream flows are established for the stream management units in WAC 173-532-025, as indicated in Table II.

Table II
Instream Flows in the Walla Walla River Basin
(cubic feet per second)
Stream Management Unit

<u>Month</u>	<u>Mill Creek</u>	<u>Walla Walla River</u>	<u>North Fork Touchet</u>	<u>Touchet River</u>
	<u>MP 1 (Mill Creek at Kooskooskie), USGS Gage No. 14013000</u>	<u>MP 5a (Walla Walla River at Detour Road), Department Gage No. 32A100</u>	<u>River, MP 6a (North Fork Touchet above Dayton), Department Gage No. 32E050</u>	<u>MP 11 (Touchet River at Bolles), Department Gage No. 32B100</u>
<u>January</u>	<u>110</u>	<u>250</u>	<u>95</u>	<u>150</u>
<u>February</u>	<u>125</u>	<u>250</u>	<u>95</u>	<u>150</u>
<u>March</u>	<u>150</u>	<u>350</u>	<u>125</u>	<u>200</u>

Table II
Instream Flows in the Walla Walla River Basin
(cubic feet per second)
Stream Management Unit

Month	Mill Creek	Walla Walla River	North Fork Touchet River	Touchet River
	MP 1 (Mill Creek at Kooskooskie).USGS Gage No. 14013000	MP 5a (Walla Walla River at Detour Road). Department Gage No. 32A100	MP 6a (North Fork Touchet above Dayton). Department Gage No. 32E050	MP 11 (Touchet River at Bolles). Department Gage No. 32B100
April	150	350	125	200
May	125	250	125 Closure	200 Closure
June	100 Closure	Closure	95 Closure	125 Closure
July	53 Closure	Closure	65 Closure	74 Closure
August	41 Closure	Closure	53 Closure	48 Closure
September	41 Closure	Closure	51 Closure	56 Closure
October	48 Closure	Closure	63 Closure	82 Closure
November	100 Closure	Closure	95 Closure	150 Closure
December	110	250	95	150

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-040 ((Streams)) Surface and ground water closed to further consumptive appropriations. ((The department has determined that no waters are available for consumptive appropriation through the establishment of water rights for the following streams for the periods indicated:

Pine-Creek	Mouth to Headwaters	Date of Adoption	May 1 -- Oct. 31 or whenever Walla-Walla River at confluence with Pine-Creek or below Touchet River drops below 50 cfs.
Stone-Creek	Mouth to Headwaters	Date of Adoption	May 1 -- Oct. 31

*Exception for single-domestic and stock water where no other practical source is available.))

TABLE II-1
 SURFACE WATER CLOSURES*

STREAM NAME	AFFECTED REACH	EFFECTIVE DATE OF CLOSURE	PERIOD OF CLOSURE
Blue-Creek	Mouth to Headwaters	Date of Adoption	June 1 -- Oct. 31
Mill-Creek	Mouth to State Line	2-6-1957	May 1 -- Oct. 1
Walla-Walla River	Mouth to State Line	Date of Adoption	May 1 -- Nov. 30
Dry-Creek	Mouth to Headwaters	Date of Adoption	April 15 -- Nov. 15 or whenever Walla-Walla at USGS Gage 14.0185 drops below 91.0 cfs.
Touchet River	Mouth to Headwaters	Date of Adoption	June 1 -- Oct. 31
Coppei Creek	Mouth to Headwaters	Date of Adoption	April 1 -- Nov. 10
Doan-Creek	Mouth to Headwaters	Date of Adoption	June 1 -- Oct. 1
Mud-Creek	Mouth to Headwaters	Date of Adoption	May 1 -- Oct. 31 or whenever Walla-Walla below confluence with Mud-Creek falls below 50 cfs.

(1) Based on historical and current low flows and water withdrawals by existing water right holders, the department has determined that no waters are available for new consumptive uses during periods of low surface water flows. Therefore, all rivers and streams in the basin are seasonally closed to any further consumptive appropriation from May 1 to November 30 with the exception that the Walla Walla River and all of its tributaries between Stateline and Detour Road at MP 5a, and Mill Creek and all of its tributaries from the confluence with the Walla Walla to the headwaters shall be closed from June 1 to November 30.

(2) Based on the hydrogeology of the basin, the department finds that gravel aquifers in the basin are hydraulically connected to surface waters in the basin. Therefore, the gravel aquifers are closed. Exception to this closure is provided for future permit-exempt ground water withdrawals as prescribed in WAC 173-532-050 and for nonconsumptive ground water use as prescribed in WAC 173-532-045. The closure does not affect the construction of a replacement well or new additional well or wells consistent with the conditions set in RCW 90.44.100 (2) and (3).

(3) Future permits to withdraw surface water during non-closure periods, shall be limited to environmental enhancement projects as described in WAC 173-532-055.

NEW SECTION

WAC 173-532-045 Future permitting actions. Surface and ground water permits may be issued if either condition in subsection (1), (2), or (3) of this section applies.

- (1) The proposed water use is nonconsumptive.
- (2) The proposed ground water use from the basalt aquifer will not:
 - (a) Impair existing water rights;
 - (b) Affect any closed surface source where instream flows have not been established; or
 - (c) Affect any closed gravel aquifer.
- (3) The proposed surface water use would occur during nonclosure periods and is intended for an environmental enhancement project, as defined in WAC 173-532-020(6) and meeting the criteria listed in WAC 173-532-055.

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

WAC 173-532-050 Protection of surface water rights from ~~((new appropriators of ground water))~~ future permit-exempt ground water appropriations from the gravel aquifer. ~~((New appropriators of ground water will be required to locate wells outside of the zone of direct hydraulic continuity between the surface water stream and the ground water aquifer. The actual limits of the zone of direct hydraulic continuity at a specific location will be determined by the department after an individual ground water application is received. The department will use accepted engineering methods for its determination.))~~ (1) In exception to the closure in WAC 173-532-040, future appropriation from the gravel aquifers under the permit exemption in RCW 90.44.-050 may be allowed, under the following conditions:

(a) Where connections to an existing municipal water supply cannot be provided to the residences or development in a timely and reasonable manner in areas with a zoned density equal to or more dense than one residence per ten acres (high density areas); then the total amount of water that may be withdrawn from the gravel aquifer for domestic uses and irrigation of one-half acre of lawn and garden shall not exceed the amounts specified in (a)(i) and (ii) of this subsection. This condition does not apply to the Burbank area that drains to the Snake and Columbia rivers.

(i) For any one residence, one thousand two hundred fifty gallons a day.

(ii) For multiple residences that are part of a group use in addition to the limitations in (a)(i) of this subsection, the combined maximum water withdrawal for the development shall not exceed five thousand gallons per day.

(b) If the source of withdrawal is in the gravel aquifer in either the Burbank area or areas where the zoned density is less than one residence per ten acres, future permit-exempt ground water withdrawals for single or group domestic uses, watering of a lawn or noncommercial garden, or for industrial purposes, must be consistent with the requirements set in RCW 90.44.050.

(c) For stockwatering, water use from an exempt well in the gravel aquifer may not exceed: Seven hundred gallons per day on a tax parcel size of ten acres or less, two thousand five hundred gallons per day on a tax parcel size between ten

and twenty acres or five thousand gallons per day on a tax parcel size twenty acres and greater. This exception shall not apply to feedlots or other activities not related to normal grazing land uses.

(d) All future appropriation in the high density areas, including for stockwatering, shall be required to install and maintain a water measuring device (water source meters) meeting specifications provided by the department. The user must report to the department, by December 31 of each year, monthly water use from May 1 to November 30.

(2) With limited water availability, closure of surface sources and the gravel aquifer to any future consumptive uses, and ongoing regulation of existing adjudicated rights, new permit-exempt withdrawals from the gravel aquifer are likely to have cumulative impacts on existing water rights, including instream flows and the closed water sources. Therefore, new permit-exempt users from the gravel aquifer in the high density areas must provide water-for-water mitigation for any outdoor water use, from May 1 to November 30, prior to such use unless the department specifies otherwise.

(3) The department will keep records of all future permit-exempt ground water appropriations from the gravel and basalt aquifers.

(4) In consultation with Walla Walla and Columbia counties, the planning unit and the Confederated Tribes of the Umatilla Indian Reservation, the department will identify means, such as the use of the trust water right program under chapter 90.42 RCW, to assist future permit-exempt users to offset the impacts of their proposed water use, either individually or jointly.

(5) If the department determines, in consultation with Walla Walla and Columbia counties, the planning unit and the Confederated Tribes of the Umatilla Indian Reservation, that the impacts of outdoor water use from new permit-exempt wells in the gravel aquifer are not fully mitigated and may impair existing rights, the department shall issue an order and public notice stopping all such use. The order and notice shall define the area for which the stoppage applies. The order shall continue until such time that adequate and reliable mitigation is in place.

NEW SECTION

WAC 173-532-055 Future surface water withdrawals for environmental enhancement projects. The department finds there may be water available above existing water rights and instream flows that could be captured for environmental enhancement projects. This water is only available at specific locations where instream flows are established and during the nonclosure periods, as specified in Table III. A surface water withdrawal for an environmental enhancement project ("EEP") may be approved if it meets all of the following:

- (1) EEP may be sponsored only by:
 - (a) The Confederated Tribes of the Umatilla Indian Reservation;
 - (b) A municipal governments located within Walla Walla or Columbia counties;

- (c) An irrigation district or ditch company within the watershed;
 - (d) The Washington department of fish and wildlife;
 - (e) A conservation district within the watershed;
 - (f) A quasi-governmental organization within the watershed; or
 - (g) A nonprofit organization within the watershed.
- (h) Individual landowners may qualify as a sponsor only when the said landowner is a participant in a project sponsored by one or more of the aforementioned qualifying sponsors.

(2) A proposed project may only qualify as an EEP after the project has received a consensus recommendation from the Confederated Tribes of the Umatilla Indian Reservation, the Planning Unit, Washington department of fish and wildlife, and planning unit initiating governments.

(a) The consensus recommendation shall occur after receiving technical advice and recommendations from the technical advisory group with representatives from:

- (i) The Confederated Tribes of the Umatilla Indian Reservation;
- (ii) The governor's salmon recovery office;
- (iii) The Walla Walla basin watershed council;
- (iv) The Washington department of fish and wildlife; and
- (v) The department of ecology.

(vi) The United States Army Corps of Engineers, United States Forest Service, United States Fish and Wildlife Service, and National Marine Fisheries Service may be invited to participate in the technical review.

(b) Technical evaluation shall consider:

- (i) The specific management objectives for the stream management reaches affected by the EEP;
- (ii) Effects of the project on inward and outward migration of salmonids and ecological function provided by high stream flows; and
- (iii) Cumulative effects of all environmental enhancement projects.

(c) The technical evaluation shall also weigh any detriment caused by storing some seasonal stream flows (e.g., high winter flows and flood flows) against any benefit the stored water would provide.

(3) An application for EEP must include a monitoring and adaptive management program and show ability to implement such a program. Applicants will define how they will measure and evaluate the project's effectiveness in achieving environmental enhancement goals. The technical advisory group may assist in developing the criteria for evaluating project effectiveness.

(4) Initial water use authorization for EEP will be for short-term. No appropriative right shall develop out of this authorization. The department may only issue a permanent water right if the project's intended benefits are being realized, on the advice of the technical group.

(5) All other applicable permits must be obtained from the department, Washington department of fish and wildlife, and other agencies, prior to construction or water use.

(6) Water right permits for EEP shall be subject to existing water rights and instream flows as established under this chapter.

(7) In consideration of the recommendations of the technical advisory group, the withdrawals shall be managed consistent with salmonid migration needs and with the protection of high flow functions.

(8) Monitoring and sampling shall be consistent with the monitoring plan developed and approved for the project. Daily records shall be kept of the quantity of water diverted to the project. Such records shall be made available to the department upon request.

(9) The department will maintain a record of all diversion for EEP approved in each stream management unit.

(10) The maximum allowable allocation for EEP within a stream management unit shall not exceed the values indicated in Table III.

Table III
Maximum Allowable Allocation for Environmental Enhancement Projects
(cubic feet per second)

Stream Location	EEP Diversion Period	Maximum Allowable Allocation*
Mill Creek at confluence with Walla Walla River (Walla Walla River, RM 33) to headwaters.	Dec. 1 to May 31	125
Walla Walla River below confluence of Walla Walla River and Mill Creek (RM 32.4) to state line.	Dec. 1 to May 31	300
North Fork Touchet at mouth of North Fork Touchet River to headwaters.	Dec. 1 to April 30	110
Touchet River at Bolles to headwaters, excluding North Fork Touchet.	Dec. 1 to April 30	175

*The total allowable allocation on the Touchet River and North Fork Touchet River shall not exceed 175 cfs. The total maximum allocation on the Walla Walla River and Mill Creek shall not exceed 300 cfs. Due to concerns over potential impacts on inward and outward migration of salmonids and ecological function of high flows the maximum allowable allocation may be considerably less.

AMENDATORY SECTION (Amending Order 88-11, filed 6/9/88)

WAC 173-532-090 Compliance and enforcement.
~~((In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authori-~~

ties vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.) (1) The department shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

(2) When the department determines that a violation of this chapter has occurred, it shall:

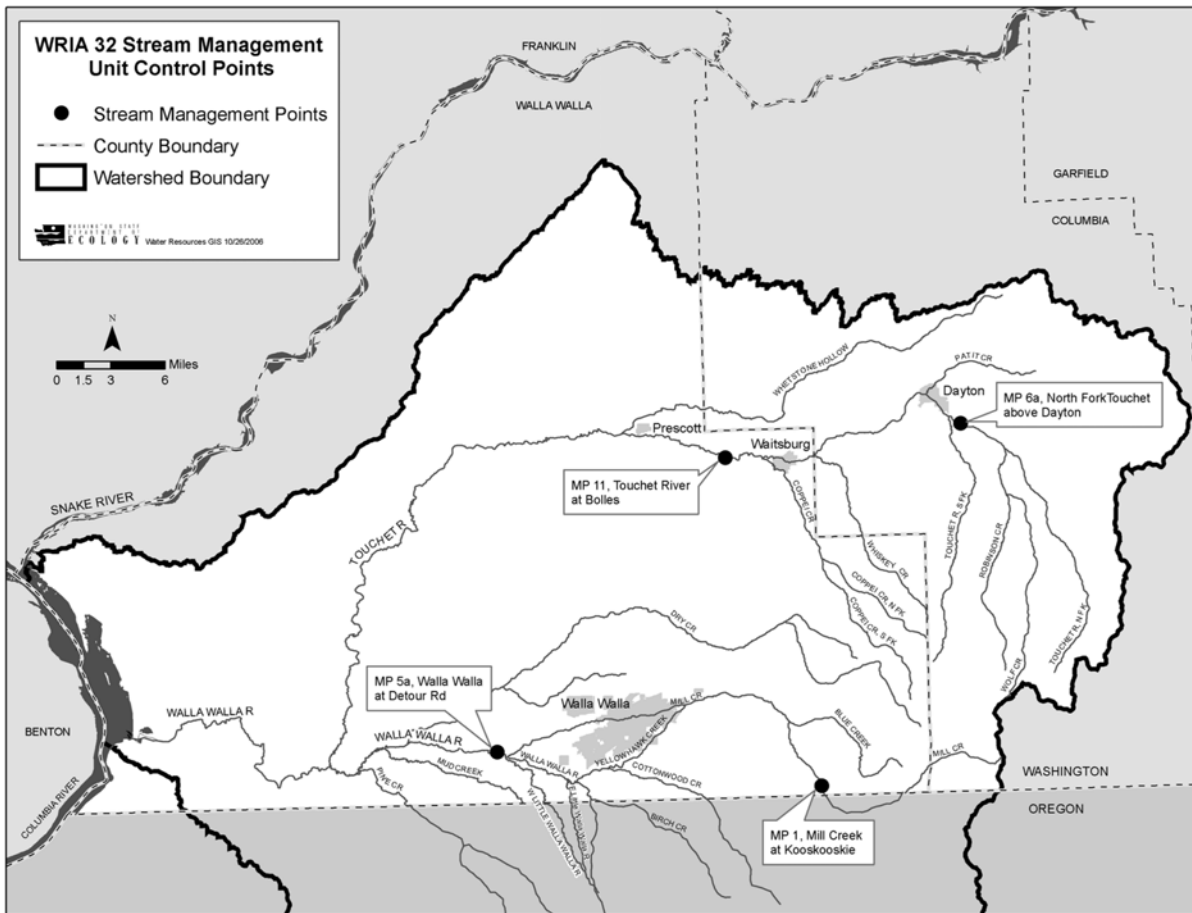
(a) First attempt to achieve voluntary compliance, except in appropriate cases involving potential harm to other water rights or the environment. An approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance

identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, the department has the authority to issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

NEW SECTION

WAC 173-532-120 Map. For the purpose of administering this chapter, the boundaries of the Walla Walla River basin identified in the figure below are presumed to accurately reflect the basin located within Washington state.



REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 173-532-060 Designation of ground water areas for specific uses.
- WAC 173-532-070 Closure of ground water aquifer to further appropriation.

WAC 173-532-080

Evaluation of ground water applications.

WAC 173-532-110

Regulation review.

WSR 07-04-118
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed February 7, 2007, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-058.

Title of Rule and Other Identifying Information: WAC 458-20-274 Staffing services, this rule explains the application of business and occupation (B&O) tax, public utility tax (PUT); and the retail sales tax collection responsibilities of staffing businesses providing staffing services.

Hearing Location(s): Capital Plaza Building, 4th Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on March 14, 2007, at 9:30 a.m.

Date of Intended Adoption: March 26, 2007.

Submit Written Comments to: Stephen P. Zagelow, P.O. Box 47453, Olympia, WA 98504-7453, e-mail StephenZ@dor.wa.gov, fax (360) 586-5543, by March 14, 2007.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue proposes a new rule to explain the tax-reporting requirements of businesses providing staffing services. This rule recognizes the Washington Supreme Court's decision in *City of Tacoma v. William Rogers Company, Inc.*, 148 Wash.2d 169, 60 P.3d 79 (2002) and explains the application of B&O tax, PUT; and the retail sales tax collection responsibilities of staffing businesses providing staffing services. This rule provides information consistent with the more exhaustive detailed "*Staffing Industry Tax Guide*," which is available via the department's internet web site at <http://dor.wa.gov/content/taxes/Industry/Staffing/default.aspx>.

Reasons Supporting Proposal: The proposed rule provides important information to taxpayers and department of revenue staff about the reporting of taxes by explaining the application of B&O tax, PUT; and the retail sales tax collection responsibilities of staffing businesses providing staffing services.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: Title 82 RCW, to the extent it applies to staffing companies.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Stephen P. Zagelow, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6117; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because this rule does

not impose any requirements or burdens upon small business that are not already required by the statutes of Title 82 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

February 7, 2007

Alan R. Lynn

Rules Coordinator

NEW SECTION

WAC 458-20-274 Staffing services. (1) Introduction.

This rule explains the application of business and occupation (B&O) tax, public utility tax (PUT); and the retail sales tax collection responsibilities of staffing businesses providing staffing services.

(2) **To whom does this rule apply?** This rule applies to any person engaged in the business activity of providing staffing services. This section does not apply to persons providing professional employer services. Persons providing professional employer services should refer to RCW 82.04.-540 for information on their tax-reporting responsibilities.

(3) **What is the definition of a staffing business and staffing services?** A "staffing business" is a person engaged in the business activity of providing staffing services. "Staffing services" means services consisting of a person:

- Recruiting and hiring its own employees;
- Finding other organizations that need the services of those employees;
- Assigning those employees on a temporary basis to perform work at or services for the other organizations to support or supplement the other organizations' work forces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the customer; and
- Customarily attempting to reassign the employees to other organizations when they finish each assignment.

(4) **Generally, what kinds of business activities are workers assigned by a staffing business?** Business activities may include, but are not limited to, services rendered with respect to:

- Construction (both custom and speculative);
 - Customer software design and implementation;
 - Manufacturing and light industrial activities;
 - Professional services including medical and clerical;
- and
- Other skilled and unskilled labor.

(5) **Is the gross income received by a staffing business subject to Washington tax?** Yes, the gross income received by a staffing business is subject to B&O and/or PUT tax.

(6) **Is the tax paid by a staffing business or is the tax collected from the client to whom the workers are assigned?**

- B&O tax and/or PUT are paid by the staffing business.
- When the activity of the assigned worker is a retail sale, retail sales tax must be collected from the client unless a specific exemption or exclusion, such as the activity being a sale for resale, applies. The collected tax is paid by the staffing business to the department.

(7) May a staffing business deduct payroll and other business expenses from gross income?

- Chapters 82.04 and 82.16 RCW provide limited deductions from the B&O tax and PUT.
- The requirements of each specific deduction or exemption must be met to qualify for the deduction or exemption.
- Generally, amounts paid to the worker, amounts deducted for payroll taxes, or any other expenses paid or accrued may not be deducted by a staffing business.
- But income received for work performed outside the state may be deducted from gross income for B&O tax purposes. Similarly, an interstate haul is deducted from the PUT.
- Bad debts on which tax has been paid and which may be written off for federal tax purposes may be deducted from the gross income of both B&O and PUT.
- Exemptions, deductions and special tax rates that may apply to the client do not automatically also apply to the staffing business.

• Example 1.

- Under the Revenue Act, certain nonprofit hospitals may qualify for a B&O tax deduction for income received through Medicare.
- Also, nonprofit and public hospitals are taxable under a special B&O tax classification.
- However, because the staffing business does not meet the criteria for the B&O tax deduction for income received through Medicare or, for the B&O tax special nonprofit hospital classification, the income received by a staffing business from assigning physicians, nurses, or other health care workers to the hospital is taxable under the service and other activities classification.

• Example 2.

- Similarly, the Revenue Act exempts from B&O tax income received by licensed adult family homes.
- However, the gross income received by a staffing business from assigning a health care worker to the adult family home is taxable under the service and other activities B&O tax classification.

(8) What if an activity is not subject to sales tax because it is a sale for resale?

- When a service that would otherwise be a retail sale is performed for a person that resells that service, such as construction work performed for a general contractor, sales tax is not collected when the staffing business receives a completed resale certificate from the client reselling the service.
- When a resale certificate is received, the staffing business must report such charges for the worker under the wholesaling B&O tax classification. (See WAC 458-20-102 for more information about resale certificates.)

(9) What is the tax rate?

- The B&O tax rate and/or the PUT rate is determined by the classification of the activity engaged in by the assigned worker.
- The retail sales tax rate is determined, generally, by the location of where the retail sale is performed. See WAC 458-20-145.

(10) If the B&O tax rate is determined by the B&O tax classification, who determines or identifies the correct classification?

- It is the responsibility of the staffing business to determine or identify the applicable B&O tax classification for the activity performed by the assigned worker.
- This determination should be made prior to dispatching the worker to the customer.
- It is important for the staffing business to know whether retail sales tax should be collected from the customer, or if a resale certificate exemption certificate or other documentation should be received from the customer as evidence of a sales tax exemption.

(11) Is the proper B&O tax classification as reported by the staffing business always the same classification as reported by the client customer to whom the worker is assigned?

- Regardless of the nature of the customer's business, the staffing business looks to the activity engaged in by the worker assigned.
- The staffing business should not assume that the income it receives through the activities of its workers is taxable under the same classification that the customer reports.
- It is the activity of each worker, not the reporting classification of the customer that determines the tax classification.

• Example:

- A person operating an insurance agency is taxable under the insurance agents B&O tax classification.
- If the staffing business assigns a receptionist for the insurance agency, the gross income received for the receptionist's services is subject to B&O tax under the service and other activities classification. The service classification applies because the receptionist is not providing services under the authority of an insurance agent's license.
- However, if the staffing business assigns a worker licensed as an insurance agent to an insurance agency, and the licensed insurance agent performs services under the authority of his/her license, the related income is taxable under the insurance agents B&O tax classification.

(12) What are the major B&O tax classifications?

The major B&O tax classifications include:

- Retailing.
- Wholesaling.
- Manufacturing.
- Processing for hire.
- Service and other activities.
- Stevedoring.
- Travel agent activities.

(13) Where can I get a description of the activities included in the major B&O tax classification? Where can I get a complete list of the B&O tax classifications and more information?

- The department's *Staffing Industry Guide* provides detailed information on the staffing industry and includes a description of the activities included in the major B&O tax classifications. The *Staffing Industry Guide* is located on the department's web site <http://dor.wa.gov/>
- A complete list of the B&O tax classifications and more information about the B&O and PUT can be found on the department's web site <http://dor.wa.gov/>

(14) What is the public utility tax (PUT)? What are the major classifications of PUT?

- The public utility tax is a tax on gross receipts, similar to the B&O tax.

- It applies to most utility services, such as water, power, and gas distribution, and sewerage collection.

- It also applies to providing transportation of persons or property for hire within five miles of the city limits (urban transportation classification) and beyond (motor transportation classification).

- These classifications apply whether or not the person performing the work owns the vehicle with which the activity is being performed.

- Examples include taxi cab service, limousine service, and hauling goods belonging to others (hauling for hire).

(15) How is income reported when the assigned worker is engaging in more than one activity?

- An assigned worker provided by a staffing business to a client may engage in several different activities while on the same job.

- The different activities may be taxable under separate B&O tax and/or PUT classifications.

- If the staffing business separates the amounts it charges the client by activities, the separated charges are reported.

- If the staffing business does not separate its charge to the client the charge is reported under the classification of the predominant activity.

- "Predominant activity" for two worker activities is when more than fifty percent of the worker's time is spent working in one tax classified activity.

- "Predominant activity" for more than two worker activities is the activity the worker spends the greatest amount of time doing.

- When two or more workers, engaged in different activities, are assigned to one client, the charge for each worker is reported based on the predominant activity of each individual worker.

• Example 1:

- A staffing business assigns a housekeeper whose primary job is to clean an apartment (subject to the service and other activities B&O tax classification).

- The job also calls for the housekeeper to prepare one meal per day (subject to retailing B&O tax and retail sales tax).

- The majority (over half) of the time spent is associated with the housekeeping service (apartment cleaning - subject to the service and other activities B&O tax classification).

- No segregated charge is made for the preparation of the meal.

- In this case, the predominant activity is cleaning the apartment.

- Therefore, the gross income received by staffing business from the charge to the client is reportable under the service and other activities B&O tax classification. Retail sales tax will not apply.

• Example 2:

- A staffing business assigns a construction worker to a client that is a developer/property owner performing construction-related services (subject to retailing B&O tax and retail sales tax).

- The assigned worker has a commercial driver's license and is only occasionally required to drive the client's truck within the city to pick up a load of gravel (an activity subject to the urban transportation PUT classification).

- The worker also spends about one hour per day helping in the office.

- The predominant activity is the retailing activity of performing construction work because the greatest amount of time is spent performing retailing construction work.

- The staffing business has not segregated charge for the other lesser activities.

- In this case, the staffing business reports the gross amount charged to the client under the retailing B&O tax classification. Additionally, the staffing business must also collect from the client retail sales tax measured by the gross charge to the client.

• Example 3:

- Same facts as Example 2, except the staffing business also provides a receptionist to the client (developer/property owner).

- As demonstrated in Example 2, the staffing business is subject to the retailing B&O tax on the gross amount charged to the client for work done by the construction worker; and retail sales tax must be collected on this charge.

- However, the staffing business is subject to service and other activities B&O tax on the gross amount charged to the client for the receptionist's work. The service and other activities B&O tax classification is the proper classification notwithstanding the client reports under the retailing classification.

(16) Is the staffing business required to keep documentation of the activities their assigned workers performed?

- The staffing business must keep documentation showing what services their assigned workers performed.

- All available information should be recorded concurrently with the assignment of the worker and the charge for the service.

- It is important that the client's labor and skill requirements are detailed up front as much as possible prior to dispatch.

- This is particularly important for purposes of billing retail sales tax.

- Documentation may be in the form of a copy of a client order or other documented request by a client for a worker.

- The documentation must state the specific work to be performed, and/or the worker skills requested by the client.

- If the client's request comes in by telephone, the staffing business should ask exactly what type of services are required and write them down on an order form, or as a memo to the client's file.

- Also, the worker can provide a written explanation of the services actually performed.

- Documentation to support the B&O tax classification must be sufficiently detailed to support the classification reported.

- The classification of primary interest to the client is retailing. Only under retailing is the staffing company, as seller of the service, required to collect retail sales tax from the client.

- Any other classification which does not directly impact the client may be of less interest to the client. Nevertheless, because the rates may vary between classifications, it is in the person providing staffing service's best interest to gather enough information to classify all services correctly.

- If, subsequent to filing a return, it is later determined that income has been incorrectly classified, amended returns should be submitted to the department to make the appropriate adjustment.