

WSR 17-06-048
PERMANENT RULES
COLUMBIA RIVER
GORGE COMMISSION

[Filed February 27, 2017, 4:28 p.m., effective April 1, 2017]

Effective Date of Rule: April 1, 2017.

Purpose: This rule adopts legal descriptions for the urban areas designated in the Columbia River Gorge National Scenic Area, 16 U.S.C. § 544b(e). The rule does not change the National Scenic Area Act, it is, in effect, an interpretation of the National Scenic Area Act. The rule will provide greater certainty for landowners and land managers about the precise location of the urban areas. Where the legal descriptions differ from a prior interpretation of an urban area boundary, the legal description will supersede the prior interpretation. Existing uses based on a prior interpretation will be managed in accordance with the existing uses provisions of the commission's management plan and county land use ordinances administering the plan. The rule does not change any urban area boundary; changes to urban area boundaries may only occur in accordance with 16 U.S.C. § 544b(f) (commonly referred to as "4(f)").

Citation of Existing Rules Affected by this Order:
 Repealing 350-81-017.

Statutory Authority for Adoption: RCW 43.97.015, ORS 197.150, 16 U.S.C. § 544b(e).

Adopted under notice filed as WSR 16-24-063 on December 5, 2016.

Changes Other than Editing from Proposed to Adopted Version: Some of the angle points were renumbered to make them sequential; some of the courses had wording changes for clarification, uniformity of syntax and phrases, and correcting typos; and some of the footnotes were edited for consistency with the revisions to the wording in the courses.

Number of Sections Adopted in Order to Comply with Federal Statute: New 6, Amended 0, Repealed 1; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 6, Amended 0, Repealed 1; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

Date Adopted: February 14, 2017.

Nancy A. Andring
 Rules Coordinator

COLUMBIA RIVER GORGE COMMISSION

Chapter 350
New Division 10

Legal Descriptions of Boundaries for Maps of the Columbia River Gorge National Scenic Area Act

Adopted February 14, 2017, Effective April 1, 2017

NEW SECTION
350-10-000. Purpose.

(1) This division adopts a Legal Description of each of the thirteen urban areas designated in the Columbia River Gorge National Scenic Area Act ("National Scenic Area Act" or "Act"). This division may be expanded in the future to include legal descriptions of the exterior boundary of the National Scenic Area and of the boundaries of the special management areas designated in the Act.

(2) The maps that Congress enacted as part of the National Scenic Area Act in 1986 were not drawn to cartographic or surveying standards. Congress did not provide any legal description of other documentation accompanying the maps. Different maps enacted in section 4(e) and sections 4(a) and 4(c) of the National Scenic Area Act differ and conflict.

Subsequently, in 1987, the U.S. Forest Service prepared new maps addressing many of the issues with the maps that Congress enacted. The U.S. Forest Service did not provide any legal description, and provided only limited documentation accompanying the maps. The Commission, U.S. Forest Service, and others have used the 1987 maps almost exclusively for administration of the National Scenic Area Act.

The Commission has experienced many situations in which the maps that Congress enacted were drawn to a scale that is too coarse for precision decision making at a parcel level. In addition, improvements in geographic information systems and locational technology have made the identification of precise boundaries more readily available; thus landowners and others involved in land planning expect more precise identification of boundaries established by the National Scenic Area Act.

(3) This rule promotes the efficient and reasonable administration of the National Scenic Act and affords interested persons notice of the Commission's interpretation of the maps referenced in section 4(e) of the National Scenic Area Act. This rule shall be applied to carry out these objectives.

NEW SECTION
350-10-010. Authority.

Section 4(e) of the National Scenic Area Act specifies that the boundaries of urban areas are "generally depicted" on maps that Congress enacted as part of the National Scenic Area Act. The Columbia River Gorge Commission, U.S. Forest Service, and Gorge counties need precise legal descriptions to develop and administer the Management Plan and land use ordinances for the National Scenic Area pursuant to sections 6, 7, and 8 of the Act, and the Commission needs precise legal descriptions before making minor revisions to the boundaries pursuant to section 4(f). The Commission and

U.S. Forest Service therefore have inherent authority to interpret the generally depicted boundaries, consistent with congressional intent, to administer the Act.

NEW SECTION

350-10-020. Definitions.

In this rule, unless the context or subject matter requires otherwise:

(1) "Cities" means incorporated cities within the Columbia River Gorge National Scenic Area: Cascade Locks, Hood River, Mosier and The Dalles in Oregon; and White Salmon, Bingen, Stevenson, and North Bonneville in Washington.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco counties in Oregon; and Clark, Skamania and Klickitat counties in Washington.

(4) "Legal Description" or "Legal Descriptions," when capitalized, means the legal descriptions adopted in section 030(1) below and contained in the appendix to this rule. When not capitalized, the term, "legal description" or "legal descriptions" does not mean the Legal Descriptions adopted in section 030(1).

NEW SECTION

350-10-030. Adoption and Use of Legal Descriptions and Maps.

(1) The Commission adopts the Legal Descriptions contained in the appendix to this rule.

(2) The Commission, counties, cities, landowners, and other interested persons shall use the Legal Descriptions for all planning, decisions, and other actions requiring reliance on the location of a boundary of an urban area.

(3) The Legal Descriptions have not been monumented or otherwise marked on the ground, except that specific angle points and courses may reference monuments and precise features that existed at the time the Commission adopted the Legal Descriptions. Landowners that want to monument or otherwise mark the Legal Descriptions on their property shall use a licensed surveyor to do so. The Commission will not rely on monuments or markings unless a licensed surveyor has placed them.

NEW SECTION

350-10-040. Resolving Prior Interpretations.

The Commission, Commission staff, U.S. Forest Service staff, and surveyors have made prior interpretations of the maps that Congress enacted. These prior interpretations may differ from the Legal Descriptions. The Legal Descriptions shall prevail in the event of a difference. Land use claims involving any difference shall be resolved in accordance with the Existing Uses provisions in the applicable county or Commission land use ordinance corresponding to the Existing Uses provisions in Section 7 of the Management Plan.

NEW SECTION

350-10-050. Natural and Human Management Processes Do Not Affect Urban Area Boundaries.

(1) The location of an urban area boundary does not shift in response to natural processes that occur over a long period of time, such as accretion and reliction of rivers and streams or ordinary high water, or as a result of major sudden event, such as an avulsion, flooding, landslide, or earthquake. The urban area boundary remains at the location described prior to the event.

(2) The location of an urban area boundary does not shift in response to management of the normal pool elevation behind Bonneville and The Dalles dams. The normal pool elevation is as defined by dam operations on November 17, 1986.

(3) The location of an urban area boundary does not shift in response to relocation or realignment of linear features, including but not limited to roads and highways, railroads, pipelines, or powerlines, or their associated rights-of-way or easements. A Legal Description that uses a linear feature means the linear feature as it existed on November 17, 1986, or as otherwise noted in the Legal Description.

(4) The location of an urban area boundary does not shift in response to changes in land management boundaries, including, but not limited to, municipal boundaries and approved urban growth boundaries. A Legal Description that refers to a land management boundary means the land management boundary as it existed on November 17, 1986, or as otherwise described in the Legal Description.

APPENDIX TO COMMISSION RULE 350-10

LEGAL DESCRIPTIONS FOR COLUMBIA RIVER GORGE NATIONAL SCENIC AREA URBAN AREAS

Columbia River Gorge National Scenic Area Carson Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle

points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 ft. horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Carson Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 3 North, Range 8 East, of the Willamette Meridian, Skamania County, Washington

T. 03 N., R. 08 E.

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| <p>AP 1 Beginning at the corner of sections 7, 8, 17, and 18, identical with the Columbia River Gorge National Scenic Area Exterior Boundary; Latitude: 45°45'17. 6" N., Longitude: 121°50'8. 7" W.;
thence on the line between sections 8 and 17, and identical with said Exterior Boundary, S. 88°29'10" E., approximately 2,120 ft. to</p> <p>AP 2 at intersection with the 560 foot contour line (National Geodetic Vertical Datum of 1929 (N.G.V.D. 29));
thence along said 560 foot contour line, southeasterly, approximately 2,110 ft. to</p> <p>AP 3 at intersection with the crest of a ridge running downhill to the northeast;
thence leaving said 560 foot contour line descending along the line of steepest downhill gradient, northeasterly, approximately 510 ft. to</p> <p>AP 4 at intersection with the 400 foot contour line (N.G.V.D. 29);
thence along said 400 foot contour line, southeasterly, approximately 9,815 ft. to</p> <p>AP 5 at intersection with the E. and W. center line of section 21;
thence on said E. and W. center line, easterly, approximately 545 ft. to</p> <p>AP 6 at intersection with the Ordinary High Water Mark (O.H.W.M.) on the right bank of the Wind River;
thence along said O.H.W.M. downstream, southerly, approximately 2,330 ft. to</p> <p>AP 7 at intersection with the center line of the natural gas pipeline crossing the Wind River;
thence leaving said O.H.W.M. crossing the Wind River, southeasterly, approximately 595 ft. to</p> <p>AP 8 at intersection with the line between sections 22 and 27 and the center line of a Wind River boat launch access road (not Indian Cabin Road);
thence southerly, approximately 600 ft. to</p> | <p>AP 9 at intersection with the line between sections 27 and 28 and center line of the Bonneville Power Administration (B.P.A.) Bonneville-Coulee transmission line easement;
thence on said center line, S. 61°30'30" W., approximately 1,395 ft. to</p> <p>AP 10 on said center line;
thence continuing on said center line, N. 88°27'45" W., approximately 750 ft. to</p> <p>AP 11 at intersection with the northerly extension of the east line of that tract of land described in Book 162, Page 979, records of Skamania County, Washington;
thence leaving said center line on said extension and east line, S. 00°01'11" W., approximately 1,000 ft. to</p> <p>AP 12 at intersection with the easterly extension of the south line of that tract of land described in Auditor's File No. 2006-161403, records of Skamania County, Washington;
thence on said extension and south line, N. 89°50'14" W., approximately 500 ft. to</p> <p>AP 13 at intersection with the center line of the B.P.A. Carson Tap B.P.A. transmission line easement;
thence on said center line, S. 00°09'50" W., approximately 519.2 ft. to</p> <p>AP 14 thence continuing on said center line, N. 89°44'30" W., approximately 2,886.7 ft. to</p> <p>AP 15 thence continuing on said center line, N. 80°12'30" W., approximately 1,116 ft. to</p> <p>AP 16 thence continuing on said center line, N. 37°54'10" W., approximately 392.9 ft. to</p> <p>AP 17 at intersection with the center line of the Wind River Road;
thence on said center line, southwesterly, approximately 1,505 ft. to</p> <p>AP 18 at intersection with the N. and S. center line of section 29;
thence on said N. and S. center line, N. 00°59'45" E., approximately 2,035 ft. to</p> <p>AP 19 at intersection with the crest of a ridge line;
thence leaving said N. and S. center line ascending along the line of steepest uphill gradient, northwesterly, approximately 960 ft. to</p> <p>AP 20 at intersection with the 800 foot contour line (N.G.V.D. 29);
thence along said 800 foot contour line, northerly, approximately 7,715 ft. to</p> <p>AP 21 at intersection with the line between sections 19 and 20;
thence on said line between sections 19 and 20, N. 01°30'19" E., approximately 275 ft. to</p> |
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- AP 22 the corner of sections 17, 18, 19, and 20; thence on the line between sections 17 and 18, N. 01°29'54" E. a distance of 2,616.63 ft. to
- AP 23 the 1/4 corner of sections 17 and 18; thence continuing on the line between sections 17 and 18, N. 00°57'51" E. a distance of 2,643.38 ft. to
- AP 1 the corner of sections 7, 8, 17, and 18 and **Point of Beginning.**
the Area being 1,880 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):
 - a. Sheet 2
 - b. Sheet 3
2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.
 - a. USFS Map 8
 - b. USFS Map 9
3. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. The primary references for this description are the USFS 1987 Map Set, Sheets 8 and 9, and the 1986 Act Map Set UA-004, Sheets 2 and 3.
2. No significant differences are noted between the two reference maps. A significant portion of the Act Map was obliterated by a sticky note.
3. The southern end of the AP 4 to AP 5 call, running along the 400 contour and the AP 5 to AP 6 call, is substantially consistent with the May 16, 1994 planning map initiated by Gorge Commission staff as a SMA/UA Boundary Determination. The Commission staff determination shows undimensioned straight line segments which appears intended to mimic the USFS Carson UA Map. Upon further review, including the Carson Act Map, the intent appears to use the 400 contour. This description follows the contour to and then on the east and west center line of section 21.

Columbia River Gorge National Scenic Area
Cascade Locks Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legisla-

tion map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 feet horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Cascade Locks Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 2 North, Range 7 East,

Township 2 North, Range 8 East, and

Township 3 North, Range 8 East, of the Willamette Meridian, Hood River County, Oregon.

T. 02 N., R. 08 E.

- AP 1 **Beginning** at the corner of sections 4 and 5, T. 02 N., R. 08 E. and sections 32 and 33, T. 03 N., R. 08 E., re-established by Professional Land Surveyor (P.L.S.) No. 2209 in 1992; monumented with an aluminum post and 3-1/2" aluminum cap, as shown in County Survey (C.S.) No. 93070, records of Hood River County, Oregon; thence on the line between sections 4 and 5, identical with United States Forest Service (USFS) Map 8, Act Map 3, and the Cascade Locks Urban Growth Boundary (C.L. UGB), S. 00°10' W., approximately 3,350 ft. to
- AP 2 at intersection with the southerly line of the Bonneville-The Dalles Transmission Line easement, thence on said easement line, leaving the C.L. UGB, S. 58°40' W., approximately 1,530 ft. to
- AP 3 at intersection with the N. and S. center line of the SE1/4 of said section 5 (See Footnote 1); thence on said N. and S. center line, S. 00°03'30" E., approximately 1,080 ft. to
- AP 4 the E1/16 corner of sections 5 and 8; thence on the line between sections 5 and 8, S. 89°34'58" W. a distance of 654.4 ft. to

- AP 5 the SE corner of the W1/2 SW1/4 SE1/4 of section 5, established by PLS 2209 in 1992, as shown in C.S. No. 93070, records of Hood River County, Oregon; monumented with an aluminum post and 3-1/4" aluminum cap;
thence on the N. and S. center line of the SW1/4 SE1/4 of section 5, N. 00°01'21" W. a distance of 329.21 ft. to
- AP 6 the NE corner of the S1/2 SW1/4 SW1/4 SE1/4 of section 5, established in said C.S. No. 93070; monumented with an aluminum post and 3-1/4" aluminum cap;
thence on the E. and W. center line of the SW1/4 SW1/4 SE1/4 of section 5, S. 89°36'14" W. a distance of 654.19 ft. to
- AP 7 the NW corner of said S1/2 SW1/4 SW1/4 SE1/4 of section 5, established in said C.S. No. 93070; monumented with an aluminum post and 3-1/4" aluminum cap;
thence on the N. and S. center line of section 5, S. 00°00'14" W. a distance of 329.46 ft. to
- AP 8 the 1/4 corner of sections 5 and 8, perpetuated by United States Department of Agriculture (U.S.D.A.) in 1987, as shown in said C.S. No. 93070; monumented with an iron post and 3-1/4" brass cap;
thence on the line between sections 5 and 8, S. 89°36'59" W., approximately 510 ft. to
- AP 9 at intersection with the southeasterly line of the Bonneville-The Dalles Transmission Line easement, identical with USFS Map 8 and Act Map 3; thence on said southeasterly easement line, identical with USFS Map 8, S. 57°09' W., approximately 2483 ft. to
- AP 10 at intersection with the line between sections 7 and 8;
thence on the line between sections 7 and 8, southerly, approximately 20 ft. to
- AP 11 the N1/16 corner of sections 7 and 8
thence on the E. and W. center line of the NE1/4 of section 7, joining the C.L. UGB, N. 89°40' W., approximately 1,320 ft. to
- AP 12 the NE1/16 corner of section 7;
thence on the N. and S. center line of the NE1/4 of section 7, S. 00°27' E., approximately 1,320 ft. to
- AP 13 the center E1/16 corner of section 7;
thence on the E. and W. center line of section 7, S. 89°01' W., approximately 2,640 ft. to
- AP 14 the northerly corner of lot 1 and an unnumbered lot (NW1/4 SW1/4) of section 7;
thence on the line between said lots, S. 00°12' W., approximately 1,320 ft. to
- AP 15 the corner of lots 1, 2, an unnumbered lot (NW1/4 SW1/4), and an numbered lot (SW1/4 SW1/4) of section 7;
thence on the line between said unnumbered lots, S. 88°11' W., approximately 1,320 ft. to
- AP 16 the S1/16 corner of section 7, T. 02 N., R. 08 E. and section 12, T. 02 N., R. 07 E.;
thence on the line between said sections 7 and 12, S. 01°06'04" E. a distance of 1,320.60 ft. to
T. 02 N., R. 07 E.
- AP 17 the corner of sections 7 and 18, T. 02 N., R. 08 E., and sections 12 and 13, T. 02 N., R. 07 E.;
thence on the line between sections 12 and 13, S. 88°22' W. a distance of 2,618.7 ft. to
- AP 18 the 1/4 corner of sections 12 and 13, as shown in C.S. No. 96015, records of Hood River County, Oregon; monumented with an iron post and brass cap;
thence on the N. and S. center line of section 13 (See Footnote 2), S. 00°08'26" E. a distance of 1,313.2 ft. to
- AP 19 the N1/16 corner of section 13, as shown in C.S. No. 2006082, records of Hood River County, Oregon; monumented with an iron post and 3-in. brass cap;
thence on the E. and W. center line of the NE1/4 of section 13, S. 89°32'14" W. a distance of 220.26 ft. to
- AP 20 the northwesterly corner of that property described in Warranty Deed No. 661324, and shown in C.S. No. 98030, records of Hood River County, Oregon; monumented with a 5/8" iron rod with plastic cap;
thence on the westerly line of said property, S. 00°08'18" E. a distance of 199.98 ft. to
- AP 21 the southwest corner of said property, as shown in C.S. No. 98030, records of Hood River County, Oregon; monumented with a 5/8" iron rod with plastic cap;
thence on the northerly line of that property described in Warranty Deed No. 701515, records of Hood River County, Oregon, S. 89°32'14" W. a distance of 435.55 ft. to
- AP 22 the northwesterly corner of said property, as shown in C.S. No. 98030, records of Hood River County, Oregon; monumented with a 5/8" iron rod with plastic cap;
thence on the N. and S. center line of the SE1/4 NW1/4 of section 13, identical with the westerly line of said property, S. 00°08'37" E. a distance of 455.05 ft. to

- AP 23 the southwesterly corner of said property, as shown in the aforementioned C.S. No. 2006082; monumented with a 5/8" iron rod with yellow plastic cap; thence on the E. and W. center line of the SE1/4 NW1/4 of section 13, S. 89°36'59" W. a distance of 655.65 ft. to
- AP 24 the northwesterly corner of the property described in Warranty Deed Book 72 Page 26, records of Hood River County, Oregon, as shown in said C.S. 2006082; monumented with a 5/8" iron rod with yellow plastic cap; thence on the N. and S. center line of the NW1/4 of section 13, N. 00°10'32" W. a distance of 654.21 ft. to
- AP 25 the NW1/16 corner of section 13, as shown in said C.S.. No. 2006082; monumented with an iron post and 3" brass cap; thence on the E. and W. center line of the NW1/4 of section 13, S. 89°00' W., approximately 1,230 ft. to
- AP 26 at intersection with the left bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.), elevation 72 ft., National Geodetic Vertical Datum of 1929 (N.G.V.D. 29); thence along the left bank at B.N.P.E., northeasterly, approximately 2,750 ft. to
- AP 27 at intersection with the southwesterly line of that property conveyed to the Port of Cascade Locks described in Deed Book 52 Page 551, as shown in C.S. No. 2008065, records of Hood River County, Oregon; thence on a line across the water, N. 45°45' W., approximately 340 ft. to
- AP 28 at intersection with the southwesterly most extremity of Thunder Island at B.N.P.E.; thence along the northwesterly shore of Thunder Island at B.N.P.E., northeasterly, approximately 1,420 ft. to
- AP 29 from which the northwesterly corner of Thunder Island bears northeasterly, approximately 720 ft.; thence on a line across the water, westerly from a small island and group of rock outcroppings, N. 45° W., approximately 435 ft. to
- AP 30 at intersection with the meander line of lot 4, from which the north most northwesterly meander corner of lot 4 bears N. 46°00' E., approximately 367 ft.; thence on said meander line, N. 46°00' E. approximately 367 ft. to
- AP 31 said north most northwesterly meander corner of lot 4; thence on a line across the water, S. 45° E., approximately 390 ft. to
- AP 32 at intersection with the northwesterly shore of Thunder Island, at B.N.P.E.; thence along said northwesterly shore at B.N.P.E., northeasterly, approximately 340 ft. to
- AP 33 at the northwesterly corner of Thunder Island at B.N.P.E.; thence along the northerly shore of Thunder Island at B.N.P.E., S. 84° E., approximately 85 ft. to
- AP 34 the northeasterly corner of Thunder Island at B.N.P.E.; thence on a line across the water, N. 60° E., approximately 960 ft. to
- AP 35 at intersection with the northerly most extremity of the eastern peninsula of the Port of Cascade Locks Marina, at B.N.P.E.; thence along the left bank of the Columbia River at B.N.P.E., easterly, approximately 7,100 ft. to
T. 02 N., R. 08 E.
- AP 36 at intersection with the northerly extension of the line between lots 2 and 3 of section 6, T. 02 N., R. 08 E.; thence on a line across the water, N. 53° E., approximately 1,890 ft. to
- AP 37 the northwesterly most extremity of the northerly spit in lot 1, section 6, at B.N.P.E.; thence along the northerly shore of the spit and peninsula, at B.N.P.E.; in sections 6 and 5, northeasterly, approximately 3,200 ft. to
- AP 38 the northerly most extremity of said peninsula at B.N.P.E.; thence on a line across the water, N. 45° E., approximately 1,080 ft. to
- AP 39 at intersection with the north most northwesterly corner of the peninsula in lot 1, section 5, at B.N.P.E.; thence along the northerly shore of said peninsula at B.N.P.E., easterly, a distance of 275 ft. to
- AP 40 the north most northeasterly corner of said peninsula; thence on a line across the water, N. 62° E., approximately 440 ft. to
- AP 41 at intersection with the westerly shore of Quarry Island, at B.N.P.E.; thence along the westerly and northerly shores of Quarry Island, including the spit at the northwesterly point, at B.N.P.E. northwesterly and easterly approximately 3,420 ft. to

T. 03 N., R. 08 E.

AP 42 at intersection with the line between sections 32, T. 03 N., R. 08 E. and section 5, T. 02 N., R. 08 E., as shown in C.S. No. 99018, records of Hood River County, Oregon;
thence on said line between sections 32 and 5, S. 89°35' E. approximately 20 ft. to

AP 1 the **Point of Beginning**

the Area being 1,581 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004 (Congressional or Act Maps)

- a. Sheet 1
- b. Sheet 3

2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description. The USFS maps appear to have very few differences from the earlier Act Maps.

- a. USFS Map 7
- b. USFS Map 8

3. Memorandum from Jonathan Doherty, Columbia River Gorge Commission, to Gorge Commissioners, dated November 10, 1997, to Gorge Commissioners, records of Columbia River Gorge Commission, White Salmon, Washington, about "Review of Urban Area Mapping Discrepancies." These mapping discrepancies were addressed in later agreements.

4. "Final Order of the Columbia River Gorge Commission (Modified) Minor Urban Area Boundary Revision - City of Cascade Locks UA-98-01," dated April 16, 2001.

5. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. AP 3 to AP 9, held the "Final Order of the Columbia River Gorge Commission (Modified) Minor Urban Area Boundary Revision - City of Cascade Locks UA-98-01," dated April 16, 2001, records of Columbia River Gorge Commission, White Salmon, Washington.

2. AP 10 to AP 25, held the "Final Order of the Columbia River Gorge Commission (Modified) Minor Urban Area Boundary Revision - City of Cascade Locks UA-98-01," dated April 16, 2001, records of Columbia River Gorge Commission, White Salmon, Washington.

Columbia River Gorge National Scenic Area
Dallesport Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial

monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 ft. horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Dallesport Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 2 North, Range 13 East, of the Willamette Meridian, Klickitat, County Washington

T. 02 N., R. 13 E.

- AP 1 **Beginning** at the corner of sections 13, 14, 23, and 24, monumented with an iron post with a brass cap on top in a mound of stones perpetuated by the U.S. Army Corps of Engineers;
Latitude: 45°39'03.0" N., Longitude: 121°08'07.5" W.;
thence on the line between sections 23 and 24, S. 01°00'14" W., approximately 265 ft. to
- AP 2 at intersection with the center line of Washington State Route 14;
thence on said center line, easterly, approximately 2,957 ft. to
- AP 3 at intersection with center line of Horse Thief Lake State Park access road;
thence on said access road center line, southeasterly, approximately 1,329 ft. to
- AP 4 at intersection with a line 1,100 ft. westerly of when measured perpendicular thereto from the line between T. 02 N., Rs. 13 and 14 E.;
thence on a line parallel with and 1,100 ft. distant westerly from said line, southerly, approximately 8,641 ft. to

- AP 5 at intersection with the Washington-Oregon state line;
thence on said state line more specifically described by the following courses:
S. 48°47' W., approximately 250 ft. to
- AP 6 thence S. 21°46' E., approximately 1,950 ft. to
- AP 7 thence S. 59°42' W., approximately 1,545 ft. to
- AP 8 thence S. 46°19' W. a distance of 2,925 ft. to
- AP 9 thence leaving said state line, N. 51°55' W. a distance of 889 ft. to
- AP 10 thence S. 89°47' W., approximately 1,540 ft. to
- AP 11 at intersection with aforementioned state line;
thence on said state line, S. 46°27' W., approximately 445 ft. to
- AP 12 at intersection with the center line of U.S. Highway 197;
thence on said center line, northwesterly, approximately 790 ft. to
- AP 13 at intersection with the right bank of the Columbia River at Bonneville Pool Normal Elevation (B.N.P.E.), 72 ft., National Geodetic Vertical Datum of 1929 (N.G.V.D. 29);
thence along said right bank at B.N.P.E., southwesterly, approximately 990 ft. to
- AP 14 said point being South of the intersection of the west right-of-way line of aforementioned U.S. Highway 197 and the center line of Dallesport County Road;
thence South, approximately 1,815 ft. to
- AP 15 at intersection with said west right-of-way line of U.S. Highway 197 and center line of Dallesport County Road;
thence on said center line, westerly, approximately 8,345 ft. to
- AP 16 at intersection with the center line of Old Ferry County Road;
thence on said center line of Old Ferry County Road, southwesterly, approximately 1,620 ft. to
- AP 17 at intersection with the line between sections 33 and 34;
thence on the line between said sections 33 and 34, southerly, approximately 545 ft. to
- AP 18 at intersection with the aforementioned right bank of the Columbia River at B.N.P.E.;
thence along said right bank at B.N.P.E., northwesterly a distance of 1,817 ft. to
- AP 19 thence leaving said right bank N. 30° E., approximately 710 ft. to
- AP 20 at intersection with the center line of the Burlington Northern Santa Fe Railroad right-of-way at a point 1,241 ft. northwesterly on said center line from the intersection with the center line of aforementioned Old Ferry County Road;
thence on said railroad center line, northerly, approximately 14,965 ft. to
- AP 21 at intersection with the center line of the Bonneville Power Administration (B.P.A.) The Dalles - Goldendale transmission line easement;
thence on said center line, northeasterly, approximately 645 ft. to
- AP 22 thence leaving said center line, N. 08°50'55" W. a distance of 2,235.12 ft., as shown on Amendment to Short Plat No. SP-97-35, recorded at Auditor's File No. (A.F.N.) 1024369, records of Klickitat County, Washington, to
- AP 23 at intersection with the center line of a private farm access road and monumented with a 5/8" x 30" iron rod with 2-1/2" aluminum cap set in said Amendment to Short Plat No. SP-97-35;
thence on said center line more specifically described by the following courses:
N. 16°04'54" E. a distance of 99.66 ft. to
- AP 24 thence N. 01°46'25" E. a distance of 105.56 ft. to
- AP 25 thence N. 27°36'50" W. a distance of 55.45 ft. to
- AP 26 thence N. 12°23'07" W. a distance of 106.19 ft. to
- AP 27 thence N. 15°43'12" W. a distance of 79.56 ft. to
- AP 28 thence N. 06°25'57" E. a distance of 89.91 ft. to
- AP 29 thence N. 04°33'26" W. a distance of 92.07 ft. to
- AP 30 thence N. 13°35'39" W. a distance of 85.32 ft. to
- AP 31 thence N. 00°50'25" W. a distance of 111.96 ft. to
- AP 32 at intersection with the south most corner of Lot 1, Boundary Line Adjustment BLA 2012-04, recorded at A.F.N. 1101083, records of Klickitat County, Washington, and monumented with a 5/8" x 30" iron rod;
thence on the line between Lots 1 and 2, said BLA 2012-04, more specifically described by the following courses:
N. 55°55'00" E. a distance of 200.12 ft. to
- AP 33 at intersection with the southwesterly right-of-way line of Elm Street monumented with a 5/8" x 30" iron rod;
thence on said right-of-way line, N. 34°05'00" W. a distance of 60.00 ft. to

- AP 34 at intersection with the northwesterly right-of-way line of Mt. Hood Street identical with the line between said Lot 1 and Lot 2, BLA 2012-04 monumented with a 5/8" x 30" iron rod; thence on the line between said Lots 1 and 2 more specifically described by the following courses: N. 38°46'27" W. a distance of 89.77 ft. to
- AP 35 a 5/8" x 24" iron rod; thence N. 85°00'28" W. a distance of 44.94 ft. to
- AP 36 a 5/8" x 24" iron rod; thence N. 04°59'31" E. a distance of 333.47 ft. to
- AP 37 at intersection with the E. and W. center line of section 16 and monumented with a 5/8" x 24" iron rod; thence on said E. and W. center line, S. 88°44'04" E., approximately 997 ft. to
- AP 38 at intersection with an existing fence; thence on said fence, N. 07°23'17" E., approximately 733.73 ft. to
- AP 39 at intersection with an angle point in said fence and monumented with a 5/8" x 30" iron rod with yellow plastic cap inscribed "B BESEDA PLS 35092" as shown in survey recorded at A.F.N. 1115674, records of Klickitat County, Washington; thence leaving said fence, S. 43°14'51" E. a distance of 2,135.26 ft. to
- AP 40 a 5/8" x 30" iron rod with yellow plastic cap inscribed "B BESEDA PLS 35092" as set in said A.F.N. 1115674; thence S. 76°35'58" E. a distance of 1,112.42 ft. to
- AP 41 at intersection with the center line of the Schreiner Farms paved access road; thence on said center line, southerly, approximately 1,630 ft. to
- AP 42 at intersection with the line between sections 16 and 21; thence on the line between sections 16 and 21, S. 88°48'27" E., approximately 710 ft. to
- AP 43 the corner of sections 15, 16, 21, and 22 perpetuated with a 5/8" x 30" iron rod with 1-1/2" aluminum cap inscribed "PLS 15673"; thence on the line between sections 15 and 22, S. 88°54'24" E. a distance of 2,664.97 ft. to
- AP 44 the 1/4 corner of sections 15 and 22 perpetuated with an axle in a mound of stones; thence continuing on the line between sections 15 and 22, N. 88°54'27" E. a distance of 2,663.58 ft. to
- AP 45 the corner of sections 14, 15, 22, and 23 perpetuated with a nail set in the top of a notched stone; thence on the line between sections 14 and 23, S. 88°48'37" E. a distance of 2,645.39 ft. to
- AP 46 the 1/4 corner of sections 14 and 23 and monumented with a stone notched "1/4"; thence continuing on the line between sections 14 and 23, S. 88°21'34" E., approximately 11 ft. to
- AP 47 at intersection with an existing fence; thence on said fence, northeasterly, approximately 1,825 ft. to
- AP 48 at intersection with the E. and W. center line of the southeast 1/4 of section 14; thence on said E. and W. center line, easterly, approximately 1,430 ft. to
- AP 49 at intersection with the line between sections 13 and 14; thence on the line between sections 13 and 14, southerly, approximately 1,322 ft. to
- AP 1 **the Point of Beginning.**
the Area being 6,427 Acres, more or less.
- SOURCE MAPS AND DOCUMENTS:
- 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):
 - Sheet 8
 - Sheet 9
 - In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.
 - USFS Map 20
 - USFS Map 21
 - USFS Map 22
 - USFS Map 23
 - Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.
- FOOTNOTES:
- For the course in the UA line to AP 9, it is not clear why Congress elected to deviate from continuing to run along the State line. Both the USFS and Act Maps clearly show that the line in this area does not follow the State line.
 - The call from AP 22 to AP 23 is per the resolution shown on Amendment to Short Plat No. SP-97-35, recorded July 6, 2001 at AF No. 1024369, records of Klickitat County, and runs to an existing farm road. D. Peoples appears to have the correct location of AP 22. The quad maps used in 1985 reflected 1973 aerial photography and would have reflected the road location Peoples monumented. Review of the Gorge Commission files on Urban Area decision revealed a 1997 survey by Land Development Consultants, Inc. (Robert Oquist, PLS) for Dale Jones. This survey was not recorded with Klickitat County. It locates the UA line through the

same area as Amendment to Short Plat No. SP-97-35. This survey locates the line by using a bluff and bisecting a house. It also references a November 9, 1992 Gorge Commission determination.

3. AP 23 to AP 32 are as depicted on the plat of Columbia Vineyards Subdivision, recorded June 19, 2007 at AF No. 1070858, records of Klickitat County. Line courses L1 through L10 on this plat reflect the field surveyed location of the original farm road but could only verify this by field survey.

4. AP 32 to AP 36 follow the Urban Area Boundary line, as shown on Boundary Line Adjustment BLA 2012-04, as recorded January 8, 2013, at A.F.N. 1101083, records of Klickitat County, Washington. The line location is consistent with C.R.G.C. No. COA-K-11-02, Final Order and Opinion. The surveyed line and final order reflect an agreed to location for the Urban Area line through the then Arndt Living Trust property.

5. The Bonneville Dam Normal Pool is listed as elevation 72 ft. on the N.S.A. Boundary Quad maps.

6. This dimension off of the east line of section 24 used in the AP 3 to AP 4 call is scaled from USFS CRGNSA Urban Area Map 23.

7. The calls and monuments in AP 38 to AP 41 are per the survey for John Grim & Associates, recorded at A.F.N. 1115674, records of Klickitat County, Washington.

8. The calls and monuments in AP 43 to AP 45 are per the survey for Webster Orchards, recorded at A.F.N. 1112592, records of Klickitat County, Washington.

9. The call and monuments in AP 45 to AP 47 are per the Binding Site Plan for the Port of Klickitat, recorded at A.F.N. 1107846, records of Klickitat County, Washington.

Columbia River Gorge National Scenic Area Home Valley Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade

Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 ft. horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Home Valley Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 3 North, Range 8 East, of the Willamette Meridian, Skamania County, Washington

T. 03 N., R. 08 E.

- AP 1 **Beginning** at the intersection of the center line of Washington State Route 14 and the right bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.) elevation 72 ft. National Geodetic Vertical Datum of 1929 (N.G.V.D. 29); Latitude: 45°42'56.8" N., Longitude: 121°47'28.8" W.
thence at said B.N.P.E. easterly and northerly, approximately 2,500 ft. to
- AP 2 the terminus of said B.N.P.E. at left bank of the Wind River, identical with beginning of the Ordinary High Water Mark (O.H.W.M.);
thence along said O.H.W.M. northerly a distance of 1,117 ft. to
- AP 3 on said left bank;
thence leaving said left bank, S. 70° E., approximately 635 ft. to
- AP 4 at intersection with the center lines of Berge and Indian Cabin Roads;
thence on the center line of Berge Road, easterly, approximately 1,615 ft. to
- AP 5 a point on said center line being at the northmost point in a curve deflecting said center line from a northeast to southeast direction;
thence leaving said center line, N. 73° E., approximately 410 ft. to
- AP 6 at intersection with the 480 foot contour line (N.G.V.D. 29);
thence southeasterly, approximately 1,405 ft. to
- AP 7 at intersection with the east line of the Robins Donation Land Claim (D.L.C.) No. 38, at a point being northerly on said line, a distance of 100 ft. from the center line of Home Valley Cut-off Road;
thence on said east line, S. 01°02' W., approximately 1,655 ft. to

AP 8 at the northwest corner of that tract of land described in Document No. 2015-160037, records of Skamania County, Washington; thence leaving said east line on the north line of said tract of land and extension thereof, easterly, approximately 2,685 ft. to

AP 9 at intersection with the center line of Wind Mt. Road; thence on said center line southwesterly approximately 510 ft. to

AP 10 at intersection with the center line of Rike Road intersecting the south side of said Wind Mt. Road; thence on the center line of said Rike Road, south-easterly, approximately 510 ft. to

AP 11 at intersection with the 400 foot contour line (N.G.V.D. 29); thence along said 400 foot contour line, southerly, approximately 2,060 ft. to

AP 12 at intersection with the line between the NW1/4 of the NE1/4 and Lot 3, section 35; thence leaving said 400 foot contour, westerly, approximately 1,060 ft. to

AP 13 the southmost point of the center line of View-point Road; thence S. 05° W., approximately 335 ft. to

AP 14 at intersection with the southerly right-of-way line of the Burlington Northern/Santa Fe Railroad right-of-way; thence on said southerly right-of-way line, north-westerly, approximately 3,585 ft. to

AP 15 at intersection with northwest corner of the U.S.A. Home Valley Park property; thence on the northerly and westerly lines of said property, westerly and southerly a distance of 1,310 ft. to

AP 16 a point on said west line; thence leaving said west line, East a distance of 106 ft. to

AP 17 thence N. 12°13' E. a distance of 90 ft. to

AP 18 thence S. 86°10' E. a distance of 94 ft. to

AP 19 thence S. 49°23' E. a distance of 444 ft. to

AP 20 thence N. 27°02' E. a distance of 522 ft. to

AP 21 thence N. 79°55' E. a distance of 108 ft. to

AP 22 thence S. 00°15' E. a distance of 525 ft. to

AP 23 thence S. 37°41' E. a distance of 143 ft. to

AP 24 thence S. 24°51' W. a distance of 184 ft. to

AP 25 thence S. 01°30' E. approximately 239 ft. to

AP 26 at intersection with aforementioned B.N.P.E.; thence along aforementioned right bank of the Columbia River at said B.N.P.E., southwesterly, approximately 153 ft. to

AP 27 at the easterly side of a small bay; thence crossing the mouth of said small bay, northwesterly, approximately 345 ft. to

AP 28 at the south most point on the westerly side of said small bay at said B.N.P.E.; thence along aforementioned right bank of the Columbia River at said B.N.P.E., westerly, approximately 6,260 ft. to

AP 1 at intersection with said center line of State Route 14 and **Point of Beginning**.

the Area being 551 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):

a. Sheet 3

2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.

a. USFS Map 8

3. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. The Normal Pool Elevation of the Bonneville Dam is 72 ft. (N.G.V.D. 29) as shown on the USFS 1987 Map Set, Sheet 8.

2. From AP 17 to AP 27 the UAB was scaled from the USFS 1986 Map, Sheet 8, and 1987 Act Map UA-004, Sheet 3. The maps are very similar and the UA line cannot be correlated to known lines or features. The calls from Angle Points 17 to 27 are random. Site investigation may yield a reason for this line location.

3. AP 3 to AP 5 are substantially consistent with the June 2, 1993 planning map initialed by Commission staff as a Boundary Determination. The Act map shows more of a point at Angle Point 3 which this description mimics. The Commission staff determination shows an east and west line segment of 150 ft.

Columbia River Gorge National Scenic Area
Hood River Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be

junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 feet horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Hood River Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 2 North, Range 10 East,

Township 3 North, Range 10 East, and

Township 3 North, Range 11 East, of the Willamette Meridian, Hood River County, Oregon.

T. 03 N., R. 11 E.

- AP 1 **Beginning** at intersection of the easterly line of the Nathan L. Benson Donation Land Claim (D.L.C.) No. 37 with the left bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.), elevation 72 ft., National Geodetic Vertical Datum 1929 (N.G.V.D. 29); Latitude: 45°36'39.6" N., Longitude: 121°07'37.2" E.
thence on said easterly line (See Footnote 1), S. 01°11' E., approximately 500 ft. to
- AP 2 at intersection with the southerly right-of-way line of the Union Pacific Railroad;
thence on said southerly right-of-way line, S. 82°18' E., approximately 750 ft. to
- AP 3 at intersection with the line between lots 1 and 2, section 30;
thence on the line between lots 1 and 2, identical with the Hood River Urban Growth Boundary (H.R. UGB) (See Footnote 2), S. 01°10' E., approximately 467 ft. to
- AP 4 the southerly corner of said lots 1 and 2;
thence on the line between sections 30 and 31, westerly, a distance of 1,063.65 ft. to

- AP 5 the northwest corner of that property described in Warranty Deed No. 862185, and shown in County Survey (C.S.) No. 89106, records of Hood River County, Oregon;
thence leaving the line between sections 30 and 31, on the westerly line of said property, S. 01°27' W., approximately 196 ft. to
- AP 6 at intersection with the northeasterly right-of-way line of the Historic Columbia River Highway;
thence on said right-of-way line, northwesterly, approximately 710 ft. to
- AP 7 the southeast corner of that property described in Warranty Deed Book 46 Page 300, records of Hood River County, Oregon;
thence on the southwesterly line of said property, N. 71°29' W., approximately 208 ft. to
- AP 8 the southerly most southwest corner of said property, on the northeasterly right-of-way line of the aforementioned Historic Highway;
thence on said right-of-way line, northwesterly, approximately 100 ft. to
- AP 9 the northerly most southwest corner of said property;
thence on the west line thereof, northerly, approximately 10 ft. to
- AP 10 the northerly most corner of said property, at intersection with the line between sections 30 and 31; from which the point of intersection of said section line with the southeasterly right-of-way line of the aforementioned Historic Highway bears N. 89°47'00" W., on said section line, a distance of 158.03 ft., as shown in C.S. No. 83025, records of Hood River County, Oregon;
thence N. 26°55' W. a distance of 220.7 ft. to
- AP 11 a 1/2" iron rod as shown in said C.S. No. 83025, at intersection with the northeasterly right-of-way of said Historic Highway;
thence on a line radial to the right-of-way curve, southwesterly a distance of 60 ft. to
- AP 12 at intersection with the southerly right-of-way line of said Historic Highway;
thence on said southerly right-of-way line, continuing through the intersection with the Mount Hood Highway 35, westerly, approximately 850 ft. to

T. 03 N., R. 10 E.

- AP 13 at intersection with the easterly terminus of the southerly right-of-way line of realigned United States Highway 30, as shown in Highway Drawings 3B-15-8 and 9B-2-19, records of Oregon Department of Transportation;

- thence on said southerly right-of-way line, identical with USFS Map 28, across the Hood River, westerly, approximately 600 ft. to
- AP 14 at intersection with the westerly right-of-way line of the Mount Hood Railroad;
thence on said right-of-way line, southerly, approximately 1,660 ft. to
- AP 15 at intersection with the E. and W. center line of the NE1/4 of section 36;
thence on said center line, S. 89°31'09" W., approximately 1,290 ft. to
- AP 16 the northwesterly corner of that property shown in C.S. No. 892769, records of Hood River County, Oregon;
thence on the westerly line and southerly extension thereof, as shown in C.S. No. 1995111, records of Hood River County, Oregon, S. 27°08'08" W., approximately 676 ft. to
- AP 17 at intersection with the N. and S. center line of section 36 at the center line terminus of Pine Street;
thence on said N. and S. center line of section 36, southerly, approximately 1,000 ft. to
- AP 18 at 300 ft. southerly of the C1/4 of section 36;
thence along the top of a ridge overlooking the Hood River, S. 28°52' E., approximately 690 ft. to
- AP 19 the northeast corner of that property described in Deed No. 800749, records of Hood River County, Oregon, said corner being 300 ft. easterly from the N. and S. center line of section 36, when measured perpendicular thereto;
thence on the westerly line of said property, S. 00°01' E., approximately 1,730 ft. to
- T. 02 N., R. 10 E.**
- AP 20 at intersection with the line between Tps. 02 and 03 N.;
thence on said township line, identical with the exterior boundary of the Columbia River Gorge National Scenic Area (CRGNSA) (See Footnote 3), N. 89°27'48" W., approximately 4,660 ft. to
- AP 21 at intersection with the southerly bank of Indian Creek at ordinary high water (See Footnote 4);
thence along said southerly bank, westerly, approximately 3,800 ft. to
- AP 22 at intersection with the easterly right-of-way line of Indian Creek Road;
thence continuing along said southerly bank, S. 48°37' W., approximately 800 ft. to
- AP 23 at intersection with the line between sections 2 and 3;
thence on said section line (See Footnote 5), N. 00°24' W., approximately 1,720 ft. to
- AP 24 the corner of sections 2 and 3, T. 02 N., R. 10 E., and sections 34 and 35, T. 03 N., R. 10 E., leaving the exterior boundary of the CRGNSA;
thence on the line between sections 34 and 35, N. 00°53' W., approximately 2,628 ft. to
- T. 03 N., R. 10 E.**
- AP 25 the 1/4 corner of sections 34 and 35;
thence on the E. and W. center line of section 34, S. 88°57'42" W., approximately 2,638 ft. to
- AP 26 the center 1/4 of said section 34;
thence southerly, approximately 20 ft. to
- AP 27 at intersection with the easterly extension of the southerly right-of-way line of Post Canyon Road;
thence on said southerly right-of-way line and extension thereof, N. 89°43' W., approximately 1,325 ft. to
- AP 28 at intersection with the N. and S. center line of the NW1/4 of section 34;
thence on said center line, N. 00°35'10" E., approximately 1,960 ft. to
- AP 29 at intersection with the southerly line of the Dav-
enport Lane easement, as described in Deed Volume G Page 30, and shown in C.S. No. 2003019, records of Hood River County, Oregon;
thence on said southerly line (See Footnote 6), N. 89°06'53" W. a distance of 1,327.78 ft. to
- AP 30 at intersection with the line between sections 33 and 34;
thence on said line N. 00°34'52" W. a distance of 660.00 ft. to
- AP 31 the corner of sections 27, 28, 33, and 34 as shown in C.S. No. 2009004, records of Hood River County, Oregon, monumented with an iron post with 3" brass cap;
thence on the line between sections 27 and 28, N. 00°06'02" W., approximately 280 ft. to
- AP 32 at intersection with the northerly right-of-way line of Interstate 84, identical with the southerly right-of-way line of Frontage Road, as relinquished in 1976 by O.D.O.T. to Hood River County, as described in Document No. 76-0682 and shown in C.S. No. 2009004, records of Hood River County, Oregon (See Footnote 7);
thence on said right-of-way line, S. 72°49'50" W. a distance of 321.85 ft. to
- AP 33 thence N. 86°23'19" W. a distance of 170.63 ft. to
- AP 34 at intersection with the southerly corner of Lots 8 and 9, Clifton Park Subdivision;
thence S. 72°49'50" W., approximately 340 ft. to
- AP 35 the southwest corner of Lot 11, Clifton Park Subdivision;

- thence on the westerly line of said Lot 11 and northerly extension thereof, N. 17°10'10" W., approximately 750 ft. to
- AP 36 at intersection with the left bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.) 72 ft. (N.G.V.D.); thence along said left bank at B.N.P.E., easterly, approximately 5,240 ft. to
- AP 37 at intersection with the westerly face of a peninsula in the S1/2 of section 27, at B.N.P.E. (See Footnote 8); thence across the base of said peninsula, N. 63°44' E., approximately 750 ft. to
- AP 38 at intersection with the easterly face of said peninsula and the left bank of the Columbia River at B.N.P.E.; thence along said left bank at B.N.P.E., easterly, approximately 5,100 ft. to
- AP 39 at the northerly most extremity of a small peninsula at B.N.P.E., in the SW1/4 NE1/4 of section 26, at B.N.P.E.; thence on a line, N. 47° E., approximately 1,240 ft. to
- AP 40 from which the north most point of the peninsula known as "The Hook", at B.N.P.E., bears East a distance of 200 ft. and South a distance of 30 ft.; thence N. 90° E., approximately 250 ft. to
- AP 41 at intersection with a line parallel with and 30 ft. from the northeasterly face of the "The Hook" at B.N.P.E., when measured perpendicular thereto; thence on said line, S. 64° E., approximately 1,010 ft. to
- AP 42 at intersection with the westerly extension of a line between the northerly most extremity of the small peninsula, at B.N.P.E., which bears easterly, approximately 300 ft., from the base of "The Hook"; and the northerly most extremity of the westerly jetty, at B.N.P.E., which bears easterly, approximately 2,100 ft., from said base of "The Hook"; thence along said line and the westerly and easterly extensions thereof, N. 87° E., approximately 3,000 ft. to
- AP 43 at intersection with a meander line of lot 2, identical with the 1982 H.R. UGB; thence on said meander line S. 63° 45' E., approximately 585 ft. to
- AP 44 a record meander corner of lot 2, westerly of the Hood River; thence on said meander line S. 49°45' E. a distance of 1,815 ft. to
- AP 45 the record meander corner on the line between Rs. 10 and 11 E; thence on said range line, northerly, approximately 670 ft. to
- T. 03 N., R. 11 E.**
- AP 46 the northerly most corner of the Shore Lands Line, as described in Hood River County Annexation Ordinance No. 1159, dated May 6, 1963, Deed Volume 73 Page 124, records of Hood River County, Oregon; thence on the northerly line of said Shore Lands Line more specifically described by the following courses:
- S. 68°30' E. a distance of 770.0 ft. to
- AP 47 S. 28°16' E. a distance of 148.1 ft. to
- AP 48 S. 53°32' E. a distance of 593.53 ft. to
- AP 49 S. 45°52' E. a distance of 180.0 ft. to
- AP 50 S. 24°04' E. a distance of 314.47 ft. to
- AP 51 S. 51°13' E. a distance of 382.0 ft. to
- AP 52 the northeasterly corner of said Shore Lands Line; thence on the easterly line of the Nathan L. Benson D.L.C. No. 37 and northerly extension thereof, S. 01°11' E., approximately 266 ft. to
- AP 1 the **Point of Beginning**
- the Area being 2,422 Acres, more or less.
- SOURCE MAPS AND DOCUMENTS:
1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps UA-004, September 1986, (Congressional or Act Maps):
 - a. Sheet 4 - Hood River (Act Map 4); the Urban Area Boundary is not drawn on this map.
 - b. Sheet 5 - Hood River (Act Map 5) - is a land use map that was the basis for the 1987 USFS Maps. The Gorge Commission and U.S. Forest Service did not have a copy of Sheet 5; a map that appears to be a copy of Sheet 5 was found in a 2016 search of the Hood River County Surveyor's Office. The 1986 Hood River Urban Growth Boundary is drawn on this map, however the Urban Area Boundary is not.
 2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. Because Act Map 4 did not show the Hood River Urban Area Boundary, and Sheet 5 was missing, the USFS Maps are the basis for this description, particularly USFS Map 28. Certain cartographic interpretations differ from USFS Map to USFS Map.
 - a. CRGNSA Boundary Map, September 1986, NSA-001, Sheets 1 and 2; Urban Area Boundaries (U.A.B.s) are drawn at a small scale.
 - b. USFS Map 12.
 - c. USFS Map 15.
 - d. USFS Maps 12 and 15 have unexplainable differences with USFS Map 28.

e. Map 28, CRGNSA, September 1986, UA-004, Hood River Urban Area, Sheet 5, Produced January 1987, is a "Land Use Map" which was used as the primary basis for this description. The title block states, "The information on these maps was taken from the official maps referred to in Section 4 of P.L. 99-663 ... A map entitled 'Land Use Map, Hood River, Oregon' was used as the base for this map." However, no boundary lines are found on said Act Map.

3. Memorandum from Jonathan Doherty, Columbia River Gorge Commission, to Gorge Commissioners, dated November 10, 1997, to Gorge Commissioners, records of Columbia River Gorge Commission, White Salmon, Washington, about "Review of Urban Area Mapping Discrepancies." These mapping discrepancies are noted in this description at each area.

4. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

5. Research indicates the general intent was to coincide with Oregon Urban Growth Boundaries from that era, with NSA Urban Area Boundaries except where this approach conflicted with other NSA objectives, such as in large areas in the main stem of the Columbia River. This description has incorporated the "legs" of the 1982 Hood River "Urban Growth Boundary (H.R. UGB) legal description, Goal 14 - Urbanization" in many places, which coincide with USFS Map 28.

FOOTNOTES:

1. AP 1 to AP 3, held USFS Map 28; not coincident with the City of Hood River Urban Growth Boundary (H.R. UGB).

2. AP 3 to AP 14, held USFS Map 28; AP 3 to AP 13, held Eastside Amendment to the Urban Growth Boundary, as shown in Ordinance No. 1578, records of City of Hood River, Oregon; also Emergency Ordinance No. 155, records of Hood River County, Oregon.

3. AP 20 to AP 21, held the exterior boundary of the National Scenic Area, on the line between Tps. 02 and 03 N., coincident with the center line of Eliot Drive and Brookside Drive; not coincident with the H.R. UGB, which is on the southerly right-of-way line of Eliot Drive, outside the NSA.

4. AP 21 to AP 23, held the 1982 H.R. UGB description calls to the "south bank of Indian Creek" which is an unusual call for a non-navigable stream. Clark on Surveying and Boundaries, 4th Edition, 1976 (in use when the NSA was created), Page 843 states, "Where a stream is given as an abutting boundary, the general rule is that title of the abutting landowners runs into the stream unless it is clear from the title descriptions that title runs to one of the banks Where the bank is the boundary, it may be either the high water mark or the low water mark." Here, ordinary high-water mark is held, along the southerly bank.

5. AP 23 to AP 25, held 1982 H.R. UGB, as elsewhere in this description, Leg 6 description along section line; USFS Map 28 and USFS Map 12 show the H.R. UGB along the easterly right-of-way lines of Hutson Road and Belmont Drive.

6. AP 29 to AP 31, held 1982 H.R. UGB Leg 6 and USFS Map 28, consistent with calls elsewhere in this description; contrary to the 1/4/93 Boundary Determination which was

based upon USFS Map 12, records of Columbia River Gorge Commission, White Salmon, Washington.

7. AP 31 to AP 34, held boundary line determination as shown in C.S. No. 2009-004, records of Hood River County, Oregon; and supported by Forest Service Land Surveyor Don Karsch in his letter dated Dec. 8, 2005, records of Columbia River Gorge Commission, White Salmon, Washington. This boundary determination modified Legs 7 and 8 of the 1982 H.R. UGB.

8. AP 37 to AP 43, held USFS Map 28 and USFS Map 12, not 1982 H.R. UGB which departs significantly from the USFS mapping along the waterfront.

Columbia River Gorge National Scenic Area

Lyle Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 ft. horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Lyle Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 2 North, Range 12 East, of the Willamette Meridian, Klickitat County, Washington

Township 3 North, Range 12 East, of the Willamette Meridian, Klickitat County, Washington

T. 03 N., R. 12 E.

- AP 1 **Beginning** at the intersection of the thread of the Klickitat River and the right bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.) elevation 72 ft., National Geodetic Vertical Datum of 1929 (N.G.V.D. 29); Latitude: 45°41'46.0" N., Longitude: 121°17'31.3" W.;
thence upstream along said thread, northerly a distance of 905 ft. to
- AP 2 thence leaving said thread, S. 81°16' E., approximately 283 ft. to
- AP 3 at intersection with the centerline of the abandoned Burlington Northern Santa Fe railroad Lyle-Goldendale spur track;
thence N. 66°29' E., approximately 200 ft. to
- AP 4 at intersection with the center line of Washington State Route 142;
thence N. 80°30' E., approximately 1,225 ft. to
- AP 5 at intersection with the 400 foot contour line (N.G.V.D. 29);
thence along said 400 foot contour line, southeasterly, approximately 2,840 ft. to

T. 02 N., R. 12 E.

- AP 6 at intersection with an unnamed drainage and monumented with a 5/8" x 30" iron rod with yellow plastic cap inscribed "B BESEDA PLS 35092", as shown in survey recorded at Auditor's File No. (A.F.N.) 1107552, records of Klickitat County, Washington;
thence S. 24°27'14" W. a distance of 357.97 ft. to
- AP 7 at intersection with the head of a second drainage and monumented with a 5/8" x 30" iron rod with yellow plastic cap inscribed "B BESEDA PLS 35092", as shown in said survey recorded at A.F.N. 1107552;
thence along drainage bottom, southwesterly, approximately 415 ft. to
- AP 8 at intersection with a third drainage and monumented with a 5/8" x 30" iron rod with yellow plastic cap inscribed "B BESEDA PLS 35092", as shown in said survey recorded at A.F.N. 1107552;
thence along the combined drainage bottom, southerly, approximately 610 ft. to
- AP 9 at intersection with the northerly right-of-way line of Washington State Route 14;
thence on said northerly right-of-way line, easterly, approximately 915 ft. to

- AP 10 a point opposite Washington State Route 14 Center Line Station 27+77.80 Point of Tangent (P.T.); thence at a right angle through said Station 27+77.80 P.T., southwesterly, approximately 170 ft. to
- AP 11 the intersection with the aforementioned right bank of the Columbia River at B.N.P.E.;
thence along said right bank at B.N.P.E., westerly, approximately 6,945 ft. to
- AP 1 the **Point of Beginning**.

the Area being 239 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):
 - a. Sheet 7
 2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.
 - a. USFS Map 18
 3. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. The Bonneville Dam Normal Pool Elevation is listed as elevation 72 ft. on the USFS Map 18.
3. At AP 2 to AP 5, the Act Map clearly shows more angle points than the USFS mapping. The USFS Map was followed in the description as best as possible through these apparently random locations. The actual physical difference between the maps is very minor.
4. The easterly end of the 400 contour call and AP 6 to AP 9 are fully shown and monumented in the survey for the Friends of Columbia Gorge Land Trust, as recorded at A.F.N. 1107552, records of Klickitat County, Washington.

Columbia River Gorge National Scenic Area
Mosier Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats in effect as of December 1, 2016, and state authority survey plats unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary.

Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 feet horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Mosier Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 2 North, Range 11 East, of the Willamette Meridian, Wasco County, Oregon.

T. 02 N., R. 11 E.

- AP 1 **Beginning** at the intersection of the northerly extension of the westerly most line of the J. A. Mosier Donation Land Claim (D.L.C.) No. 37 and the left bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.), elevation 72 ft., National Geodetic Vertical Datum 29 (N.G.V.D. 29), at; Latitude: 45°41'13.2" N., Longitude: 121°25'12.0" E.; thence on said northerly extension, the D.L.C. line, and southerly extension thereof, S. 00°27' E., approximately 850 feet to
- AP 2 at intersection with the 200-ft. contour line (N.G.V.D. 1929); thence along said 200-ft. contour line, southeasterly, approximately 1,400 feet to
- AP 3 at intersection with the center line of the Historic Columbia River Highway, formerly Rock Creek County Road; thence on the center line of said highway and Hood River County Road, southwesterly, approximately 1,040 ft. to
- AP 4 at intersection with the 280-ft. contour line (N.G.V.D. 1929); thence on a line, S. 9°40' W., approximately 390 ft. to
- AP 5 the 1/4 corner of sections 2 and 11, perpetuated by Professional Land Surveyor (P.L.S.) No. 1815 in 1996, as shown in County Survey (C.S.) No. 9-190, records of Wasco County, Oregon; monumented with an iron post with a 2-1/2" brass cap; thence on the line between sections 2 and 11, N. 87°42'47" E. a distance of 2,640.24 feet to
- AP 6 the corner of secs. 1, 2, 11, and 12, perpetuated by the United States Army Corps of Engineers (U.S.A.C.E.) in 1936 from original evidence; monumented with an iron post with 3" brass cap; thence on the line between sections 1 and 12, S. 88°22'52" E. a distance of 2,642.35 ft. to
- AP 7 the 1/4 corner of sections 1 and 12, perpetuated by P.L.S. No. 856 in 1970, as shown in Land Corner Record Sheet (L.C.) 0012, records of Wasco County, Oregon; monumented with an iron post with 3" brass cap; thence on the line between sections 1 and 12, S. 88°22' E. a distance of 1,012.7 ft. to
- AP 8 at intersection with the thread of Mosier Creek, identical with the exterior boundary of the Columbia River Gorge National Scenic Area; thence downstream along the thread of Mosier Creek, as shown in 1916 County Survey (C.S.) No. C-4-3, records of Wasco County, Oregon (See Footnote 1), northwesterly, approximately 905 ft. to
- AP 9 at intersection with the southerly extension of the easterly line of the aforementioned J. A. Mosier D.L.C. No. 37; thence on said southerly extension, N. 01°09' W., approximately 230 feet to
- AP 10 the southeast corner of said Mosier D.L.C., perpetuated by the U.S.A.C.E. in 1936, as shown in L.C. 0006, records of Wasco County, Oregon; monumented with an iron post with 3" brass cap; thence on the easterly line of said Mosier D.L.C. and northerly extension thereof, N. 01°09' W., approximately 3,425 ft. to
- AP 11 at intersection with the left bank of the Columbia River at B.N.P.E.; thence along said left bank, westerly, approximately 5,780 ft. to
- AP 1 **the Point of Beginning**
the Area being 391 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, September 1986 (Congressional or Act Maps).

a. NSA-001

b. UA-004, Sheet 6

2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.

a. USFS Map 15

3. Memorandum from Jonathan Doherty, Columbia River Gorge Commission, to Gorge Commissioners, dated

November 10, 1997, to Gorge Commissioners, records of Columbia River Gorge Commission, White Salmon, Washington, about "Review of Urban Area Mapping Discrepancies."

4. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. AP 8 to AP 9, held the thread of Mosier Creek. Believing the intent of Congress was to follow existing municipal boundary lines, the Mosier city limits line, dated in multiple drawings back to 1916, is clearly depicted as following along the thread of Mosier Creek. Holding the thread of Mosier Creek eliminates conflict with dwellings in the vicinity. This departs slightly from USFS Map 15 which depicts a straight line before intersecting with the southerly extension of the Mosier Donation Land Claim.

Columbia River Gorge National Scenic Area
North Bonneville Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 feet horizontally, unless otherwise noted.

This description encompasses land that is identified as

The North Bonneville Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 2 North, Range 7 East, of the Willamette Meridian, Skamania County, Washington

Township 2 North, Range 7 East, of the Willamette Meridian, Multnomah County, Oregon

T. 02 N., R. 07 E., Multnomah County, Oregon

- AP 1 **Beginning** at the corner of sections 21, 22, 27, and 28, T. 02 N., R. 07 E, Latitude: 45°37'58.3" N., Longitude: 121°56'34.4" W.;
thence on the line between sections 21 and 28, S. 89°20' W., approximately 2,910 ft. to
- AP 2 at intersection with the center line of the Union Pacific Railroad right-of-way;
thence on said center line, southwesterly, approximately 2,224 ft. to
- AP 3 at Engineers Station 2091+64.3 Point of Spiral;
thence crossing the Columbia River, N. 90° W., approximately 2,060 ft. to

T. 02 N., R. 07 E., Skamania County, Washington

- AP 4 at intersection with the right bank of the Columbia River at Ordinary High Water Mark (O.H.W.M.);
thence along the meanders of said O.H.W.M., southwesterly, approximately 6,510 ft. to
- AP 5 at intersection with the left bank of Hamilton Creek;
thence along the meanders of said left bank, northeasterly, approximately 3,030 ft. to
- AP 6 at intersection with the southeasterly extension of the south most southwesterly line of the plat of Relocated North Bonneville;
thence on said southeasterly extension, crossing Hamilton Creek and continuing on said southwesterly line, N. 67°00'00" W., approximately 760 ft. to
- AP 7 thence continuing on said southwesterly boundary, N. 18°27'10" W. a distance of 1,452.91 ft. to
- AP 8 thence continuing on said southwesterly boundary, N. 29°58'55" E. a distance of 119.59 ft. to
- AP 9 at the northwest corner of said Relocated North Bonneville, identical with the line between sections 19 and 30;
thence N. 43°21' W., approximately 1,045 ft. to
- AP 10 at intersection with the N. and S. center line of section 19 and the southeasterly right-of-way line of the Burlington Northern - Santa Fe Railroad;
thence on said center line, N. 0°29' W., approximately 1,890 ft. to
- AP 11 the center 1/4 corner of said section 19 at;
Latitude: 45°38'36.6" N., Longitude: 121°59'31.6" W.;
thence on the E. and W. center line of said section 19, S. 89°59' E., approximately 505 ft. to

- AP 12 at intersection with the northerly right-of-way line of the Bonneville Power Administration (B.P.A.) Bonneville-Vancouver transmission line easement; thence on said northerly line, N. 57°56' E., approximately 4,490 ft. to
- AP 13 at intersection with the westerly boundary of the G. W. Johnson Donation Land Claim (D.L.C.) No. 38 and city limits line of North Bonneville; thence on said westerly boundary, identical with said city limits line, N. 16°46'08" W., approximately 160 ft. to
- AP 14 the northwest corner of said Johnson D.L.C.; thence on the northerly boundary thereof, N. 84°22'12" E., approximately 350 ft. to
- AP 15 at intersection with aforementioned northerly right-of-way line of the B.P.A. Bonneville-Vancouver transmission line easement; thence leaving said city limits line on said northerly line, N. 57°56' E., approximately 1,450 ft. to
- AP 16 at north most point thereof; thence continuing on said northerly line, S. 57°28' E., approximately 1,050 ft. to
- AP 17 at intersection with the aforementioned northerly boundary of the Johnson D.L.C. and city limits line; thence on said northerly boundary, and identical with said city limits line, N. 84°22'12" E., approximately 550 ft. to
- AP 18 at intersection with the westerly boundary of the B. B. Bishop D.L.C. No. 39; thence on said westerly boundary, N. 02°12'16" E., approximately 1,347 ft. to
- AP 19 the northwest corner of said Bishop D.L.C.; thence on the north boundary thereof, N. 86°20'39" E., approximately 666 ft. to
- AP 20 at intersection with the center line of a natural gas pipe line easement; thence on said center line, N. 45°18'27" E., approximately 499 ft. to
- AP 21 being 430.00 feet North of the northerly boundary of the aforementioned B. B. Bishop D.L.C. No. 39 when measured perpendicular thereto; thence on a line 430.00 feet North of and parallel with said northerly boundary, S. 89°54'48" E., approximately 1,047 ft. to
- AP 22 at intersection with the thread of Greenleaf Creek; thence downstream along the meanders of said thread, southwesterly, approximately 950 ft. to
- AP 23 at intersection with aforementioned northerly boundary of the Bishop D.L.C.; thence on said northerly boundary, S. 89°54'48" E., approximately 610 ft. to
- AP 24 at intersection with the center line of the Bonneville-Coulee B.P.A. No. 1 transmission line easement; thence on said center line, S. 32°28' W., approximately 755 ft. to
- AP 25 at intersection with the center line of East Cascade Drive, also known as Moffett-Hot Springs Road; thence on said center line, southerly, approximately 1,310 ft. to
- AP 26 at intersection with the line between sections 16 and 21; thence on said line, S. 87°55'01" E., approximately 930 ft. to
- AP 27 at intersection with the northerly boundary of the U.S. Army Corps of Engineers Bonneville Project Take Line, as shown on survey by Hagedorn, Inc., recorded at Book 1, Page 168, survey records of Skamania County, Washington, monumented with aluminum post and 4" aluminum cap; thence leaving aforementioned city limits line on said boundary more specifically described by the following courses:
N. 33°30'32" E. a distance of 633.68 ft. to
- AP 28 an aluminum post with 4" aluminum cap; thence S. 72°59'28" E. a distance of 1,000.04 ft. to
- AP 29 an aluminum post with 4" aluminum cap; thence N. 52°00'32" E. a distance of 675.03 ft. to
- AP 30 an aluminum post with 4" aluminum cap; thence N. 84°00'32" E. a distance of 740.03 ft. to
- AP 31 an aluminum post with 4" aluminum cap; thence S. 88°59'28" E. a distance of 340.01 ft. to
- AP 32 an aluminum post with 4" aluminum cap; at intersection with the line between sections 15 and 16; thence S. 79°29'28" E. a distance of 2,000.08 ft. to
- AP 33 an aluminum post with 4" aluminum cap; thence S. 86°59'28" E., approximately 1,599.51 ft. to
- AP 34 an aluminum post with 4" aluminum cap; at intersection with the city limits line of North Bonneville; thence on said city limits line more specifically described by the following courses:
northerly, approximately 1,000 ft. to

- AP 35 a northwest corner of said city limits line; thence continuing on said city limits line, East a distance of 223 ft. to
- AP 36 the northeast corner of that tract of land described in Book 51, Page 352, records of Skamania County, Washington; thence N. 90° E., approximately 700 ft. to
- AP 37 thence continuing on said city limits line, N. 35°15' W. a distance of 50 ft. to
- AP 38 thence East a distance of 565 ft. to
- AP 39 thence S. 78°30' E. a distance of 159 ft. to (see Footnote 5)
- AP 40 thence N. 78°12' E. a distance of 50 ft. to
- AP 41 at intersection with the west line of section 14 and the southerly right-of-way line of Wauna Lake Road; thence continuing on said city limits line, identical with said southerly right-of-way line, easterly and southerly, approximately 560 ft. to
- AP 42 thence leaving said right-of-way line, continuing on said city limits line, N. 84°36' E. a distance of 276 ft. to
- AP 43 thence S. 59°59' E. a distance of 158 ft. to
- AP 44 thence N. 90° E. a distance of 35 ft. to
- AP 45 at intersection with the easterly boundary of the D. F. Bradford D.L.C. No. 37; thence continuing on said city limits line, identical with the easterly boundary of said Bradford D.L.C., S. 43° E. a distance of 14 ft. to
- AP 46 thence leaving said easterly boundary, continuing on said city limits line, N. 00° E., approximately 353 ft. to
- AP 47 thence N. 90° E. a distance of 341 ft. to
- AP 48 at intersection with the westerly line of lot 2, in section 14, from which the northerly right-of-way line of State Route 14 bears S. 00° E., approximately 353 ft.; thence on said westerly line of lot 2, S. 00° E., approximately 444 ft. to
- AP 49 at intersection with the southerly right-of-way line of Washington State Route 14; thence continuing on said city limits line, identical with said southerly right-of-way line, S. 74°54' W., approximately 212 ft. to
- AP 50 at intersection with the easterly boundary of the aforementioned Bradford D.L.C.; thence leaving said city limits line, South, approximately 130 ft. to
- AP 51 at intersection with the right bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.) 72 ft. National Geodetic Vertical Datum (N.G.V.D. 29); thence along said right bank at B.N.P.E., southwesterly, approximately 4,100 ft. to
- AP 52 at intersection with the line between lots 2 and 3, in section 22 at B.N.P.E.; thence crossing the Columbia River, S. 30°06' W., approximately 3,770 ft. to
- AP 53 at intersection with the left bank of the Columbia River at B.N.P.E.; thence S. 47°38' W., approximately 634 ft. to
- AP 54 at intersection with the right-of-way line of Interstate 84 where the east and westbound lanes separate on the westerly side of Tooth Rock Tunnel; thence parallel with the westbound center line of Interstate 84, S. 69°06' W., approximately 1,020 ft. to
- AP 55 at intersection with the line between sections 21 and 22; thence on the line between sections 21 and 22, S. 00°16' E., approximately 1,340 ft. to the Point of Beginning

the Area being 2,580 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):

a. Sheet 1

2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.

a. USFS Map 7

3. Memorandum from Jonathan Doherty, Columbia River Gorge Commission, to Gorge Commissioners, dated November 10, 1997, to Gorge Commissioners, records of Columbia River Gorge Commission, White Salmon, Washington, about "Review of Urban Area Mapping Discrepancies." These mapping discrepancies were addressed in later agreements.

4. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. AP 6 to AP 9 follow the southwesterly boundary of the plat of Relocated North Bonneville. This line is also a portion of the easterly boundary of the Pierce National Wildlife Refuge. Both the 1987 USFS and 1986 Act Maps are vague on the location of the UA line in this area. The line on both maps appears to follow what has been interpreted as a construction haul road, which existed as a part of the construction and relocation of the City of North Bonneville. The shape of the

haul road is very similar to the shape of the exterior boundary of the subdivision plat. The haul road no longer exists. Its apparent location would bisect multiple lots within the subdivision plat. Because there is a common shape of both lines and no resource protection or policy reason to split small division lots, this description interpreted the Urban Area Boundary to run along the exterior boundary of the subdivision plat.

2. AP 13 to AP 15 follow the city limits of the City of North Bonneville. These angle points form a very small triangle on the north side of the B.P.A. transmission line corridor. This land was within the North Bonneville city limits at the time of the Act and was developed. Both the 1987 USFS and 1986 Act Maps do not include this small triangular area. Believing that the intent of Congress was to follow the existing city limits line, this description included this area within the Urban Area description for North Bonneville.

3. AP 22 to AP 24 follow the North Bonneville city limits line. This is consistent with both the 1987 USFS and 1986 Act Maps. However, in this area on the base map utilized for both map sets, the city limits line was incorrectly depicted. This description reflects the correct location of the North Bonneville city limits line as it existed at the time of the Act.

4. AP 27 to AP 34 follow the Corps of Engineers Take Line. These courses are as per the survey completed by Hagedorn, Inc., recorded at Book 1, Page 168, survey records of Skamania County.

5. AP 34 to AP 50 follow the North Bonneville city limits line as adopted by the City of North Bonneville under Ordinance No. 272, dated December 10, 1974. The description within Ordinance No. 272 runs in the opposite direction to the Urban Area legal description. Every effort was made to make the Urban Area description consistent with the description in the ordinance. Deference should be given to the ordinance as the senior document for surveys along this portion of the Urban Area line. AP 35 to AP 50 do not follow USFS Map 7. Believing that the intent of Congress was to follow the existing city limits line, this description includes this area within the Urban Area description for North Bonneville.

6. For the area between AP 27 and AP 50 both the 1987 USFS and 1986 Act Maps are very vague. The lines drawn on both map sets appear to mimic the shape of the lines described in footnotes 4 and 5 above. However, the location as shown on both map sets appears to be offset from the actual location of these lines. Neither map set had the property lines or Corp Take lines on them to make them able to be easily followed. Therefore, believing the intent of Congress to be to follow the Take line and city limits line as they existed at the time of the Act, this description was written as discussed in footnotes 4 and 5 above.

7. The Normal Pool Elevation of the Bonneville Dam is 72 ft. (N.G.V.D. 29) as shown on the National Scenic Area Maps dated September 1986. The current Quad maps show an elevation of 74 feet.

Columbia River Gorge National Scenic Area
Stevenson Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority

survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail center lines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 ft. horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Stevenson Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 2 North, Range 7 East, of the Willamette Meridian, Skamania County, Washington

Township 3 North, Range 7 East, of the Willamette Meridian, Skamania County, Washington

Township 3 North, Range 7-1/2 East, of the Willamette Meridian, Skamania County, Washington

T. 02 N., R. 07 E.

- AP 1 **Beginning** at intersection of the northeasterly line of the Bradford Donation Land Claim (D.L.C.) No. 37 and the right bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.) elevation 72 ft. National Geodetic Vertical Datum of 1929 (N.G.V.D. 29); Latitude: 45°40'37.2" N., Longitude: 121°54'18.6" W.; thence on said northeasterly line, N. 52°47'28" W., approximately 2,630 ft. to
- AP 2 the northerly corner of said Bradford D.L.C. No. 37, identical with the southeast corner of the Iman D.L.C. No. 44; thence on the west line of said Iman D.L.C. No. 44, N. 0°29'21" E., approximately 1,505 ft. to

AP 3 at intersection with the northerly line of Lot 2 of the Columbia Gorge Park Subdivision; thence on the northerly line of said Lot 2 and Lot 1, said Columbia Gorge Park Subdivision, N. 65°46'40" W., approximately 1,375 ft. to

AP 4 at intersection with E. and W. center line of section 2; thence continuing on said northerly line, N. 88°58'40" W., approximately 65 ft. to

AP 5 at intersection with the southeasterly right-of-way line of the Bonneville Power Administration (B.P.A.) Bonneville-Coulee transmission line easement; thence on said southeasterly line, N. 40°32'30" E., approximately 2,135 ft. to

AP 6 at intersection with aforementioned west line of the Iman D.L.C. No. 44; thence leaving said southeasterly line on said west line, N. 0°29'21" E., approximately 215 ft. to

AP 7 at intersection with the center line of aforementioned B.P.A. Bonneville-Coulee transmission line easement; thence on said center line, N. 40°32'30" E., approximately 4,920 ft. to

T. 03 N., R. 07 E.

AP 8 at intersection with the center line of Aalvik Road; thence on said center line northwesterly, approximately 7,525 ft. to

AP 9 at intersection with the E. and W. center line of section 26; thence on said E. and W. center line, S. 89°04'59" E., approximately 3,015 ft. to

AP 10 the 1/4 corner of sections 25 and 26; thence on the line between said sections 25 and 26, N. 0°34'36" E., approximately 2,639.84 ft. to

AP 11 the corner to sections 23, 24, 25, and 26; thence on the line between said sections 23 and 24, N. 01°47'00" E., approximately 558.6 ft. to

AP 12 at intersection with the center line of the B.P.A. McNary-Ross No. 1 transmission line easement; thence on said center line, N. 65°01'50" E., approximately 4,920 ft. to

AP 13 thence continuing on said center line, N. 61°43'30" E., approximately 1,040 ft. to

AP 14 at intersection with the line between R. 7 E. and R. 7-1/2 E.; thence on the line between said R. 7 E. and R. 7-1/2 E. southerly, approximately 7,500 ft. to

AP 15 at intersection with the center line of the aforementioned B.P.A. Bonneville-Coulee transmission line easement; thence on said center line, N. 77°37'00" E., approximately 1,270 ft. to

T. 03 N., R. 7-1/2 E.

AP 16 thence continuing on said center line, N. 69°37'30" E., approximately 900 ft. to

AP 17 at intersection with the thread of Nelson Creek; thence along said thread downstream, southerly, approximately 5,945 ft. to

AP 18 at intersection with the aforementioned right bank of the Columbia River at B.N.P.E.; thence along said right bank southwesterly, approximately 18,000 ft. to (see Footnote 6)

AP 1 at intersection with said northeasterly line of the Bradford D.L.C. No. 37 and **Point of Beginning.**

the Area being 3,153 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):

- a. Sheet 1
- b. Sheet 3

2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.

- a. USFS Map 7
- b. USFS Map 8

3. "Final Order of the Columbia River Gorge Commission, Minor Urban Area Boundary Revision - City of Stevenson, UA-98-02," dated June 22, 1999.

4. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. The normal pool elevation of the Bonneville Dam is 72 ft. (N.G.V.D. 29) as shown on the National Scenic Area Maps dated September 1986. The current Quad maps show an elevation of 74 ft.

2. Both the 1987 USFS and 1986 Act Maps show this line going from AP 2 to AP 6. This area reflects the "Final Order of the Columbia River Gorge Commission, Minor Urban Area Boundary Revision - City of Stevenson, UA-98-02," dated June 22, 1999, records of Columbia River Gorge Commission, White Salmon, Washington. This revision is also shown and depicted on the November 10, 1997 memorandum as Area 2 (Iman Lake Triangle). The revision area is included in this legal description.

3. Between AP 7 and AP 8 both the 1987 USFS and 1986 Act Maps depict the center line of the Bonneville-Coulee (300 ft. wide) transmission line easement with angle breaks. The Bonneville-Coulee line drawings do not show angle

breaks nor do any exist in the field. This legal description simply calls the center line of the Bonneville-Coulee right-of-way.

4. Both the 1987 USFS Maps (Sheets 7 and 8) and the 1986 Act Maps (UA-004, Sheets 1 and 3) were analyzed for preparation of this description. There is only one location where the maps differ enough to note. This location is the AP 15 to AP 17 courses. The USFS Map runs to a B.P.A. transmission line easement center line. The Act Map runs a random direction to intersect Nelson Creek. With no logic to the random Act Map course, this description held the USFS Map location.

5. The Urban Area Boundary jumps across the mouth of Rock Creek. It does not enter Rock Cove.

Columbia River Gorge National Scenic Area

The Dalles Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 feet horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Dalles Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 1 North, Range 13 East,

Township 2 North, Range 13 East,

Township 1 North, Range 14 East, and

Township 2 North, Range 14 East, of the Willamette Meridian, Wasco County, Oregon.

T. 02 N., R. 14 E.

- AP 1 **Beginning** at the record meander corner (See Footnote 1) on the left bank of the Columbia River on the line between sections 36 and 31, T. 02 N., Rs. 13 and 14 E., perpetuated by the United States Army Corps of Engineers (U.S.A.C.E.) in 1939 from original evidence; monumented with a brass disk cemented into the top of solid rock, from which the corner of Tps. 01 and 02 N., Rs. 13 and 14 E. bears S. 00°14'42" W., a distance of 2,033.43 ft.; Latitude 45°36'39.6" N. Longitude 121°07'37. 2" E. thence on the line between T. 02 N., Rs. 13 and 14 E., S. 00°14'42" W., approximately 1,070 ft. to
- AP 2 at intersection with the northwesterly right-of-way line of the Union Pacific Railroad (See Footnote 2); thence on a line, northeasterly, approximately 873 ft. to at intersection with the southwesterly right-of-way line of
- AP 3 Interstate 84 and the line between lots 4 and 5 in said section 31; thence on the line between said lots 4 and 5, identical with the E. and W. center line of the SW1/4 of section 31, S. 89°46'38" E., approximately 2,220 ft. to
- AP 4 the center S1/16 corner of said section 31 as shown on County Survey (C.S.) No. 5-072, records of Wasco County, Oregon; thence on the N. and S. center line of section 31, N. 0°57'09" E., approximately 61 ft. to
- AP 5 at intersection with the southerly right-of-way line of Lower Eightmile County Road, formerly The Dalles - California Highway; thence on said southerly right-of-way line, easterly, approximately 2,475 ft. to
- AP 6 a 5/8" iron rod as shown in C.S. No. 4-087, records of Wasco County, Oregon, at intersection with the line between sections 31 and 32; thence on said section line, S. 0°18'44" W. a distance of 446.80 ft. to
- AP 7 a 5/8" iron rod as shown in said C.S. 4-087, at intersection with the northeasterly boundary line of Bonneville Power Administration (B.P.A.) land as described in Deed document No. 66-0507, records of Wasco County, Oregon, from which the corner of sections 5, 6, 31, and 32, Tps. 01 and 02 N., R. 14 E. bears S. 0°18'44" W. a distance of 776.20 ft., perpetuated by the U.S.A.C.E. in 1937; monumented with a stainless steel post with a brass cap on top;

thence on the northeasterly boundary line of said B.P.A. land, S. 72°02'37" E. a distance of 2,417.83 ft. to

T. 01 N., R. 14 E.

- AP 8 at intersection with the line between sections 5 and 32, Ts. 01 and 02 N., R. 14 E.;
- thence on the line between said sections 5 and 32, N. 89°14'04" E. a distance of 353.83 ft. to
- AP 9 the 1/4 corner of sections 5 and 32, Ts. 01 and 02 N., R. 14 E.;
- thence on the line between said sections 5 and 32, N. 89°49'59" E., approximately 744 ft. to
- AP 10 from which the northerly corner of unnumbered lot (NE1/4 NE1/4) containing 42.12 acres and unnumbered lot (NW1/4 NE1/4) containing 42.00 acres, said section 5, bears N. 89°49'59" E., approximately 587 ft.;
- thence, S. 53° E. a distance of 742 ft. to
- AP 11 at intersection with the line between said unnumbered lots, from which the northerly corner bears northerly, approximately 455 ft.;
- thence on the line between said unnumbered lots, southerly, approximately 928 ft. to
- AP 12 the southerly corner of said unnumbered lots;
- thence on the southerly line of said lot (NW1/4 NE1/4) and unnumbered lot (NE1/4 NW1/4) containing 41.86 acres, S. 89°39' W. a distance of 2,648 ft., as shown in C.S. 0163-2, records of Wasco County, Oregon, to
- AP 13 the southerly corner of unnumbered lot (NW1/4NW1/4) containing 41.74 acres and unnumbered lot (NE1/4 NW1/4) containing 41.86 acres, said section 5;
- thence on the N. and S. center line of the NW1/4 of section 5, southerly, approximately 1,304 ft. to
- AP 14 the center W 1/16 corner of section 5;
- thence on the E. and W. center line of section 5, S. 89°39' W. a distance of 1,320.5 ft. to
- AP 15 the 1/4 corner of sections 5 and 6;
- thence on the line between sections 5 and 6, S. 00°25' E., approximately 2,640 ft. to
- AP 16 the corner of sections 5, 6, 7, and 8, established by Professional Land Surveyor (P.L.S.) No. 872 in 1983, as described in Wasco County Land Corner Record Sheet L.C. 0678; monumented with an aluminum post and cap;
- thence on the line between sections 6 and 7, S. 88°03' W. a distance of 1,494.41 ft., as shown in the survey of B.P.A. Celilo-Mead Transmission Line, Page 1 of 266, dated 2/8/1967, records of B.P.A., to
- AP 17 at intersection with the easterly line of the B.P.A. Celilo-Mead Transmission Line easement, as shown in said survey;
- thence leaving B.P.A. land, on easterly line of said easement, S. 19°45' E. a distance of 1,000 ft. to
- AP 18 on said easterly line;
- thence perpendicular to said easterly line, across the full width of said easement, S. 70°15' W. a distance of 437.5 ft. to
- AP 19 on the westerly line of said easement;
- thence on said westerly line, N. 19°45' W. a distance of 1,140 ft. to
- AP 20 at intersection with the line between sections 6 and 7, identical with the south line of the aforementioned B.P.A. land;
- thence on said line, S. 88°03' W., approximately 970 ft. to
- AP 21 the northwest corner of that property described in Deed Document No. 2011-1521, records of Wasco County, Oregon;
- thence on the northwesterly boundary line of said property, identical with the southerly line of said B. P. A land, southwestly, approximately 1,682 ft. to
- AP 22 at intersection with the easterly right-of-way line of The Dalles - California Highway, US 197;
- thence on said easterly right-of-way line, northwesterly, approximately 355 ft. to
- AP 23 at intersection with the easterly line of the R. R. Thompson Donation Land Claim (D.L.C.) No. 37;
- thence on said easterly D.L.C. line, N. 00°04' 05" W. a distance of 2,371.62 ft. to
- AP 24 the northeast corner of said Thompson D.L.C., perpetuated by P.L.S. No. 856 in 1983, as shown in Wasco County L.C. 0686; monumented with a 2-inch bronze disk set in a large stone;
- thence leaving B.P.A. land, on the northerly line of said Thompson D.L.C., on The Dalles Urban Growth Boundary (T.D. UGB) from this point forward unless otherwise noted, N. 89°34' W., approximately 3,920 ft. to
- T. 01 N., R. 13 E.**
- AP 25 at intersection with a line extended northerly, parallel with and 208.7 ft. easterly of, the westerly line of Lot 1, Cherry Park Addition to Wasco County;
- thence on said line, S. 00°08' W., approximately 90 ft. (See Footnote 3) to

- AP 26 the southeast corner of the Cherry Park Grange Tract described in Deed Book 127 at Page 725, records of Wasco County, Oregon; thence on the southerly line of said tract, N. 89°34' W. a distance of 208.7 ft. to
- AP 27 at intersection with the easterly right-of-way line of Lambert Street; thence on said right-of-way line, S. 00°08' W., approximately 2,543 ft. to
- AP 28 at intersection with the southerly line of the aforementioned Thompson D.L.C.; thence on said southerly line, N. 89°28'53" W., approximately 4,640 ft. to
- AP 29 at intersection with the southerly terminus of the center line of Thompson Street, as platted in Thompson Addition to Wasco County; thence on the southerly extension thereof, S. 00°08' W. a distance of 20 ft. to
- AP 30 at intersection with a line parallel with and 20 ft. southerly of the southerly line of said Thompson D.L.C., when measured perpendicular thereto; thence on said line, N. 89°28'53" W. a distance of 301.48 ft. to
- AP 31 at intersection with the westerly line of Wasco County Partition Plat 2004-0013; thence on said westerly line, S. 00°10'48" E. a distance of 1,172.60 ft. to
- AP 32 the southeast corner of The Dalles city reservoir land as described in Deed Book 108 at Page 499, records of Wasco County, OR; thence N. 89°56' W. a distance of 1,516.02 ft. to
- AP 33 the southeast corner of the John A. Simms D.L.C. No. 39; thence on the southerly line of said Simms D.L.C., N. 89°45' W. a distance of 3,003.41 ft. to
- AP 34 the southwest corner of the Plat of Assembly Addition; thence on the westerly line of said Assembly Addition and the northerly extension thereof, N. 00°04' W. a distance of 568.15 ft. to
- AP 35 at intersection with the southerly boundary line of Dry Hollow Elementary School property, as described in Deed Book 139 at Page 605, records of Wasco County, Oregon, from which the southeast corner of the W.D. Bigelow D.L.C. No. 40 bears N. 89°56' E. a distance of 660.00 ft.; thence on the southerly boundary line of said school land, S. 89°56' W., approximately 390 ft. to
- AP 36 the southwest corner of said school land (See Footnote 4); thence on the westerly line of said school land and the northerly extension thereof, leaving T.D. UGB, N. 00°39' W., approximately 530 ft. to
- AP 37 the southerly right-of-way line of East Scenic Drive; thence on said southerly right-of-way line westerly, approximately 850 ft. to
- AP 38 at intersection with the northerly extension of the easterly line of Lot 5, Block 2, Orchard Hills Addition to the City of The Dalles; thence on said northerly extension of the easterly line of Lot 5, the easterly line of Lot 5, and further on the southerly extension thereof, S. 19°30' W., approximately 680 ft. to
- AP 39 at intersection with the southerly line of the aforementioned Bigelow D.L.C.; thence on said southerly line, S. 89°59' W., approximately 1,500 ft. to
- AP 40 the southwest corner of the Plat of Hillcrest Addition; thence on the westerly line of Hillcrest Addition, N. 00°10'00" E., approximately 360 ft. to
- AP 41 at intersection with the City of The Dalles city limit line; thence on said city limit line, S. 77°09' W., approximately 965 ft. to
- AP 42 at intersection with the southeasterly extension of the Fort Dalles Military Reservation line; thence on said city limit line N. 66°36' W., approximately 1,140 ft. to
- AP 43 the southeast corner of said Fort Dalles Military Reservation at intersection with the westerly line of the aforementioned Bigelow D.L.C., from which the southwest corner of said Bigelow D.L.C. bears S. 32°30' W., on said westerly line, a distance of 695.47 ft.; thence on the southerly line of said Fort Dalles Military Reservation, N. 66°36' W., approximately 1,225 ft. to
- AP 44 from which the initial point of Brocks Addition to the City of The Dalles bears S. 66°36' E. a distance of 2.0 ft.; thence on the southeasterly line of that property described in Deed Document 1968-0064, records of Wasco County, Oregon, S. 47°27' W. a distance of 228.60 ft. to
- AP 45 the southeasterly corner thereof; thence on the southwesterly line of said property, N. 38°46' W. a distance of 64.00 ft. to

- AP 46 the southwesterly corner thereof;
thence on the northwesterly line of said property,
N. 42°58' E. a distance of 168.77 ft. to
- AP 47 from which the southerly line of the Fort Dalles
Military Reservation bears northerly 20 ft., when
measured perpendicular thereto;
thence on a line parallel with and 20 ft. southerly,
when measured perpendicular from said southerly
line, N. 66°22'30" W. a distance of 151.28 ft. to
- AP 48 the interior corner of the property described in
Deed Document No. 1979-2215, records of
Wasco County, Oregon;
thence on the westerly most southeasterly line of
said property, S. 23°37'30" W. a distance of
210.00 ft. to
- AP 49 the most southerly corner thereof;
thence on the southerly most southwesterly line of
said property, N. 66°22'30" W. a distance of
100.00 ft. to
- AP 50 the southwesterly corner thereof;
thence on the northwesterly line of said property,
N. 23°37'30" E. a distance of 230.00 ft. to
- AP 51 at intersection with the westerly right-of-way line
of Radio Way, identical with said southerly line of
the Fort Dalles Military Reservation;
thence on said southerly line and city limit line, N.
66°36' W., approximately 1,815 ft. to
- AP 52 at intersection with the easterly right-of-way line
of Sunset Valley Drive;
thence on said right-of-way line, S. 6°00' E.,
approximately 155 ft. to
- AP 53 at intersection with the northeasterly extension of
the southeasterly line of that property described in
Wasco County Deed Document No. 78-0471,
records of Wasco County, Oregon;
thence on said line and continuing on the south-
easterly line of that property described in Wasco
County Deed Book 119 Page 80, records of
Wasco County, Oregon, S. 53°35' W. a distance of
166.38 ft. to
- AP 54 the southwesterly corner of said property
described in Deed Book 119 at Page 80;
thence on the southwesterly line of said property,
N. 36°53' W. a distance of 30.00 ft. to
- AP 55 the southeasterly corner of that property described
in Deed Document No. 1980-0450, records of
Wasco County, Oregon;
thence on the southeasterly line thereof, S. 53°35'
W. a distance of 86.0 ft. to
- AP 56 the southwest corner thereof, identical with the
northeasterly line of that property described in
Deed Book 145 at Page 351, records of Wasco
County, Oregon;
thence on said line, S. 36°53' E. a distance of
30.00 ft. to
- AP 57 the southeasterly corner thereof;
thence on the southeasterly line of said property
and continuing on the southeasterly line of that
property described in Wasco County Deed Docu-
ment No. 66-2105, records of Wasco County, Ore-
gon, S. 53°35' W. a distance of 200.00 ft. to
- AP 58 the southwesterly corner thereof;
thence on the southwesterly line of said property,
N. 36°53' W., approximately 36 ft. to
- AP 59 the southeasterly corner of that property described
in Deed Document No. 1982-0040, records of
Wasco County, Oregon;
thence on the southeasterly line of said property,
S. 53°15' W. a distance of 105.0 ft. to
- AP 60 the southwesterly corner thereof;
thence on the southwesterly line of said property,
N. 36°53' W. a distance of 150.00 ft. to
- AP 61 the southeasterly right-of-way line of Mill Creek
Market County Road;
thence on said southeasterly right-of-way line, S.
53°24" W., approximately 700 ft. to
- AP 62 the northwesterly corner of that property
described in Deed Document No. 79-0849,
records of Wasco County, Oregon;
thence on the line determined by Gifford Pinchot
National Forest Surveyor Don Karsch and Tenne-
son Engineering Corporation surveyor Ben
Beseda, memorialized in a letter dated September
30, 2005 to Brian Litt, File Code 7150, records of
Columbia River Gorge Commission, leaving T.D.
UGB, North, approximately 1,355 ft. to
- AP 63 at intersection with the southerly line of Tract "A"
of the Plat of Ericksen's 4th Addition;
thence rejoining T.D. UGB on said southerly line,
S. 88°31' W., approximately 277 ft. to
- AP 64 the southwest corner of said Tract "A";
thence on the westerly line of said Tract "A", N.
00°19' E. a distance of 149.37 ft. to
- AP 65 thence on a property line, N. 29°36'00" W. a dis-
tance of 36.50 ft. to
- AP 66 thence on said property line, N. 60°24' E. a dis-
tance of 21.00 ft. to
- AP 67 at intersection with the westerly line of said Tract
"A";
thence on said westerly line, N. 00°19' E. a dis-
tance of 166.00 ft. to

- AP 68 the northwest corner of said Tract "A";
thence on the northerly line of said Tract "A", S. 89°41'00" E. a distance of 683.33 ft. to
- AP 69 a 5/8" iron rod at the northeasterly corner Parcel 1, as shown on Partition Plat 2004-0001, records of Wasco County, Oregon;
thence on the easterly line of said partition plat, S. 00°19'00" W. a distance of 118.00 ft. to
- AP 70 a 5/8" iron rod;
thence continuing on said easterly line, S. 43°41'00" E. a distance of 70.23 ft. to
- AP 71 at intersection with the westerly line of the aforementioned Fort Dalles Military Reservation, identical with The Dalles city limit line;
thence on said Military Reservation line and extension thereof, N. 13°59' E., approximately 2,000 ft. to
- AP 72 the westerly right-of-way line of Cherry Heights Road;
thence on said right-of-way line, northerly, approximately 470 ft. to
- AP 73 the center line of Road H, in Fruitland Park Addition;
thence continuing on the 1980 T.D. UGB, on said center line, N. 60°43' W., approximately 129 ft., to
- AP 74 on said center line;
thence N. 17°29' W. a distance of 300 ft. to
- AP 75 on said center line;
thence northwesterly a distance of 140 ft. to
- AP 76 on said center line, at intersection with the southwesterly extension of the northwesterly line of Lot 20 of said Fruitland Park Addition;
thence continuing on said center line, N. 47°04' W., approximately 600 ft. to
- AP 77 on said center line;
thence N. 61°28'14" W., approximately 514 ft. to
- AP 78 at intersection with the southwesterly extension of the westerly most line of Parcel 2, Replat 2005-0035, records of Wasco County, Oregon; said point being S. 24°40'32" W., approximately 20 ft. on said line from the westerly most corner of said Parcel 2;
thence on said extension and most westerly line, N. 24°40'32" E., approximately 232 ft. to
- AP 79 at intersection with the southwesterly right-of-way line of Road "L" in the aforementioned Fruitland Park Addition;
thence on said southwesterly right-of-way line, northwesterly, approximately 760 ft. to
- AP 80 an angle point on the northeasterly line of Lot 51 of said Fruitland Park Addition;
thence on the southwesterly line of Road "L", which becomes West 16th Street, N. 79°34' W. a distance of 406.81 ft., as shown in C.S. G-12-11b, records of Wasco County, Oregon to
- AP 81 an angle point on the northeasterly line of Lot 50 of said Fruitland Park Addition;
thence on the southwesterly right-of-way line of West 16th Street, N. 47°34'03" W., approximately 2,735 ft. to
- T. 02 N., R. 13 E.**
- AP 82 at intersection with the northwesterly right-of-way line of Meek Street in said Fruitland Park Addition;
thence on said northwesterly right-of-way line, N. 42°27'00" E., approximately 650 ft. to
- AP 83 at intersection with the southwesterly right-of-way line of Road "B", known also as West 13th Street;
thence on said southwesterly right-of-way line and extension thereof, N. 47°34'00" W., approximately 420 ft. to
- AP 84 a 5/8-inch iron rod at intersection with the southeasterly exterior boundary of the Amended Plat of Highland Heights, Phase One;
thence on said exterior line, N. 49°54'24" E. a distance of 26.34 ft. to
- AP 85 a 1/2-inch iron rod at the easterly most corner of said plat;
thence on the northeasterly exterior line of said plat and northwesterly extension thereof, N. 22° W., approximately 2,356 ft. to
- AP 86 at intersection with the center line of Pomona Street West;
thence on the center line of Pomona Street West, S. 74°36'40" W., approximately 312 ft. to
- AP 87 at intersection with the westerly right-of-way line of West 13th Street;
thence on said westerly right-of-way line, N. 10°32'36" W., approximately 730 ft. to
- AP 88 at intersection with the line between sections 29 and 32, identical with the southeasterly corner of Block "C", Emerson Park Addition;
thence on the south most southerly line of Emerson Park Addition, S. 89°58' W. a distance of 100 ft. to
- AP 89 the south most southwesterly corner of Emerson Park Addition;
thence on the westerly line of Emerson Park Addition, northerly, approximately 2,050 ft. (See Footnote 6) to

AP 90 the northwesterly corner of Lot 34, Block C, Emerson Park Addition; thence on the north most southerly line of Emerson Park Addition, N. 89°58' W. a distance of 290 ft. to

AP 91 the southwesterly corner of Block "G", Emerson Park Addition; thence on the westerly line of said Block "G", N. 00°02' W. a distance of 390.0 ft. to

AP 92 the northwesterly corner of Emerson Park Addition; thence on the northerly line of Emerson Park Addition, S. 89°58' E. a distance of 390.0 ft. to

AP 93 the northeasterly corner of Block "D", Emerson Park Addition, identical with the westerly right-of-way line of West 13th Street; thence on the westerly then northerly right-of-way line of West 13th Street as it becomes Irvine Street West, northerly and easterly, approximately 760 ft. to

AP 94 at intersection with the westerly right-of-way line of West 10th Street, also known as Chenowith Road; thence on said right-of-way, northwesterly, approximately 390 ft. to

AP 95 at intersection with the thread of Chenowith Creek; thence along the thread of Chenowith Creek, easterly, approximately 4,950 ft. to

AP 96 at intersection with the westerly right-of-way line of Interstate Highway I-84; thence on said right-of-way line, N. 19°56'30" E., approximately 1,900 ft. to

AP 97 being 150 ft. westerly from engineers centerline survey station 2157+84.25 PT, when measured perpendicular thereto; thence leaving said right-of-way line and continuing on the extension thereof, N. 19°56'30" E., approximately 1,020 ft. to

AP 98 at intersection with the westerly extension of the southerly most line of the Edward Crate D.L.C. No. 38; thence on said westerly extension and southerly most line, N. 89°27' E., approximately 1,800 ft. to

AP 99 at intersection with the left bank of the Columbia River, at Bonneville Normal Pool Elevation (B.N.P.E.) 72 ft., National Geodetic Vertical Datum of 1929 (N.G.V.D. 29); thence along said left bank at B.N.P.E. through sections 21, 28, 33 and 34 of T. 02 N., R. 13 E. and

T. 01 N., R. 13 E.

section 3 of T. 01 N., R. 13 E., southeasterly, approximately 17,600 ft. to

AP 100 at intersection with the northwesterly extension of the U.S. Army Corps of Engineers Permit Harbor Line of the Port of The Dalles, as shown in the U.S.A.C.E. Portland District map of "Bonneville Dam - Lands Vicinity Map of The Dalles City" No. R-0-8-10/c-OW dated December 16, 1941 (See Footnote 7); thence on said northwesterly extension, S. 74°24'07" E., approximately 360 ft. to

AP 101 at intersection with the northeasterly extension of the easterly right-of-way line of Union Street, from which the southwesterly corner of Block 2, Plat of Original Dalles City, bears S. 34°35'53" W. a distance of 601.15 ft.; thence on said U.S.A.C.E. Harbor Line, S. 74°24'07" E. a distance of 1,043.48 ft. to

AP 102 thence on said U.S.A.C.E. Harbor Line and southeasterly extension thereof (See Footnote 8), S. 29°05'05" E., approximately 810 ft. to

AP 103 at intersection with a line parallel with and distance of 50 ft. northwesterly from the Port of The Dalles Marina sea wall, as measured perpendicular thereto; thence on said line, northeasterly, approximately 250 ft. to

AP 104 at intersection with a line parallel with and a distance of 50 ft. northerly from said sea wall, as measured perpendicular thereto; thence on said line, easterly, approximately 650 ft. to

AP 105 from which the northerly most extremity of the Port of The Dalles Marina jetty, at B.N.P.E, bears South a distance of 50 ft.; thence on a line, southeasterly, approximately 830 ft. to

AP 106 the north most extremity of the eastern jetty, at B.N.P.E., protecting the existing boat launch ramp; thence along the easterly face of said jetty and the left bank of the Columbia River, at B.N.P.E. through sections 1, 2, and 3, T. 01 N., R. 13 E.,

T. 02 N., R. 13 E.

and section 36, T. 02 N., R 13 E., easterly, approximately 11,800 ft. to

AP 107 at intersection with the northerly extension of the line between lots 1 and 2, section 36, T. 02 N., R. 13 E. (See Footnote 9); thence N. 18° E., approximately 390 ft. to

- AP 108 at intersection with the Oregon-Washington state line;
thence on said state line, N. 46° E., approximately 1,660 ft. to
- AP 109 at intersection with the northeasterly easement line of the B.P.A. transmission line;
thence southerly, approximately 615 ft. to
- AP 1 the **Point of Beginning**
the Area being 5,536 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):

- a. Sheet 8 - The Dalles UA Boundary has been erased, refers to: "See NSA-001, Sheet Two"
- b. Sheet 9 - The Dalles UA Boundary has been erased, refers to: "See NSA-001, Sheet Two"
- c. Sheet 10 - Land Use Map The Dalles, Oregon - is a land use map which, by reference, was the basis for the 1987 USFS Maps. Cartographic depictions from Sheet 10 (Act Map 10) were held where occasional differences occurred with USFS Map 29. Act Map 10 also contains a handwritten note stating, "Note: Urban Growth Boundary follows The Dalles UGB" The Commission and U.S. Forest Service believe the words "Urban Growth Boundary" means "Urban Area Boundary." Consistent with this note, the 1980 Zoning Map of The Dalles, see note 3, was examined where applicable. Act Map 10 depicts numerous courses which fit well with roads, ownerships, and the US rectangular system.

2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description. USFS Certain cartographic interpretations differ from USFS Map to USFS Map. The footnotes in this description explains significant discrepancies between the congressional and USFS Maps, between the USFS Maps, and resolutions of the discrepancies.

- a. CRGNSA Boundary Map, September 1986, NSA-001, Sheet 2, UABs drawn at a small scale.
- b. USFS Map 20.
- c. USFS Map 21.
- d. USFS Map 22.
- e. USFS Maps 20 to 22 have several unexplainable differences with USFS Map 29.

f. USFS Map 29. This map is a "Land Use Map" which was referred to when USFS Maps 20 to 22 were ambiguous. The title block states, "The information on these maps was taken from the official maps referred to in Section 4 of P.L. 99-663 A map entitled 'Land Use Map, The Dalles, Oregon' was used as the base for this map." Based on that statement, this description occasionally holds to Act Map 10 where differences between the two maps occur and where Act Map 10 fits known geographic features or property lines. Map 29 also has two notes stating "Urban Growth Boundary" at the depicted Urban Area Boundary lines. These notes, and identical Act Map UA-004, Sheet 10 notes, demonstrate the

USFS cartographers' intent to follow the congressional delegation's attempt to depict the city's 1986 urban growth boundaries.

3. Zoning Map of City of The Dalles, Oregon, dated May 28, 1980, was used in this description to clarify a number of ambiguities between various maps.

4. City of The Dalles Urban Growth Boundary Mapping and Legal Description (2006) were both referred to as this description was written. The mapping was a basis for comparison USFS because the CRGNSA Act states that urban areas are "generally depicted" (*see* CRGNSA Act, § 4(e)), and are contained on small-scale drawings.

5. Memorandum from Jonathan Doherty, Columbia River Gorge Commission, to Gorge Commissioners, dated November 10, 1997, to Gorge Commissioners, records of Columbia River Gorge Commission, White Salmon, Washington, about "Review of Urban Area Mapping Discrepancies." These mapping discrepancies are noted in this description at each area.

6. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. AP 1 begins at the same point as The Dalles Urban Growth Boundary (T.D. UGB).

2. AP 2 to AP 12 held 1980 T.D. UGB and Act Map 10 for reasons stated in the Map Source Narrative, specifically where these courses fit well with roads, public ownerships, and the US rectangular system, unlike the depictions in USFS mapping in these specific locations. Note also that 1997 G.C. Memorandum "Area 6B - I 84 Right-of-Way" was not held because the "drafting error" pertains to USFS Map 29 which, itself, is not drawn correctly in this location.

3. AP 25 to AP 27 held T.D. UGB, minor difference from USFS Map 29.

4. AP 35 to AP 39 held USFS Map 29, in harmony with conclusion reached in 1997 G.C. Memorandum "Area 6C - Dry Hollow Elementary School."

5. AP 44 to AP 51 held 2006 T.D. UGB description, including two long-standing residential home sites, which were shown as one "protrusion" on the 1982 T.D. UGB map.

6. AP 89 to AP 90 held westerly line of 1953 Emerson Park Addition. The 1987 USFS dotted boundary line is drawn some distance westerly of the West 13th Street right-of-way, not depicting this said right-of-way, suggesting it must have been intended to be westerly of the existing homes, so this description held the 1980 T.D. UGB Map which coincides with the subdivision boundary. This is also consistent with the "Urban Growth Boundary" note on USFS Map 29 and the conclusion reached in 1997 G.C. Memorandum "Area 6D - West Thirteenth Street."

7. AP 100 to AP 106 held USFS Map 29 and U.S. Army Corps of Engineers Permit Line, see also Urban Area Boundary determination letter from James Johnson, Columbia River Gorge Commission, to John Rayburn, Port of The Dalles, dated July 17, 1990, records of Columbia River Gorge Commission, White Salmon, Washington.

8. AP 102 to AP 107 held conclusion reached in 1997 G.C. Memorandum "Area 6A, Columbia River The Dalles," leaving T.D. UGB, staying consistent with USFS Map 29.

9. AP 107 to AP 1 held USFS Map 29 to coincide with state line and to abut the Dallesport Urban Area Boundary.

Columbia River Gorge National Scenic Area

White Salmon and Bingen Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 ft. horizontally, unless otherwise noted.

This description encompasses land that is identified as

The White Salmon and Bingen Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 3 North, Range 10 East, of the Willamette Meridian, Klickitat County, Washington

Township 3 North, Range 11 East, of the Willamette Meridian, Klickitat County, Washington

T. 03 N., R. 10 E.

AP 1 **Beginning** at the intersection of the right bank of the Columbia River at Bonneville Normal Pool Elevation (B.N.P.E.), elevation 72 ft., National Geodetic Vertical Datum of 1929 (N.G.V.D. 29) and the southerly extension of the center line of Washington State Route 141 Alternate; Latitude: 45°43'41.0" N., Longitude: 121°31'15.9" W.; thence on said extended center line, northerly, approximately 135 ft. to

AP 2 at intersection with the northerly right-of-way line of Washington State Route 14; thence N. 48°49' E., approximately 380 ft. to

AP 3 at intersection with the 200 foot contour line (N.G.V.D. 29); thence along said 200 foot contour line, northerly, approximately 990 ft. to

AP 4 at intersection with the westerly extension of the center line of Eyrie Road; thence ascending on the line of steepest uphill gradient, northeasterly, approximately 85 ft. to

AP 5 at intersection with the westerly line of Lot 4 of the Hatfield Estates Phase 1 Subdivision, as recorded at Auditor's File No. (A.F.N.) 1076670, records of Klickitat County, Washington; thence on said westerly lot line, northerly, approximately 110 ft. to

AP 6 the southern terminus of the Urban Area Boundary line as located on Short Plat No. SPL 2004-32, as recorded at A.F.N. 1055724, records of Klickitat County, Washington, and monumented with a 5/8" x 30" iron rod with red plastic cap inscribed "WA PLS 18028"; thence on said Urban Area Boundary line, N. 10°40'43" E. a distance of 54.49 ft. to

AP 7 an angle point on said Urban Area Boundary line, monumented with a 5/8" x 30" iron rod with red plastic cap inscribed "WA PLS 18028"; thence continuing on said Urban Area Boundary line, N 00° W. a distance of 816.27 ft. to

AP 8 an angle point on said Urban Area Boundary line monumented with a 5/8" x 30" iron rod with red plastic cap inscribed "WA PLS 18028"; thence continuing on said Urban Area Boundary line, N. 13°41'40" W. a distance of 268.57 ft. to

AP 9 at intersection with the northern terminus of said Urban Area Boundary line, as located on Short Plat No. SPL 2004-32, identical with the northerly line of Lot 1 of aforementioned Short Plat 2004-32 and monumented with a 5/8" x 30" iron rod with red plastic cap inscribed "WA PLS 18028"; thence on said northerly line and westerly extension thereof, N. 89°13'51" W., approximately 30 ft. to

AP 10 at intersection with the 400 foot contour line (N.G.V.D. 29); thence along said 400 foot contour line, northerly, approximately 2,370 ft. to

AP 11 at intersection with the southerly line of Tax Parcel 03-10-1400-0010/00, as shown on Boundary Line Adjustment BLA 2007-12, as recorded at A.F.N. 1072760, records of Klickitat County, Washington;

- thence on said southerly line, N. 89°39'47" E., approximately 80 ft. to
- AP 12 at intersection with the top of prominent slope identical with the southern terminus of the Urban Area Boundary line as located on said BLA 2007-12;
thence on said top of prominent slope identical with Urban Area Boundary line more specifically described by the following courses:
N. 04°20'52" E. a distance of 170.41 ft. to
- AP 13 thence N. 76°07'36" W. a distance of 214.10 ft. to
- AP 14 thence N. 59°55'04" W. a distance of 104.74 ft. to
- AP 15 thence N. 31°01'16" W. a distance of 105.06 ft. to
- AP 16 thence N. 24°24'20" W. a distance of 30.49 ft. to
- AP 17 thence N. 14°41'39" E. a distance of 242.87 ft. to
- AP 18 thence N. 30°30'08" E. a distance of 51.48 ft. to
- AP 19 thence N. 14°34'05" E. a distance of 367.33 ft. to
- AP 20 thence N. 04°16'28" W. a distance of 100.55 ft. to
- AP 21 thence N. 27°11'36" E. a distance of 267.87 ft. to
- AP 22 thence N. 67°32'17" E. a distance of 165.79 ft. to
- AP 23 thence S. 85°30'02" E. a distance of 121.14 ft. to
- AP 24 thence N. 58°57'14" E. a distance of 156.82 ft. to
- AP 25 thence N. 01°33'31" E. a distance of 123.13 ft. to
- AP 26 at intersection with the northerly line of aforementioned Tax Parcel 03-10-1400-0010/00;
thence on said northerly line, S. 89°34'06" W., approximately 50 feet to
- AP 27 at intersection with the 400 foot contour line (N.G.V.D. 29);
thence along said 400 foot contour line, northerly, approximately 200 feet to
- AP 28 at intersection with the northerly extension of the west line of Lot 1, SP-91-12, as adjusted in aforementioned BLA 2007-12;
thence easterly, approximately 8,269 ft. to
- AP 29 at intersection with an angle point in the Columbia River Gorge National Scenic Area Exterior Boundary and the line between section 13, T. 03 N., R. 10 E., and section 18, T. 03 N., R. 11 E.;
thence identical with said exterior boundary more specifically described by the following courses:
N. 90° E. a distance of 1,189.0 ft. to
- T. 03 N., R. 11 E.**
- AP 30 thence across the east slope of Cemetery hill, South a distance of 773.0 ft. to
- AP 31 thence descending, N. 90° E., approximately 1,430 ft. to
- AP 32 at intersection with the N. and S. center line of section 18;
- thence on said N. and S. center line, S. 00°29'38" E., approximately 2,055 ft. to
- AP 33 the 1/4 corner between sections 18 and 19 perpetuated with a 5/8" iron rod with aluminum cap driven into a 1" pipe as shown in Short Plat SP 97-16, recorded at A.F.N. 1003866, records of Klickitat County, Washington;
thence leaving said exterior boundary line on the N. and S. center line of said section 19, S. 00°44'45" E., approximately 2,645 ft. to
- AP 34 the center 1/4 corner of section 19 perpetuated with a 6" concrete monument in a mound of stones with a 1-1/2" pipe and brass cap on top and a northeast corner of the White Salmon city limits;
thence S. 34°46' E., approximately 405 ft. to
- AP 35 at intersection with the 800 foot contour line (N.G.V.D. 29);
thence along said 800 foot contour line, southeasterly, approximately 3,659 ft. to
- AP 36 at intersection with the line between sections 29 and 30;
thence on the line between sections 29 and 30, N. 01°37'52" E. or S. 01°37'52" W. to
- AP 37 at intersection with the Urban Area Boundary line, as shown on survey recorded at A.F.N. 1020245, records of Klickitat County, Washington, and monumented with a 5/8" x 30" iron rod with cap inscribed "OR 932 & WA 22098", as shown in said survey;
thence on said Urban Area Boundary line, S. 56°33'36" E. a distance of 570.80 ft. to
- AP 38 a 5/8" x 30" iron rod with cap inscribed "OR 932 & WA 22098", as shown in said survey;
thence continuing on said Urban Area Boundary line, S. 46°00'13" E. a distance of 397.66 ft. to
- AP 39 a 5/8" x 30" iron rod with cap inscribed "OR 932 & WA 22098", as shown in said survey;
thence continuing on said Urban Area Boundary line, as shown on survey recorded at A.F.N. 1085112, records of Klickitat County, Washington, S. 45°06'55" E. a distance of 5,532.43 ft. to
- AP 40 at intersection with the line between sections 28 and 29;
thence leaving said Urban Area Boundary line as shown on A.F.N. 1085112 on the line between sections 28 and 29, S. 00°29'43" W., approximately 140 ft. to
- AP 41 the corner of sections 28, 29, 32, and 33 perpetuated with an iron post in concrete with a brass cap on top set by the U.S. Army Corps of Engineers;
thence S. 63°06' E., approximately 3,002 ft. to

- AP 42 the north 1/16 corner of section 33 monumented with a 5/8" x 30" iron rod, as shown in survey recorded at A.F.N. 176093, records of Klickitat County, Washington;
thence on the E. and W. center line of the NE 1/4 of section 33, S. 88°34'53" E. a distance of 1,933.17 ft. to
- AP 43 the center E-NE 1/64 corner of section 33;
thence on the N. and S. center line of the SE1/4 of the NE1/4 of section 33, S. 01°11'20" W. a distance of 1,321.01 ft. to
- AP 44 the center E-E 1/64 corner of section 33;
thence S. 01°07'34" W., approximately 1,206 ft. to
- AP 45 at intersection with the aforementioned right bank of the Columbia River at B.N.P.E.;
thence along said right bank at B.N.P.E., westerly, approximately 7,419 ft. to
- AP 46 at intersection with the easterly mouth of the Bingen Marina;
thence crossing said mouth of the Bingen Marina, S. 64°39' W., approximately 278 ft. to
- AP 47 at intersection with said right bank at B.N.P.E.;
thence along said right bank at B.N.P.E., westerly, approximately 8,739 ft. to
- AP 48 at intersection with the south side of the mouth of the S.D.S. Lumber Co. Harbor;
thence crossing said mouth, N. 08°03' W., approximately 1,893 ft. to
- AP 49 at intersection with the west line of the E.S. Joslyn Donation Land Claim and said right bank at B.N.P.E.;
thence along said right bank at B.N.P.E., westerly, approximately 11,389 ft. to
- AP 1 **the Point of Beginning.**
the Area being 3,325 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):

- a. Sheet 4
- b. Sheet 6

2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.

- a. USFS Map 12
- b. USFS Map 15

3. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. The Bonneville Dam Normal Pool Elevation is listed as elevation 72 ft. on the N.S.A. Boundary Quad Map Sheets 12 and 15.

2. Short Plat No. SPL 2004-32, recorded at Auditor's File #1055724, records of Klickitat County was completed in 2005 by Frank Childs, PLS of Taylor Engineering. Mr. Childs worked with then USFS Scenic Area Surveyor Don Karsch, PLS, to locate the line on this plat. There was correspondence between Mr. Childs, Mr. Karsch and Gorge Commission Senior Planner Brian Litt concerning this short plat. Mr. Childs utilized an overlay of USFS Map 12 which was then rotated, translated and scaled into position by reference to other known common points such as road intersections. Mr. Karsch accepted this location which was subsequently accepted by the Gorge Commission and Klickitat County. Both surveyors acknowledge that the line located in in this fashion is likely to be accurate to within only 10 to 20 ft. Following the initial short plat the property has been developed as Hatfield Estates. Platted lots adjoin the line established in Short Plat 2004-32. Mr. Childs' determination and Mr. Karsch's review did not have the benefit of also being able to review the Act Map. The Act Map appears to follow the 400 contour through the majority of the determination. Utilizing the 400 contour would appear to move the UA line to the east in the 15 to 65 foot range. Because of the determination and subsequent land use actions this description follows the line determined in Short Plat 2004-32.

3. Boundary Line Adjustment, BLA 2007-12 by Klein & Assoc. Inc. for Whitney Miller, recorded September 11, 2007 at A.F. #1072760, records of Klickitat County, shows the UA line and notes it as being the top of a prominent slope. Mr. Klein worked with then USFS Scenic Area Surveyor Don Karsch, PLS to locate the line on this plat. There was correspondence with between Mr. Klein and Mr. Karsch on the UA line location. Mr. Klein imported a digitized GIS line from the USFS map sheet 12. They surmised that the line segments shown on the map represented bluffs or grade breaks. One of Mr. Karsch's notes states "... they were trying to follow breaks of the east side of the White Salmon. Either that or a very poor tracing of the contour line." Their review of the UA line location in this area did not include review of the Act Map. The Act Map in this location appears to follow the contour line. The line established by Mr. Klein was not utilized as a property line in the BLA. There is very little physical difference in these two locations. Either location follows Mr. Karsch's opinion that the intent was to "be able to develop the flat area, and keep the steep slopes protected." Because BLA 2007-12 followed protocols of the time, this description follows the line shown on BLA 2007-12.

4. AP 32 does not coincide with a C.R.G.N.S.A draft exterior boundary description. It runs to the north and south center line of section 18. The USFS and Act Maps clearly show this intent. Berta Romio, P.L.S. No. of the USFS, and coauthor of the draft N.S.A. Exterior Boundary legal description agreed with this conclusion and would support modifying the NSA Exterior description if/when the FS continues work on the exterior descriptions.

5. The locations of AP 36 and AP 37 will be very close. Without benefit of field survey, it is unknown whether the

course from AP 36 to AP 37 will be north or south along the section line; therefore, this description shows both bearings without a distance. AP 37, AP 38, and AP 39 conform to the Klein surveys for Vezina, recorded as A.F.N. 1046562 and 1020245. AP 39 connects to the Pioneer Surveying and Engineering survey for S.D.S. Lumber Co., recorded as A.F.N. 1085112. The surveys do not readily explain how they fully connected to each other. Under additional actual field survey, another angle point may be developed within the UA line. The intent of the UA description is to conform to these surveys. These surveys were performed without benefit of the review of the Act Map. Consideration of the Act Map may have resulted in a slightly different location of the Urban Area description; however, these surveys followed the protocols in place at the time they were completed and were held for the UA description. This creates a small jog on the section 28 and 29 line at AP 40 to AP 41, which does not readily appear on either of the USFS or Act Maps.

Columbia River Gorge National Scenic Area
Wishram Urban Area Legal Boundary Description

All corner points and lines of the Public Land Survey System (PLSS) referenced in this description are according to the latest official survey notes and plats, and state authority survey plats in effect as of December 1, 2016, unless otherwise specified. The hierarchy of the "rules of construction" is observed herein - natural monuments control over artificial monuments, which control over bearings and distances, which control over coordinates. This description will be junior to all senior rights when overlaps may occur. This description shall be considered, along with the final legislation map, as whole and complete per the original legislation creating this urban area and together they both shall govern all boundaries of this area, and guide future "on-the-ground" surveys. Where the boundary is described as a topographic feature, the actual location of the feature will control the approximate course identifying that part of said boundary. Courses for parallel offsets are measured from the apparent road or trail centerlines of the traveled way to determine the boundary and are intended to be used to locate the boundary in the future in the event that the road migrates or becomes indistinguishable; the courses follow the general configuration of the feature and not every turn or bend. The latitudes and longitudes reported for certain corner points and angle points in this description are North American Datum of 1983 (NAD83) (2011) (Epoch2011.00) values where survey-grade Global Positioning System (GPS) data was available, otherwise were determined by Geographical Information Systems (GIS) mapping data with a relative accuracy of ± 40 ft. horizontally, unless otherwise noted.

This description encompasses land that is identified as

The Wishram Urban Area, established in the COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT OF 1986, Pub. L. No. 99-663, § 4(e), 100 Stat. 4274, 4277 (1986), located in portions of:

Township 2 North, Range 15 East, of the Willamette Meridian, Klickitat County, Washington

T. 02 N., R. 15 E.

- AP 1 **Beginning** on the line between sections 16 and 17 at the intersection with the right bank of the Columbia River at The Dalles Pool Normal Elevation (T.D.N.P.E.), elevation 160 ft., National Geodetic Vertical Datum of 1929 (N.G.V.D. 29); Latitude: 45°39'39" W., Longitude: 120°56'48. 8" N.;
- thence on the line between sections 16 and 17, N. 00°19'40" E., approximately 1,710 ft. to
- AP 2 the corner to sections 8, 9, 16, and 17;
- thence on the line between sections 8 and 17, westerly, approximately 260 ft. to
- AP 3 at intersection with the center line of Washington State Route 14;
- thence on said center line, westerly, approximately 5,675 ft. to
- AP 4 at intersection with the line between sections 17 and 18;
- thence on the line between sections 17 and 18, N. 00°23'54" E., approximately 840 ft. to
- AP 5 the corner to sections 7, 8, 17, and 18, said point being perpetuated with an iron post with a brass cap on top set by the U.S. Army Corps of Engineers;
- thence on the line between sections 7 and 8, N. 01°08'56" W., approximately 410 ft. to
- AP 6 at intersection with a line offset North of the line between sections 7 and 18 extending E. and W. through the northmost corner of Lot 4 of Short Plat SP 90-05 as recorded October 20, 1990 at Auditor's File Number (A.F.N.) records of Klickitat County Washington;
- thence parallel with and approximately 900 ft. northerly, of said line between sections 7 and 18, N. 89°17'16" W., approximately 3,315 ft. to
- AP 7 at northmost corner of said Lot 4;
- thence continuing parallel with said section line, N. 89°17'16" W., approximately 1,300 ft. to
- AP 8 at intersection with the northerly extension of the west line of Lot 1 of said Short Plat SP 90-05;
- thence along said extension, identical with the west line of said Short Plat SP 90-05, and the southerly extension thereof, S. 00°00'00" W. a distance of 1,957 ft. to
- AP 9 thence easterly approximately 3,710 ft. to
- AP 10 at intersection with an unnamed drainage, identical with the 400 foot contour line (N.G.V.D. 1929);
- thence downstream along said unnamed drainage, southeasterly, approximately 710 ft. to

- AP 11 the point at which the natural drainage becomes a manmade channel, identical with the northwest corner of Lot 3, Short Plat G-18 as recorded May 15, 1975 at A.F.N. 152475, records of Klickitat County Washington;
thence on the westerly line of said Lot 3, S. 25°20'23" E. a distance of 146.68 ft. to
- AP 12 at intersection with the toe of Talus slope as shown on survey for Gloria Flock recorded November 29, 2011 at A.F.N. 1095717 records of Klickitat County Washington;
thence leaving said westerly line along said toe of talus slope, S. 17°52'03" E. a distance of 202.54 ft. to
- AP 13 at intersection with center of a seasonal drainage;
thence continuing along said toe of talus slope, and identical with said seasonal drainage, S. 16°53'09" E. a distance of 86.92 ft. to
- AP 14 thence S. 31°07'03" E. a distance of 67.15 ft. to
- AP 15 thence leaving said toe of talus slope, continuing identical with said center of seasonal drainage, southeasterly, approximately 175 ft. to
- AP 16 at intersection with the E. and W. center line of section 18;
thence parallel with the line between sections 17 and 18, S. 00°23'56" W., approximately 1,025 ft. to
- AP 17 at intersection with aforementioned right bank of the Columbia River at T.D.N.P.E.;
thence along said right bank at T.D.N.P.E., north-easterly, approximately 6,000 ft. to
- AP 1 the **Point of Beginning**.

the Area being 456 Acres, more or less.

SOURCE MAPS AND DOCUMENTS:

1. 1986 Columbia River Gorge National Scenic Area Act Urban Boundary Maps, UA-004, September 1986, (Congressional or Act Maps):

a. Sheet 9

2. In January 1987, the U.S. Forest Service developed maps based on the congressional maps (USFS Maps). The Commission and U.S. Forest Service used the USFS Maps as the primary National Scenic Area maps until adopting this legal description. The USFS Maps are generally the basis for this description.

a. USFS Map 25

3. Copies of all source maps and documents are available at the Columbia River Gorge Commission and U.S. Forest Service, National Scenic Area offices.

FOOTNOTES:

1. The Dalles Dam Normal Pool elevation is listed as elevation 160 on USFS Map Map 25.

2. Short Plat 90-05, recorded October 22, 1990 at Auditor's File No. 220700 (Vol. 2 of Short Plats, Pg. 60), records of Klickitat County.

3. Short Plat G-18, recorded May 15, 1975 at Auditor's File No. 152475, deed records of Klickitat County.

4. AP 11 to AP 14 follow the survey for Gloria Flock completed by Jesse Garner, WA PLS No. 42687, of Pioneer Surveying and Engineering, recorded November 29, 2011 at Auditor's File No. 1095717, deed records of Klickitat County. See also Gorge Commission letter to Gloria Flock dated November 22, 2011.

5. Both the 1986 Congressional Map (CSW-UA-004, Sheet 11) and the 1987 USFS Map (Sheet 25) were studied for preparation of this description. No differences of significance between the two maps were found.

6. A planning map dated October 6, 1989 and initialed by Gorge Commission staff depicts the line between the GMA and Wishram UA and includes some dimensioning. This map appears to have been completed to allow completion of Short Plat No. SP-90-05, which was recorded October 22, 1990 (Klickitat Co. Auditor's File #220700). This description is generally consistent with this map. This description calls to the west line of Lots 1 and 2 in this short plat so will match up on the 700 foot distance from the west line of Section 18. This description's call north of the north line of Section 18 is approximately 409 ft., not 400 ft.; using the point of the old county road to locate this section of the UA line is more consistent with the USFS and Act maps than the Commission staff determination. This description's call south from the north line of Section 18 is about 1,560 ft., which is longer than the 1,500 used by the Commission staff determination. Not knowing how the Commission staff developed this distance, this description uses the more precise dimensioning developed from the USFS and Act maps.

7. A planning map dated May 22, 1990 and initialed by Gorge Commission staff depicts the line between the GMA and UA along a portion of the southwest side of Wishram. The map does not include any dimensioning. It does call out the center line of a drainage. This description also calls to the drainage, which is generally consistent with Commission staff map.

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

REPEALER

350-81-017. Advising When Review is Required

~~(1) When a person inquires from the Commission whether a proposed development requires Scenic Area review and approval, and the Commission must consider whether the proposed development is in an urban area, the landowner or the landowner's representative shall submit to the Commission:~~

~~(a) narrative metes and bounds description of the urban area boundary for the subject parcel;~~

~~(b) survey map showing the subject parcel; the urban area boundary line; and the location of all proposed development, including but not limited to, buildings, other structures, fences, roads, and utilities; and;~~

~~(c) written permission for Gorge Commission staff and persons providing technical assistance to the Commission to access the subject property to review or conduct surveying activities as needed for review of the survey.~~

~~(2) A licensed surveyor shall prepare the metes and bounds description and survey map. The surveyor shall contact the Commission office for a copy of the official maps, other necessary information, and technical assistance. The survey shall be based on official maps and shall not assume the correctness of any prior boundary determination by a non-surveyor. The Commission may require the surveyor to review proposed methodology with a U.S. Forest Service surveyor or another surveyor providing technical assistance to the Commission.~~

~~(3) After receipt of the items listed in section (1) above, the Commission will review the items and advise the landowner and county whether the proposed development requires approval under Scenic Area authorities. The Commission may engage a surveyor as needed for its review.~~

~~(4) Any disagreement with the landowner's metes and bounds description or survey map shall be handled in a manner common to resolution of surveying disputes generally, and shall not be appealable pursuant to the Scenic Area Act, Management Plan, or Commission Rules.~~

WSR 17-08-002

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed March 22, 2017, 1:39 p.m., effective April 22, 2017]

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

Purpose: WAC 458-20-100 (Rule 100) describes the general guidelines the department of revenue uses to conduct informal administrative reviews. Rule 100 is being amended to reflect the change in the physical address of the division that conducts the informal administrative reviews.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-100 Informal administrative reviews.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 17-03-055 on January 10, 2017.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: March 22, 2017.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-06-013, filed 2/18/16, effective 4/1/16)

WAC 458-20-100 Informal administrative reviews.

(1) **Introduction.** RCW 82.01.060(4) requires that the department "provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes." RCW 82.32.160 allows taxpayers to petition for correction of taxes, interest, or penalties assessed by the department. RCW 82.32.170 allows taxpayers to petition for a determination as to whether a refund request was properly denied. Under authority of these statutes, the department provides an informal, nonadversarial administrative review of these actions. The department will make such determination and resolve matters as may appear to the department to be just and lawful under its statutory authority. The department's administrative review is designed to be an expeditious and less costly means of review as compared to the costs of an independent review by the board of tax appeals (BTA) or a refund action in superior court.

Before requesting review, taxpayers are encouraged to request a supervisor's conference when they disagree with an action proposed by the department. Taxpayers should make their request for the conference with the division of the department that proposes to issue an assessment or take some other action in dispute. Supervisor's conferences can frequently resolve issues prior to the informal administrative review explained in this rule.

(a) **Departmental actions subject to informal administrative review under this rule.** Actions subject to the department's informal administrative review include, but are not limited to:

- (i) An assessment of tax, interest, or penalties;
- (ii) The denial of a refund, credit, or deferral request;
- (iii) The issuance of a balance due notice or a notice of delinquent taxes, including a notice of collection action; and
- (iv) The issuance of an adverse ruling on future liability from the taxpayer information and education (TI&E) section.

(b) **Departmental actions subject to formal administrative appeal.** The informal review provided under this rule should be distinguished from a formal administrative appeal subject to the Administrative Procedure Act (chapter 34.05 RCW). A person may submit a formal administrative appeal of certain actions by the department. Refer to the following rules for information regarding the actions for which the department conducts formal administrative appeal proceedings:

- (i) WAC 458-20-10001 for information regarding an appeal of:
 - A revocation of a certificate of registration (tax registration endorsement) under RCW 82.32.215;
- (ii) WAC 458-20-10002 for information regarding an appeal of:
 - Log export enforcement actions pursuant to chapter 240-15 WAC; or
 - Orders to county officials issued under RCW 84.08.120 and 84.41.120;
- (iii) WAC 458-20-10003 for information regarding an appeal of:

- A departmental request to the liquor and cannabis board to suspend, not renew, or not issue a spirits license as defined in RCW 66.24.010 (3)(c);

- (iv) WAC 458-20-10004 for information regarding an appeal of the assessment of:

- The one-time business license application fee or annual renewal application fee in RCW 59.30.050 (3)(a);

- The annual registration assessment fee in RCW 59.30.050 (3)(b); or

- The delinquency fee in RCW 59.30.050(4);

- (v) WAC 458-20-10202 for information regarding an appeal of:

- Matters relating to the denial or revocation of reseller permits; or

- (vi) WAC 458-20-273 for information regarding an appeal of:

- The denial or revocation of a renewable energy system certification; or

- The denial or revocation of a manufacturer's certification of a solar inverter, solar module, wind generator blade, or stirling converter qualifying as made in Washington state.

(2) **How are informal reviews started?** A taxpayer starts a review of a departmental action by filing a written petition. A petition must be sent to one of the following:

DORARHDadmin@dor.wa.gov

or

Administrative Review and Hearings Division
Washington State Department of Revenue
(~~1025 Union Avenue S.E., Suite 101~~)
6400 Linderson Way S.W.

P.O. Box 47460

Olympia, Washington 98504-7460

or

Fax: 360-534-1340

(a) **Information required in a petition.** A form petition is available on the department's web site at <http://dor.wa.gov> or upon request from the administrative review and hearings division. Taxpayers may use the form petition or prepare one of their own. The taxpayer or its authorized representative must sign the petition, which must contain the following information:

- (i) The taxpayer's name, address, registration/UBI number, telephone number, fax number, email address, and contact person;

- (ii) If represented, the representative's name, address, telephone number, fax number, and email address;

- (iii) Identifying information from the assessment notice, balance due notice, or other document related to the action being reviewed;

- (iv) The amount of tax, interest, or penalties in controversy, and the time period at issue, however, if, in the case of a denied refund request, the amount of interest or penalties is not known, the amount of the tax in controversy;

- (v) The type of review requested (see subsection (4) of this rule);

- (vi) Whether the taxpayer requests an in-person hearing in Olympia or Seattle, a telephone hearing, or no hearing; and

- (vii) A description of each issue or area of dispute and an explanation why each issue or area of dispute should be resolved as the taxpayer requests. To the extent known or available, a taxpayer should cite applicable statutes, rules, other public guidance issued by the department, and case law that support the taxpayer's position. The taxpayer should also submit with the petition documents supporting the taxpayer's position, including:

- Contracts and invoices previously requested and not provided; or

- Documents not previously provided that the taxpayer believes substantiate the taxpayer's claims.

(b) **Incomplete petition.** If a petition does not provide the required information identified in subsection (2)(a) of this rule, the department will notify the taxpayer in writing that the petition is incomplete and not accepted for review. The notice will provide a period of time for the taxpayer to provide the required petition information. If the requested information is timely provided, the petition will be treated as timely filed and accepted for review.

(c) **Authorization required for taxpayer's representative.** If a taxpayer is represented, the taxpayer must have on file with the department a confidential tax information authorization (CTIA) for that representative. Without a CTIA on file, the department cannot share confidential taxpayer information with the representative.

(3) **To be timely, when must a petition be filed or an extension requested?** A taxpayer must file a petition with the department within thirty days after the date the departmental action has occurred.

(a) The department may grant an extension of time to file a petition if the taxpayer's request is made within the thirty-day filing period. Requests for extensions must be in writing. A petition or request for extension is timely if it is post-marked or received within the thirty-day period.

Requests must be in writing to either the email or mailing address noted in subsection (2) of this rule.

(b) The department will not grant an extension of time to file a petition for review of a denied refund that would exceed the time limits in WAC 458-20-229 (Refunds). As explained in WAC 458-20-229, a request for a refund of taxes paid must be filed within four years after the close of the calendar year in which the taxes were paid.

(c) The department will notify taxpayers in writing when a petition is rejected as not timely.

(4) **What are the different types of informal reviews?** The agency conducts four different types of informal reviews.

(a) **Mainstream review.** This is the most common type of review. A review is treated as a mainstream review unless it fits within (b) through (d) of this subsection.

(b) **Small claims review.** When the tax at issue in the review is twenty-five thousand dollars or less and the total amount of the tax plus penalties and interest at issue is fifty thousand dollars or less, the review will normally be assigned as a small claims review, unless the complexity of the issues requires assignment to another category.

The department will issue an abbreviated written determination in a small claims review. This determination is the final action of the department.

(c) Executive level review.

(i) If a review involves an issue of first impression (one for which no agency precedent has been established) or an issue that has industry-wide significance or impact, a taxpayer may request that the review be considered at the executive level. The request must specify the reasons why an executive level review is appropriate. The department will grant or deny the request and will notify the taxpayer of that decision in writing. If granted, the director or the director's designee and a tax review officer will conduct an executive level hearing. The department, on its own initiative, may also choose to consider a review at the executive level.

(ii) Following the executive level hearing, the department will issue a proposed determination, which becomes final thirty days from the date of issuance unless the taxpayer files an objection to the proposed determination within that thirty-day period. Objections must specify mistakes in law or fact contained in the proposed determination, and should also provide legal authority as to why those mistakes necessitate a change to the proposed determination. Unless an extension is granted, objections must be postmarked or received by the department within thirty days from the date the proposed determination was issued. The department will issue the final determination, which may or may not reflect changes based on the objections. Although rare, the tax review officer and the director's designee, in consultation with the director, may grant a second executive level hearing on the objections. The determination in an executive level review is the final action of the department.

(d) Tax rulings issued by TI&E section. Review of a tax ruling is limited to the documents and records reviewed by TI&E and any written statements included with the petition. This review is limited to correcting an error that occurred in the course of the tax ruling process. A written determination will be issued following review of all timely submissions without a hearing. The determination is the final decision of the department. It is not eligible for reconsideration and not appealable to the board of tax appeals under RCW 82.03.130 (1)(a) or 82.03.190.

(5) The review process. The department will acknowledge receipt of the petition and identify the tax review officer assigned to the review.

(a) Role and responsibility of tax review officers. Tax review officers are attorneys trained in the interpretation of the Revenue Act, public guidance issued by the department, and precedents established by prior rulings and court decisions. The department's tax review officers are employed by the department to determine whether the appropriate departmental procedures and interpretations of law have been correctly applied to the issue(s). They are responsible for providing a departmental (not independent) review. This responsibility includes additional research about the taxpayer's activities related to the tax issue under review when necessary.

(b) Scheduling. The department will notify the taxpayer or taxpayer's representative of the time and place for the review hearing, if any, and establish timelines for the submission of additional documents and written arguments. Before a submission date has passed, the taxpayer may request an extension, which the tax review officer may grant at the tax

review officer's discretion. If a taxpayer fails to comply with a scheduling letter or any extension, the tax review officer may dismiss the petition or decline to consider arguments or documents submitted after the scheduled timelines. A tax review officer may also contact the taxpayer to clarify or narrow issues or request more information as needed for the orderly resolution of the case.

(c) Taxpayer requests to provide additional materials. If a taxpayer asks to submit additional documents or written arguments after the deadlines established in the scheduling letter, or any extension thereof, the taxpayer must explain why they could not have been submitted in a timely manner. The tax review officer has the discretion to allow late submissions by the taxpayer. If additional documents or written argument is allowed by the tax review officer after the hearing, they must be submitted within thirty days of the hearing. The tax review officer has the discretion to allow additional time for submitting additional documents or further fact-finding, including scheduling an additional hearing, as necessary in a particular case.

(d) Informal review hearings. The hearing is an opportunity to discuss the documents and arguments submitted and to clarify the reasons why the taxpayer believes it is entitled to receive the requested relief. No record is made of the hearing. The hearing is not open to the general public. Any person attending the hearing is not placed under oath. The tax review officer has the discretion to decide the case without a hearing if legal or factual issues are not in dispute, or the taxpayer fails to appear at a scheduled hearing or otherwise fails to respond to inquiries from the department. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other authorized person. All hearings before a tax review officer are conducted informally and in a nonadversarial manner.

(e) Issuing a determination. Following the hearing, if any, and review of all materials, the department will issue a determination consistent with the applicable statutes, rules, other public guidance issued by the department, case law, and department precedents. The tax review officer will notify the taxpayer of this decision in writing.

(f) Additional information or research identified by the department. The tax review officer may identify additional facts or novel legal arguments not previously communicated to the taxpayer. In this event, the tax review officer will provide the taxpayer with an opportunity to respond.

(g) Determination is final decision by the department. The determination is the final decision of the department and is binding upon the taxpayer unless a petition for reconsideration is timely filed by the taxpayer and accepted by the department. All determinations issued by the department, except those issued for a review of a TI&E tax ruling (subsection (4)(d) of this rule), are appealable to the board of tax appeals (BTA) or, alternatively, the Thurston County superior court. See subsections (8) and (9) of this rule for additional information.

(6) Request for reconsideration. If a taxpayer believes that an error has been made in a mainstream determination, the taxpayer may, within thirty days of the issuance of the determination, petition in writing for reconsideration of the decision. Only determinations issued from mainstream

reviews are subject to reconsideration. The request for reconsideration must specify mistakes in law or fact contained in the determination and should also provide legal authority as to why those mistakes necessitate the reconsideration of the determination. Any new documents and explanations must be included with the petition.

The department may grant or deny the request for reconsideration. If the request is denied, the department will send to the taxpayer written notice of the denial and the reason for the denial. The denial is then the final action of the department. If the request is granted, although rare, the tax review officer may hold a reconsideration hearing or a determination may be issued without a hearing. A reconsideration determination is the final action of the department.

A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue that has industry-wide impact or significance. The request for executive reconsideration must also specify the reasons why executive level review is appropriate. Any new documents and explanations must be included with the petition. The department will grant or deny the request and will notify the taxpayer of that decision in writing.

(7) **Settlements.** At any time during the department's review process, the taxpayer or the department may propose to compromise the matter by settlement. A taxpayer interested in proposing settlement of a dispute must submit a written offer to the department to the address noted in subsection (2) of this rule. The taxpayer or its authorized representative must sign the offer. A settlement offer may be made with the review petition or at any time during the review process. All documents needed to evaluate the offer must be submitted with the offer.

(a) **When will the department consider an offer?** Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change;

(ii) A conflict exists between precedents, such as statutes, rules, other public guidance issued by the department, or specific written instructions to the taxpayer;

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome if the matter were presented to a court.

(b) **When will the department not consider an offer?** Settlement is not appropriate when:

(i) The same issue raised by the taxpayer is being litigated by the department;

(ii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case;

(iii) The taxpayer's only argument is that a statute is unconstitutional; or

(iv) The taxpayer's only argument is financial hardship. If a taxpayer claims financial hardship, the tax review officer may refer the matter to the department's compliance division.

(c) **The closing agreement.** If the taxpayer and the department reach agreement, a settlement is concluded by a closing agreement signed by both the department and the taxpayer as provided by RCW 82.32.350. A closing agreement is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

(8) **Appeals to board of tax appeals.** A taxpayer may appeal a denial of a petition for correction of an assessment under RCW 82.32.160 or a denial of a petition for refund under RCW 82.32.170 to the board of tax appeals. The BTA also has jurisdiction to hear appeals taken from department decisions rendered under RCW 82.34.110 (relating to pollution control facilities tax exemptions and credits) and RCW 82.49.060 (relating to watercraft excise tax). The BTA does not have jurisdiction to hear appeals from determinations involving rulings of future tax liability issued by TI&E. See RCW 82.03.130 (1)(a) and 82.03.190. A taxpayer filing an appeal with the BTA must pay the tax by the due date, unless arrangements are made with the department for a stay of collection under RCW 82.32.200. See WAC 458-20-228 (Returns, remittances, penalties, extensions, interest, stay of collection).

(9) **Thurston County superior court.** A taxpayer may also pay the tax in dispute and petition for a refund in Thurston County superior court. The taxpayer must comply with the requirements of RCW 82.32.180.

WSR 17-08-009

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed March 24, 2017, 11:06 a.m., effective May 1, 2017]

Effective Date of Rule: May 1, 2017.

Purpose: All of the sections in this chapter have been amended to update outdated references to Title 388 WAC, medical assistance administration, etc., and have been simplified for easier reading. The amendment to WAC 182-554-400 adds valid prescription and proof of delivery requirements. The amendment to WAC 182-554-500 includes requirements regarding registered dietitian evaluations and recordkeeping for women, infants, and children (WIC) clients and amended authorization requirements and clinical criteria. The amendment to WAC 182-554-600 adds requirements for recordkeeping for WIC clients. The amendment to WAC 182-554-700 adds prior authorization instructions. The requirements for clients with specific medical conditions who need oral enteral nutrition were relocated from WAC 182-554-500 to new sections WAC 182-554-525 and 182-554-550. Authorization requirements were added to WAC 182-554-525 to protect clients under one year of age who receive thickeners. The Food and Drug Administration issued a warning not to give babies thickeners, particularly those born prematurely, because there is substantial evidence that it puts

them at risk of necrotizing enterocolitis. The recommendation is supported by the American Academy of Pediatrics.

Citation of Existing Rules Affected by this Order: Amending 182-554-100, 182-554-200, 182-554-300, 182-554-400, 182-554-500, 182-554-600, 182-554-700, 182-554-800, and 182-554-900.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-23-083 on November 16, 2016.

Changes Other than Editing from Proposed to Adopted Version: Based on comments from the public hearing, WAC 182-554-200, "CDC growth charts: United States. <http://www.cdc.gov/growthcharts/>" was returned to the text. Additionally, in WAC 182-554-500 (3)(b), "a valid prescription that indicates the product is medically necessary as defined in WAC 182-500-0070" was removed and replaced with "completed the agency's enteral nutrition products prescription form (HCA 13-961)."

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 9, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 9, Repealed 0.

Date Adopted: March 24, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-100 Enteral nutrition—General. (1) The ~~((department))~~ agency covers the enteral nutrition products, equipment, and related supplies listed in this chapter, according to ~~((department))~~ medicaid agency rules and subject to the limitations and requirements in this chapter.

(2) The ~~((department))~~ agency pays for covered enteral nutrition products, equipment and related supplies ~~((when))~~ if they are:

(a) ~~((Covered;~~
~~((b)))~~ Within the scope of the eligible client's medical care program;

~~((e))~~ (b) Medically necessary ~~((as defined))~~ under WAC ~~((388-500-0005))~~ 182-500-0070; and

~~((d))~~ (c) Authorized and billed, as required within this chapter, chapters ~~((388-501 and 388-502))~~ 182-501 and 182-502 WAC, and the ~~((department's))~~ agency's published billing instructions ~~((and numbered memoranda; and~~

~~((e) Billed according to this chapter, chapters 388-501 and 388-502, and the department's published billing instructions and numbered memoranda)).~~

(3) The ~~((department))~~ agency requires prior authorization (PA) for covered enteral nutrition products, equipment and related supplies when the clinical criteria ~~((set forth))~~ described in this chapter are not met, including the criteria associated with the expedited prior authorization process. The ~~((department))~~ agency evaluates requests requiring ~~((prior authorization))~~ PA on a case-by-case basis to determine whether they are medically necessary~~((according to the process found in WAC 388-501-0165))~~ under WAC 182-501-0165.

(4) The ~~((department))~~ agency evaluates a request for a covered service that is ~~((in a covered category, but has been determined to be))~~ experimental or investigational ~~((per WAC 388-531-0550, under the provisions of WAC 388-501-0165))~~ under WAC 182-531-0550 and 182-501-0165.

(5) The ~~((department))~~ agency may terminate~~((s))~~ a provider's ~~((participation with the department according to chapter 388-502-WAC))~~ core provider agreement under chapter 182-502 WAC.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-200 Enteral nutrition—Definitions. The following terms and definitions and those found in chapter 182-500 WAC ~~((388-500-0005))~~ apply to this chapter:

"BMI" see **"body mass index."**

"Body mass index (BMI)" - Means a number that shows body weight relative to height, and is calculated using inches and pounds or meters and kilograms.

~~((Department—The department of social and health services (DSHS);))~~ **"Dietitian"** - Means a dietitian who is registered with the Academy of Nutrition and Dietetics and who is certified by the Washington state department of health (DOH).

"Enteral nutrition" - Means the use of medically necessary nutritional products alone, or in combination with traditional food, when a client is unable to consume enough traditional food to meet nutritional requirements. Enteral ~~((nutritional solutions can be given))~~ nutrition may be provided orally or via feeding tube~~((s))~~.

"Enteral nutrition equipment" - Means durable medical feeding pumps and intravenous (IV) poles used in conjunction with nutrition supplies to dispense formula to a client.

"Enteral nutrition product" - ~~((Enteral nutrition formulas and/or products))~~ Means formulas or solutions that help a person meet nutritional requirements.

"Enteral nutrition supplies" - Means the supplies, such as nasogastric, gastrostomy and jejunostomy tubes, necessary to allow nutritional support via the alimentary canal or any route connected to the gastrointestinal system.

"Growth chart" - Means a series of percentile curves that illustrate the distribution of select body measurements (i.e., length, height, weight, and age) in children published by the World Health Organization (WHO), and Centers for Disease Control and Prevention (CDC), National Center for

Health Statistics. CDC growth charts: United States. <http://www.cdc.gov/growthcharts/>.

~~("Nonfunctioning digestive tract" - Caused by a condition that affects the body's alimentary organs and their ability to break down, digest, and absorb nutrients.)~~

~~"Orally administered enteral nutrition products" - ((Enteral nutrition)) Means formulas or solutions ((and products)) that a ((client)) person consumes orally for nutritional support.~~

~~"Tube-((delivery)) delivered enteral nutrition products" - ((The provision of)) Means the nutritional ((requirements)) support that a person receives through a tube into ((the)) a person's stomach or small intestine.~~

~~"Women, infants, and children (WIC) program" (Also known as WIC program) - ((A special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five and low-income pregnant and breastfeeding women who are at nutritional risk, by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.)) See WAC 246-790-001.~~

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

WAC 182-554-300 Enteral nutrition—Client eligibility. (1) To receive oral or tube-delivered enteral nutrition products, equipment, and related supplies, a person must be eligible for one of the Washington apple health programs (~~(listed in the table in)~~ under WAC 182-501-0060 or be eligible for the alien emergency medical (AEM) program (~~((see))~~ under WAC 182-507-0110).

(2) For persons who reside in a nursing facility, adult family home, assisted living facility, boarding home, or any other residence where the provision of food is included in the daily rate, oral enteral nutrition products are the responsibility of the facility (~~(to provide in accordance with)~~ under chapters 388-76, 388-97 and 388-78A WAC.

(3) For persons who reside in a state-owned facility (i.e., state school, developmental disabilities ~~((DD))~~ facility, mental health facility, Western State Hospital, and Eastern State Hospital) enteral nutrition products, equipment, and related supplies are the responsibility of the state-owned facility to provide.

(4) ~~((Persons who have elected and are eligible))~~ A person who has elected to receive the ((department's)) agency's hospice benefit must arrange for enteral nutrition products, equipment and related supplies directly through the hospice benefit.

(5) ~~((Children who qualify))~~ A child who qualifies for supplemental nutrition from the women, infants, and children (WIC) program must receive supplemental nutrition directly from that program ~~((unless the person meets the limited circumstances in WAC 182-554-500(1)(d))~~. The child may be eligible to receive enteral products from the agency if:

(a) The child's need for a product exceeds WIC's allowed amount; or

(b) The product is not available through the WIC program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-400 Enteral nutrition—Provider requirements. (1) The following providers are eligible to enroll ~~((+))~~ or contract with the ((department)) medicaid agency to provide orally administered ~~((enteral nutrition products))~~ and tube-delivered enteral nutrition products, equipment, and related supplies:

(a) A pharmacy provider; or

(b) A durable medical equipment ~~((DME))~~ provider.

(2) To receive payment for orally administered ~~((enteral nutrition products and))~~ or tube-delivered enteral nutrition products, equipment and related supplies, a provider must:

(a) Meet the requirements ~~((#))~~ under chapters ~~((388-501 and 388-502 WAC;))~~ 182-501 and 182-502 WAC.

(b) Provide only those services that are within the scope of the provider's license ~~((;))~~.

(c) Obtain prior authorization from the ((department)) agency, if required, before delivery to the client and before billing the ((department;)) agency.

(d) Deliver enteral nutritional products in quantities sufficient to meet the client's authorized needs, not to exceed a one-month supply ~~((;))~~.

(e) Confirm with the client or the client's caregiver that the next month's delivery of authorized orally administered enteral nutrition products is necessary and document the confirmation in the client's file. The ((department)) agency does not pay for automatic periodic delivery of products ~~((;))~~.

(f) Furnish clients with new or used equipment that includes full manufacturer and dealer warranties for at least one year ~~((; and))~~.

(g) Notify the client's ((physician)) primary care provider if the client has indicated the enteral nutrition product is not being used as prescribed and document the notification in the client's file.

(h) Have a valid prescription. To be valid, a prescription must be:

(i) Written, dated and signed (including the prescriber's credentials) by the prescriber on or before the date of delivery of the product, equipment or related supplies;

(ii) No older than one year from the date the prescriber signed the prescription; and

(iii) State the specific item or service requested, the client's diagnosis and estimated length of need, quantity and units of measure, frequency and directions for use.

(i) Have proof of delivery.

(i) When a client or the client's authorized representative receives the product directly from the provider, the provider must furnish the proof of delivery upon agency request. The proof of delivery must:

(A) Be signed and dated by the client or the client's authorized representative. The date of the signature must be the date the item was received by the client; and

(B) Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name.

(ii) When a provider uses a shipping service to deliver items, the provider must furnish proof of delivery upon agency request. The proof of delivery must include:

(A) The client's name or other client identifier;

(B) The delivery service package identification number;

(C) The delivery address; and

(D) The quantity, a detailed description, and brand name of the item being shipped.

(j) Bill the agency with the following dates of service:

(i) If the provider used a shipping service, the provider must use the shipping date as the date of service; or

(ii) If the client or the client's authorized representative received the product directly from the provider, the provider must use the date of receipt as the date of service.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-500 Covered orally administered enteral nutrition products, equipment and related supplies(~~—Orally administered~~)—Clients age twenty (~~years of age~~) and younger only. (~~(1) The department covers orally administered enteral nutrition products for clients twenty years of age and younger only, as follows:~~

~~(a) The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;~~

~~(b) The client is able to manage their feedings in one of the following ways:~~

~~(i) Independently; or~~

~~(ii) With a caregiver who can manage the feedings; and~~

~~(c) The client meets one of the following clinical criteria:~~

~~(i) Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:~~

~~(A) Be in a wasting state;~~

~~(B) Have a weight for length less than or equal to the fifth percentile if the client is three years of age or younger; or~~

~~(C) Have a body mass index (BMI) of:~~

~~(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or~~

~~(II) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or~~

~~(D) Have a BMI of:~~

~~(I) Less than or equal to twenty five; and~~

~~(II) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.~~

~~(ii) Amino acid, fatty acid, and carbohydrate metabolic disorders.~~

~~(A) The client must require a specialized nutrition product; and~~

~~(B) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~(iii) Cancer(s).~~

~~(A) The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;~~

~~(B) The department pays for orally administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and~~

~~(C) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~(iv) Chronic renal failure.~~

~~(A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and~~

~~(B) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~(v) Decubitus pressure ulcers.~~

~~(A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and~~

~~(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.~~

~~(vi) Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.~~

~~(A) The provider must obtain prior authorization to receive payment; and~~

~~(B) The client must have:~~

~~(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and~~

~~(II) A weight for length less than or equal to the fifth percentile if the client is two years of age or younger; or~~

~~(III) A BMI of:~~

~~(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or~~

~~(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or~~

~~(IV) Have a BMI of:~~

~~(aa) Less than or equal to twenty five; and~~

~~(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.~~

~~(vii) Medical conditions (e.g., dysphagia) requiring a thickener.~~

~~(A) The client must:~~

~~(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and~~

~~(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.~~

~~(B) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~(d) If four years of age or younger.~~

~~(i) The client must:~~

~~(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and~~

~~(B) Have a signed and dated written notification from WIC indicating one of the following:~~

~~(I) Client is not eligible for the women, infants, and children (WIC) program; or~~

~~(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or~~

~~(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and~~

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: <http://www1.dshs.wa.gov/msa/forms/eforms.html>. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight for length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.) (1) Subject to the prior authorization requirements and limitations in this section, and in the *Enteral Nutrition Program Billing Guide*, the agency covers orally administered enteral nutrition products for clients age twenty and younger.

(2) The agency's enteral nutrition program is not a food benefit. All clients under age five who qualify for supplemental nutrition from the women, infants, and children (WIC) nutrition program must receive products and formulas directly from that program. The agency may cover orally administered enteral nutrition products for a client under age five if the client has a WIC information form that verifies:

(a) The client is not eligible for the WIC program;

(b) The client is eligible for the WIC program, but the client's need for an oral enteral nutrition product or formula exceeds the amount allowed by WIC rules; or

(c) The client is eligible for the WIC program, but a medically necessary product or formula is not available through the WIC program.

(3) With expedited prior authorization, the agency covers orally administered enteral nutrition products for a one-time, initial one-month supply if the client:

(a) Has or is at risk of growth or nutrient deficits due to a condition that prevents the client from meeting their needs using food, over-the-counter nutrition products, standard infant formula, or standard toddler formula; and

(b) Has completed the agency's enteral nutrition products prescription form (HCA 13-961).

(4) With prior authorization (PA), the agency covers a monthly supply of orally administered enteral nutrition products if the client:

(a) Has or is at risk of growth or nutrient deficits due to a condition that prevents the client from meeting their needs using food, over-the-counter nutrition products, standard infant formula, or standard toddler formula;

(b) Has a valid prescription that states the product is medically necessary as defined in WAC 182-500-0070; and

(c) Has a nutrition assessment from a registered dietitian (RD) that includes all of the following:

(i) Evaluation of the client's nutritional status, including growth and nutrient analysis;

(ii) An explanation about why the product is medically necessary as defined in WAC 182-500-0070;

(iii) A nutrition care plan that monitors the client's nutrition status, and includes plans for transitioning the client to food or food products, if possible; and

(iv) Recommendations, as necessary, for the primary care provider to refer the client to other health care providers (for example, gastrointestinal specialists, allergists, speech therapists, occupational therapists, applied behavioral analysis providers, and mental health providers) who will address the client's growth or nutrient deficits as described in (a) of this subsection, and facilitate the client's transition to food or food products.

(5) If a client requires orally administered enteral nutrition products for longer than one month, the client must continue to meet criteria in subsection (4) of this section and receive periodic reevaluations from an RD. Periodic reevaluations:

(a) Must be performed at least three times a year for a client age three or younger;

(b) Must be performed at least two times a year for a client older than age three; and

(c) May be performed face-to-face, or by medical record and growth data review and phone contact with the client or the client's caregiver.

(6) If a client requires orally administered enteral nutrition products for longer than one month, the DME or pharmacy provider must obtain PA from the agency. The request for PA must include all of the following:

(a) Documentation of the client's diagnosis that supports the client's need for the orally administered enteral nutrition product;

(b) The client's nutrition care plan, which must monitor the client's nutrition status, and transition the client to food or food products, if possible, or document why the client cannot transition to food or food products;

(c) Updates to the client's nutrition care plan resulting from subsequent reevaluations;

(d) Updates to the client's growth chart;

(e) Documentation that shows through regular follow up and weight checks how the prescribed product is treating the client's growth or nutrient deficits, or is necessary to maintain the client's growth or nutrient status;

(f) Referrals, if necessary, to other health care providers (for example, gastrointestinal specialists, allergists, speech therapists, occupational therapists, applied behavioral analysis providers, and mental health providers) and show communication of recommendations and treatment plans for the client; and

(g) Documentation of any communication the treating provider has had with other providers, such as those in subsection (4)(c)(iv) of this section, directly or indirectly treating the client's growth or nutrient deficits while the client is receiving orally administered enteral nutrition products.

NEW SECTION

WAC 182-554-525 Covered orally administered enteral nutrition products, equipment and related supplies—Thickeners. (1) The medicaid agency covers, with

prior authorization (PA) thickeners for clients with dysphagia who are younger than age one. The request for PA must include:

(a) Proof the client has dysphagia as documented by a speech therapist or an occupational therapist that specializes in dysphagia;

(b) A dysphagia diet plan and assessment for the client from a registered dietitian; and

(c) Documented medical necessity. The report recommending a thickener must be in the client's chart in the prescriber's office.

(2) The agency covers, with expedited prior authorization (EPA), thickeners for clients with dysphagia who are older than age one. The provider must keep the following in the client's file:

(a) Proof the client has dysphagia as documented by a speech therapist or an occupational therapist that specializes in dysphagia;

(b) A dysphagia diet plan and assessment for the client from a registered dietitian; and

(c) Documented medical necessity. The report recommending a thickener must be in the client's chart in the prescriber's office.

NEW SECTION

WAC 182-554-550 Covered orally administered enteral nutrition products, equipment and related supplies—Clients with amino acid, fatty acid, and carbohydrate metabolic disorders, and phenylketonuria. (1) The medicaid agency covers orally administered enteral nutrition products, equipment and related supplies for clients who have amino acid, fatty acid, and carbohydrate metabolic disorders, including phenylketonuria (PKU), if the client requires a specialized nutrition product.

(2) Providers must use the agency's authorization processes as follows:

(a) Providers must use the expedited prior authorization (EPA) process for clients age twenty and younger.

(b) Providers may use the exception to rule process for clients age twenty-one and older.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-600 Covered enteral nutrition products, equipment and related supplies—Tube-delivered.

(1) ~~((The department))~~ **General.** The agency covers tube-delivered enteral nutrition products, equipment, and related supplies, ~~((without prior authorization, for eligible clients))~~ regardless of age ~~((as follows:~~

~~((a) When the client meets the following clinical criteria: (i) The client))~~ if the client:

~~((a) Has a valid prescription under WAC 182-554-400, which must be submitted within three months of the date the prescriber signed the prescription;~~

~~((A) To be valid, a prescription must:~~

~~((i) Be written by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PA-C);~~

(H) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;

(II) Be submitted within three months from the date the prescriber signs the prescription; and

(IV) State the specific product requested, diagnosis, estimated length of need (months), and quantity.

(ii) The client is able to)) (b) Can manage ((his or her)) tube feedings ((in one of the following ways)):

((A)) (i) Independently; or

((B)) (ii) With a ((caregiver who can manage the feedings)) caregiver's assistance; and

((iii) The client)) (c) Has at least one of the following medical conditions:

((A) A nonfunction or)) (i) A disease or ((clinical)) condition that impairs the client's ability to ingest sufficient calories and nutrients ((from products orally or does not permit sufficient)) or restricts calories and nutrients from ((food to reach the)) reaching the client's gastrointestinal tract; or

((B)) (ii) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to maintain weight and strength that is properly proportioned to the client's overall health status.

((b) With the following limitations:

(i) **Limitations.** The following limitations apply to the agency's payment for covered tube-delivered enteral nutrition products, equipment and related supplies. The agency pays for:

(a) One purchased pump, per client, in a five-year period; ((and

(ii)) (b) One purchased nondisposable intravenous pole required for enteral nutrition product delivery, per client, per lifetime((-

(c) Providers must follow the department's expedited prior authorization process to receive payment.

(2) The department pays for up to twelve months of rental payments for tube-delivered enteral nutrition equipment. After twelve months of rental, the department considers the equipment purchased and it becomes the client's property.

(3) The department pays for replacement parts for tube-delivered enteral nutrition equipment, with prior authorization, when:

(a)); and

(c) No more than twelve months of equipment rental. After twelve months the agency considers the equipment purchased and it becomes the client's property.

(3) Women, infants, and children (WIC) program.

(a) If the client is age four or younger, the client must have a signed and dated written notification from the WIC program to receive tube delivered enteral nutrition products. The notice must verify:

(i) The client is not eligible for the WIC program; or

(ii) The client is eligible for the WIC program, but the client's need for a tube delivered enteral nutrition product exceeds WIC's allowed amount.

(b) If the client is age four or younger and is unable to receive a necessary tube delivered enteral nutrition product

from WIC, the provider must keep the following information in the client's file:

(i) Documentation that the requested tube delivered product is not available through the WIC program; or

(ii) Reasons why a similar WIC product does not meet the client's needs.

(4) Authorization.

(a) If the client meets the criteria in subsection (1) of this section, the provider must follow the agency's expedited prior authorization (EPA) process to receive payment.

(b) If the client does not meet the criteria in subsection (1) of this section, the provider must submit a request for prior authorization (PA). The PA request must meet the requirements under WAC 182-554-700(3).

(c) The agency pays for enteral equipment replacement parts with PA if the equipment is:

(i) Owned by the client;

((b)) (ii) Less than five years old; and

((c)) (iii) No longer under warranty.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-700 Enteral nutrition products, equipment and related supplies—Authorization. ((1) The department requires providers to obtain authorization for covered orally administered enteral nutrition products, and tube-delivered enteral equipment and related supplies as required in this chapter and in published department billing instructions and/or numbered memoranda or when the clinical criteria required in this chapter are not met.

(a) For prior authorization (PA), a provider must submit a written request to the department as specified in WAC 388-554-500(2).

(b) For expedited prior authorization (EPA), a provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this chapter and in the department's published enteral nutrition billing instructions. The appropriate EPA number must be used when the provider bills the department.

(c) Upon request, a provider must provide documentation to the department showing how the client's condition met the criteria for PA or EPA.

(2) Authorization requirements in this chapter are not a denial of service for the client.

(3) When an oral enteral nutrition product or tube-delivered enteral nutrition equipment or related supply requires authorization, the provider must properly request authorization in accordance with the department's rules, billing instructions, and numbered memoranda.

(4) When authorization is not properly requested, the department rejects and returns the request to the provider for further action. The department does not consider the rejection of the request to be a denial of service.

(5) The department's authorization does not necessarily guarantee payment.

(6) The department evaluates requests for authorization for covered enteral nutrition products, equipment, and related supplies that exceed limitations in this chapter on a case-by-case basis in accordance with WAC 388-501-0169.

~~(7) The department may recoup any payment made to a provider if the department later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388-502-0100 (1)(c).~~

~~(8))~~ **(1) General.**

(a) Providers must obtain authorization for all covered orally administered or tube-delivered enteral nutrition products, equipment and related supplies as required in this chapter, the agency's published billing instructions, and when the clinical criteria in this chapter are not met.

(b) Authorization does not guarantee payment.

(c) Authorization requirements are not a denial of service.

(d) The agency may reject an incomplete authorization request and return it to the provider for further action. A returned request is not a denial of service.

(e) If a request for authorization exceeds limitations in this chapter, the agency evaluates the request under WAC 182-501-0169.

(f) If the agency determines that a service was wrongfully authorized or did not meet the expedited prior authorization (EPA) criteria, the agency may recoup payment from the provider under chapters 182-502 and 182-502A WAC.

(g) Upon request, a provider must furnish documentation to the agency that shows how the client's condition met the criteria for prior authorization (PA) or EPA.

(2) Prior authorization. PA is required for:

(a) Orally administered enteral nutrition products under WAC 182-554-500; and

(b) Tube-delivered enteral equipment, replacement parts and related supplies under WAC 182-554-600(3).

(3) Prior authorization request form. The provider must submit a request for PA on the Oral Enteral Nutrition Worksheet Prior Authorization Request form. This form is available online at <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>. This form must be:

(a) Complete, with all fields full;

(b) Completed by the prescribing physician, advanced registered nurse practitioner, or physician assistant;

(c) Written, dated, and signed (including the prescriber's credentials) by the prescriber on the same day, and before the date of delivery. This form must not be backdated; and

(d) Submitted within three months of the date the prescriber signed the prescription.

(4) Expedited prior authorization. For EPA, a provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this chapter and in the agency's published billing instructions. The provider must use the appropriate EPA number when billing the agency.

(5) If a fee-for-service client enrolls (in a department-contracted MCO before the department completes) with an agency-contracted managed care organization (MCO) before the purchase or rental of (prescribed enteral nutrition products, necessary equipment and supplies:

(a) The department rescinds the authorization of the purchase or rental;

(b) The department) authorized equipment is complete:

(a) The agency stops paying for (any) the equipment on the last day of the month (preceding) before the month in

which the client (~~(becomes enrolled)) enrolls~~ in the managed care plan; and

~~((e) The department contracted MCO determines the client's continuing need for the equipment and is then responsible for the client.~~

~~(9) The department rescinds any)) (b) The MCO may reevaluate the client's need for the equipment.~~

~~(6) The agency may rescind authorization for (prescribed) enteral equipment if (the equipment was not delivered to the client before) the client:~~

~~(a) ((Loses medical eligibility;)) Enrolls in, or becomes eligible for, an MCO;~~

~~(b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);~~

~~(c) ((Becomes eligible for a department contracted managed care plan;)) Loses eligibility; or~~

~~(d) Dies.~~

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-800 Noncovered—Enteral nutrition products, equipment, and related supplies. (1) The ~~((department))~~ medicaid agency does not cover the following:

(a) Nonmedical equipment, supplies, and related services (including but not limited to, back packs) (for example, backpacks, pouches, bags, baskets, or other carrying containers); and

(b) Orally administered enteral nutrition products for any client (s) age twenty-one (years of age) and older.

(2) A provider may request an exception to rule ((ETR), as described in WAC 388-501-0160, may be requested) under WAC 182-501-0160 for a noncovered service.

(3) When early and periodic screening, diagnosis, and treatment (EPSDT) applies, the ((department)) agency evaluates a request for a noncovered service, equipment, or (supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-534-0100)) related supplies under WAC 182-501-0165. See WAC 182-534-0100 for EPSDT rules(s)).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-900 Reimbursement—Enteral nutrition products, equipment, and related supplies. (1) The ~~((department))~~ medicaid agency:

(a) Determines reimbursement for enteral nutrition products, equipment, and related supplies according to a set fee schedule;

(b) Considers medicare's current fee schedule when determining maximum allowable fees;

(c) Considers vendor rate increases or decreases as directed by the legislature; (and)

(d) Evaluates and updates the maximum allowable fees for enteral nutrition products, equipment, and related supplies at least once per year.

(2) The ~~((department's payment))~~ agency pays for covered enteral nutrition products, equipment and related supplies according to a set fee schedule. The agency's payment includes all of the following:

(a) Any adjustment~~((s))~~ or modification~~((s))~~ to the equipment ~~((required))~~ within three months of the date of delivery ~~((This does not apply to adjustments required because of changes))~~ as long as the adjustment is not caused by a change in the client's medical condition;

(b) Instructions to the client ~~((and/))~~ or caregiver on the safe and proper use of equipment provided;

(c) Full service warranty;

(d) Delivery and pick-up; and

(e) Fitting and adjustments.

(3) If changes in circumstance occur during the rental period, such as death or ineligibility, the ~~((department))~~ agency discontinues payment effective on the date of the change in circumstance.

(4) The ~~((department))~~ agency does not pay for simultaneous rental and ~~((a))~~ purchase of any item.

(5) The ~~((department))~~ agency does not reimburse ~~((providers))~~ for equipment ~~((that is supplied to them))~~ a provider receives at no cost ~~((through suppliers/manufacturers))~~.

(6) The provider who furnishes enteral nutrition equipment to a client is responsible for any costs incurred to have another provider repair equipment if all of the following apply:

(a) Any equipment that the ~~((department))~~ agency considers purchased requires repair during the applicable warranty period;

(b) The provider refuses or is unable to fulfill the warranty; and

(c) The client still needs the equipment.

(7) If the rental equipment must be replaced during the warranty period, the ~~((department))~~ agency recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment delivered to the client if:

(a) The provider is unwilling or unable to fulfill the warranty; and

(b) The client still needs the equipment.

WSR 17-08-011

PERMANENT RULES

CHARTER SCHOOL COMMISSION

[Filed March 24, 2017, 1:27 p.m., effective April 24, 2017]

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

Purpose: To update sections of agency's rules in order to bring into alignment with new charter school law, and to update the charter school commission's public records request processing protocol.

Chapter 108-10 WAC, Introduction, the purpose of the proposed rule is to align language in the charter school commission's rule with the language in the new charter school law (E2SSB 6194).

Chapter 108-20 WAC, Application, the purpose of the proposed rule is to align language in the charter school commission's rule with the language in the new charter school law (E2SSB 6194). There are no anticipated effects of the lan-

guage changes, as the changes being proposed are minor in nature and do not affect the intent or effect of the rule. In addition to the language changes being proposed, sections related to "conversion schools" are deleted in entirety, per the new law.

Chapter 108-40 WAC, Charter school oversight and corrective action policy, renewal and nonrenewal policy, revocation policy, and termination protocol, the purpose of the proposed rule is to align language in the charter school commission's rule with the language in the new charter school law (E2SSB 6194).

Chapter 108-50 WAC, Public records, the purpose of the proposed rule is to update the charter school commission's public records officer and public records request processing protocol for charter school commission compliance with Public Records Act, chapter 42.56 RCW.

Citation of Existing Rules Affected by this Order: Amending chapters 108-10, 108-20, 108-40, and 108-50 WAC.

Statutory Authority for Adoption: For chapters 108-10 and 108-20 WAC is RCW 28A.710.070; for chapter 108-40 WAC is RCW 28A.710.070, 28A.710.180, 28A.710.190, 28A.710.200; and for chapter 108-50 WAC is chapter 42.56 RCW.

Adopted under notice filed as WSR 16-21-079 on October 18, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: January 26, 2017.

Sandy Green

Executive Assistant

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-10-020 Authority. Authority for this title is RCW 28A.710.070, which establishes the Washington state charter school commission as an independent state agency whose mission is to authorize high-quality ~~((public))~~ public schools throughout the state and to ensure the highest standards of accountability and oversight for these schools.

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-20-010 Charter school application process information. (1) Information regarding the charter school application process shall be made available on the commission's web page. The information made available on the web page will include at a minimum: A timeline for the application process, a list of required application materials, the ~~((request))~~ solicitation for proposals ~~((RFP))~~, the scoring rubric used by evaluators, and the contact information for the commission's staff. General questions regarding the application process may be directed to the commission's staff.

(2) The commission may make available an in-person or online orientation session to provide an overview of the charter school application process, content required in the application, and the online platform.

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-20-070 Criteria used for application evaluation. The commission will grant approval only to charter school applicants that are able to demonstrate the capacity to successfully execute all elements of the educational, operational, financial, and governance plan. The charter school applications must demonstrate the applicants' competence in each of the components listed in RCW 28A.710.130 as well as any other requirements in chapter 28A.710 RCW and those outlined below in this section. The approval criteria include:

(1) An executive summary that outlines the school's mission and vision, ~~((target))~~ student population and community, location or geographic area for the proposed school and the school district where it will be located, the educational need and anticipated student population, leadership and governance, enrollment summary, a brief description of the plan for the school, and an explanation of how the applicant will successfully open and operate a high-quality school; community engagement, evidence of need, and parent and/or guardian and community support for the proposed charter school.

(2) A high-quality educational program design and capacity that addresses the following elements:

(a) A curriculum and instructional design framework, must present a clear and coherent framework for teaching and learning, that reflects the needs of the anticipated population and ensures all students will meet or exceed the state standard. This includes:

(i) A description of the basic learning environment (e.g., classroom-based, independent study), class size, classroom management, and structure.

(ii) An overview of the planned curriculum including a sample course scope and sequence for one subject for each division (elementary, middle, high school) the school would serve. In addition, identified course outcomes and demonstrated alignment with applicable state standards.

(iii) Evidence that the educational program or key elements of the program are based on proven methods; evidence that the proposed educational program has a sound base in research, theory, and/or experience, and has been or is likely

to be rigorous, engaging, and effective for the anticipated student population.

(iv) If the curricular content is developed, a summarized description of content choices such as text book selection, by subject, and rationale. The applicant must provide evidence that this curricular content will be appropriate and effective for the ~~((targeted))~~ students as well as adhere to the federal and state standards.

(v) If the curricular content is not developed, a plan for how the content will be developed between approval of the application and the opening of the school, including who will be responsible and when key stages will be completed.

(vi) A description of the primary teaching methods and instructional strategies that the school will expect teachers to use and why the strategies are well-suited for the anticipated student population.

(b) A description of student performance expectations for the school as a whole. If the applicant plans to adopt or develop additional academic expectations beyond the state and authorizer standards, an explanation of the types of expectations (content areas, grade levels). The applicant must also explain the policies, standards, and expectations for promoting students from one grade to the next.

(c) For applications that include high school, a detailed explanation of high school graduation requirements including, but not limited to: A description of the process of earning credit hours, calculating grade point averages, and what information will be available on transcripts, and elective courses offered; explanations of additional requirements that exceed state and authorizer standards; explanations of how these requirements ensure student readiness for college or post secondary opportunities; and an explanation of the systems and structures used for students at risk of dropping out and/or not meeting graduation requirements.

(d) An outline of the school calendar and schedule including, but not limited to: An explanation of how the calendar meets the needs of the school's educational program; the structure of the school day including the number of instructional hours/minutes in a day for core subjects; the length of the school day (start/dismissal times); and the minimum number of hours/minutes devoted to instruction in each grade.

(e) A description of the school culture including, but not limited to: A description of the culture or ethos of the proposed school; an explanation of how it will promote a positive academic environment and reinforce student intellectual and social development; the process of implementation of this culture among students and staff; and an explanation of how the school culture will serve students with special needs.

(f) If they are to be offered, an overview of supplemental programming including, but not limited to: Summer school offerings including the schedule, length, and anticipated participants; resource and staffing needs; extra-curricular or cocurricular activities offerings and how they will be funded. As anticipated for your ~~((target))~~ student population, an overview of programs addressing student mental, emotional, and social development and health, and how these programs will be funded; and other student-focused activities and programs integral to the educational and student development plans.

(g) Special populations and at-risk students includes, but is not limited to: A description of the overall plan to serve students with special needs; a description of more specific plans identifying how the school will meet the students' learning needs in the least restrictive environment possible as defined by state and federal special education guidelines and law; how the school will meet the needs of students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families; how the school will meet the needs of highly capable students; and how the school will comply with applicable laws and regulations governing services to these student populations.

(h) A culturally inclusive student recruitment and enrollment plan that includes, but is not limited to: An enrollment policy; plans for student recruitment and marketing that will provide equal access; and plans for outreach to families of ~~((targeted))~~ at-risk students, if applicable.

(i) Evidence that the proposed discipline plan has a sound base in, and some combination of, research, theory, experience, and best practice; and has an explanation of how it is likely to be effective for the anticipated student population. The discipline policy must be culturally responsive and comply with applicable state laws and authorizer policies which includes, but is not limited to: Equitable and fair practices with incentives to promote positive behavior and school climate; penalties for infractions; types of offenses; rights of students with disabilities in disciplinary actions and proceedings; procedures for due process when a student is suspended or expelled; and how students and parents and/or guardians will be informed of the discipline policy.

~~(j) ((Conversion schools. Proposed conversion schools must provide a detailed plan for how they intend to engage the school community and any information regarding steps already taken; additionally a detailed plan that demonstrates that the conversion school will have sufficient capacity to enroll all students who wish to remain enrolled in the school after conversion; demonstrated support for the proposed conversion by a petition signed by a majority of teachers assigned to the school or a petition signed by a majority of parents and/or guardians of students in the school; if applicable, a description of the organization's prior experience in taking over or turning around an under-performing school; and specific ways it will engage and transform the existing school culture.~~

~~(k))~~ Education program capacity includes, but is not limited to: The identification of key members of the school's leadership team who will play a substantial role in school development and its success; the key members' qualifications to implement school design; identification and descriptions of organizations, agencies, or consultants that are partners in planning and establishing the school; the identification of the principal/head of school candidate and why this individual is well qualified to lead the school in achieving its mission (if no candidate identified, a description of the job and its qualifications, timeline, criteria, recruiting and selection process);

a description of the responsibilities and qualifications of the school's leadership/management team beyond the principal/head of school; and who will be working full time, or nearly full time, to lead development of the school, and the plan to compensate them.

~~((l))~~ (k) The school's plan for using internal and external assessments to measure and report student progress, including those required by the state.

(3) Operations plan and capacity. A detailed plan and supporting information addressing the school's operations plan and capacity including the following elements:

(a) A detailed description of the school's governance includes, but is not limited to: Legal status and governing documents; organization charts that show the school governance, management, and staffing structure in the school's first year and for the term of the charter, and the roles and responsibilities of the governing board, staff, any related bodies, and any external organizations playing a role in the school's management; an explanation of the governance philosophy guiding the board; a description of the governance structure; a list of current and identified board members and their intended roles and responsibilities, including their interests in and qualification for serving the school's board as well as background information on the identified or proposed governing board members and proposed school leadership and management team; if there is no initial governing board, an explanation of how and when the transition to the formal governing board will take place; the procedure by which board members have been and will be selected and how frequently they will meet; a description of the board's ethical standards and procedures for identifying and addressing conflicts of interests; plans for increasing the capacity of the governing board; advisory bodies and the roles and duties of those bodies; and a description of the school's grievance process should a student or parent have an objection to the governing board policy or decision, administrative procedure, or practice at the school.

(b) An explanation of any proposed partnership agreement between a charter school and the school district or educational service district (ESD) in which it resides and a description of the terms of that agreement.

(c) Explanations of any other partnerships or contractual relationships central to the school's operations or mission; in the case of an application where the proposed charter school intends to contract with a nonprofit education service provider (ESP) for substantial educational services, management services, or both, the applicant must:

(i) Provide evidence of the nonprofit ESP's success in serving student populations similar to the ~~((targeted))~~ student population, including demonstrated academic achievement as well as successful management of nonacademic school functions if applicable;

(ii) Provide a term sheet setting forth the proposed duration of the service contract; roles and responsibilities of the governing board, the school staff, and the ESP; scope of services and resources to be provided by the service provider; performance evaluation measures and timelines; compensation structure, including clear identification of all fees to be paid to the service provider; methods of contract oversight

and enforcement; investment disclosure; and conditions for renewal and termination of the contract; and

(iii) Disclose and explain any existing or potential conflicts of interest between the charter school board and proposed service provider or any affiliated business entities.

(d) A detailed description of the school's staffing includes, but is not limited to: Staff structure; staffing plans for the first year and for the term of the charter, hiring, management, and evaluation; professional development; and performance management.

(e) A detailed plan for engaging families in the school before it opens and once students are enrolled. The plan should include specifics on proposed events or activities to engage families.

(f) A detailed plan for acquiring a suitable facility including budget, facilities start up including backup or contingency plans, and a letter of intent. ~~((For a conversion school, the applicant must supply evidence that it has notified the encompassing school district of the conversion. A more detailed facilities plan will be required as part of the preopening requirements.))~~

(g) Start-up and ongoing operations include, but are not limited to: A detailed start-up plan for the school specifying tasks, timelines, and responsible individuals; transportation plan; food service plan; plans for all other significant operational or ancillary services; plan for safety and security for students, the facility, and property; description of types and levels of insurance coverage.

(h) A detailed description of the school's operations capacity includes, but is not limited to: Individual and collective qualifications for successfully implementing operations plan with specific emphasis on staffing, performance management, professional development, general operations, and facilities management; organization's capacity and experience in facilities acquisition and management.

(4) Financial plan. A detailed description of the school's financial plan and capacity includes, but is not limited to:

(a) A description of the systems, policies, and procedures the school will use for financial planning, accounting, purchasing, and payroll, including a description of internal controls and methods for ensuring compliance with all financial reporting requirements; roles and responsibilities of administration and governing board for school finances; plans and procedures for annual audit of financial and administrative operations; methods for ensuring financial transparency; liability insurance plans with ability to indemnify the school, its board, staff, and teachers against tort claims; completion of a budget form and financial plan workbook; a detailed description of assumptions, estimates, and bases for revenue projections, staffing levels, and costs. This includes start-up and five-year cash flow projections and budgets with clearly stated assumptions.

(b) Financial management capacity. A detailed description of the school's financial management capacity includes, but is not limited to: Individual and collective qualifications for successfully implementing the financial plan which includes, at a minimum, financial management, fund-raising and development, and accounting and internal controls.

(5) School specific performance measures. A detailed description of the school's specific performance measures

includes, but is not limited to, the following mission-specific items: Educational goals and targets; organizational goals and targets; nonmandatory assessments or measures for evaluating student learning needs and progression within the school year; training and support school leadership and teachers will receive in analyzing, interpreting, and using performance data to improve student learning.

(6) For existing charter school operators, charter management organizations or educational management organizations, a detailed description of the organization's growth plans and capacity to successfully support and execute that plan.

(7) Conflict of interest. Conflict of interest includes, but is not limited to: Full disclosure of all real or apparent conflicts of interest between reviewers, decision makers, applicants, and any affiliates of these entities.

(8) Background checks. The safety and welfare of the students in Washington's charter schools is of the utmost importance, as is the protection of scarce state resources being entrusted to charter schools. Therefore, application evaluation will include the following background check components:

(a) Each identified or proposed governing board member, and identified or proposed school leadership and management, must complete a background check disclosure form, waiver, and certification which will include disclosure of, at a minimum, criminal background information in accordance with enumerated questions and as aligned with RCW 28A.400.303 and the statutes cited therein. This will also require specific disclosure of financial mismanagement or malfeasance.

(b) The commission may also complete an independent background and/or records check on each identified or proposed governing board member, and identified or proposed school leadership and management.

(c) Individuals will not be permitted to serve on the governing board, administration, or leadership of a charter school if the results of their records check would legally preclude them from working in a school.

(d) Individuals may not be permitted to serve on the governing board, administration, or leadership of a charter school if they have a history of financial malfeasance or mismanagement.

(9) All of the above criteria will be subject to review for cultural responsiveness.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-40-070 Renewal process. (1) No later than May 1st, one school year before the expiration of the charter school contract, the charter school must notify the commission in writing of its decision to either:

(a) Apply for renewal of the contract; or

(b) Cease operation at the expiration of the contract term.

(2) If the school has decided to cease operation at the expiration of the contract term, a termination protocol shall be implemented.

(3) If the school is requesting renewal under the existing contract, it must submit a renewal application before the final

school year begins. The renewal application must be submitted no later than June 1st and must be received by the commission by 5:00 p.m.; if June 1st falls on a weekend, the renewal application must be received by the commission no later than 5:00 p.m. on the Monday following June 1st.

(4) Within ninety days of receiving a renewal application, the commission will issue a written performance report addressing the information outlined in WAC 108-40-080. The performance report will be sent to the school seeking renewal and posted on the commission's web site.

(5) The school may submit a response to the performance report that corrects or clarifies information contained in the report. If the school is subject to the ineligibility presumptions enumerated in WAC 108-40-090, then the school must rebut those presumptions by demonstrating exceptional circumstances that justify renewal in the response to the performance report. If the school submits a response, it must be received by the commission within thirty days of issuance of the performance report.

(6) In conjunction with the performance report, the commission will issue renewal application guidance. The renewal application guidance will, at a minimum, provide the charter school with an opportunity to:

(a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;

(b) Describe improvements undertaken or planned for the school; and

(c) Detail the school's plans for the next charter contract term. The renewal application guidance will also contain the criteria that will guide the commission's renewal decisions.

(7) For those renewal applications deemed eligible for renewal consideration, individuals designated by the commission may conduct a school site visit (renewal inspection) during the renewal applicant school's final school year under the existing charter contract. The renewal inspection may serve as one of the mechanisms for the commission to evaluate and document the charter school's performance and representations to inform the commission's renewal decision. The renewal inspection will include a review of the school's performance and satisfaction of its obligations under the charter contract, with specific focus on any concerns identified in the performance report. Within fourteen days following the renewal inspection, a renewal inspection report will be issued. The school will have ten days to submit a written response to the renewal inspection report.

(8) Those renewal applications deemed ineligible for renewal consideration may appeal this determination in accordance with the procedures outlined in WAC 108-40-100.

(9) Interested parties, including members of the public, may submit written comments to the commission regarding the potential renewal of a school's charter contract. The deadline for submitting comments will be posted on the commission's web site.

(10) For applications deemed eligible for renewal consideration, commission staff will review renewal applications, the renewal inspection report, and other relevant information, and make a recommendation, based on the renewal criteria, to approve, deny, or conditionally approve the

renewal application. This recommendation will be provided to the school and commissioners. This recommendation shall serve as notice of the prospect of and reasons for nonrenewal. Within twenty days of issuance of this recommendation, the school may request an opportunity to respond to the recommendation in accordance with the procedures outlined in WAC 108-40-100; failure to make such a request shall constitute a waiver of the school's right to respond.

(11) The commission will pass a resolution approving, denying, or conditionally approving the renewal application. Renewal may be for a term of up to five years. This term may be shorter depending on the school's performance, demonstrated capacities and particular circumstances.

(12) Upon approval of a school's renewal application, the school must execute a new charter contract within ninety days of the approval decision. The charter contract must include specific conditions that the commission determines are required for necessary improvements to the school; provided, however, if approval of the renewal application is conditional, the renewal conditions must be included in the charter contract.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-40-090 Renewal decision and presumptions. (1) In making charter contract renewal decisions, the commission will:

(a) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(b) Ensure that data used in making renewal decisions are available to the school and the public; and

(c) Provide a public report summarizing the evidence that forms the basis for its decision. Specific criteria guiding the commission's renewal decisions will be set out in the commission's renewal application guidance.

(2) Schools are presumed to be ineligible for renewal if they have:

(a) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management;

(d) Substantially violated any material provision of law from which the charter school is not exempt;

(e) Fallen in the bottom quartile of schools on the state ~~((board's accountability))~~ board of education's Washington achievement index at the time of the renewal application; and

(f) Are subject to an active corrective action plan for the failures or violations listed in (a) through (f) of this subsection.

(3) The presumption of ineligibility can be rebutted if the school demonstrates exceptional circumstances that the authorizer finds justifiable. The school must satisfy this burden in its application and response to the performance report.

(4) A decision to renew, conditionally renew, or nonrenew a school's charter contract will be memorialized in a resolution that sets forth the action taken, the reasons for the decision, and assurances of compliance with the commission's procedural requirements. A report of action, with the resolution attached, must be submitted to the renewal applicant and the state board of education within ten days of the decision.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-40-100 Procedures associated with possible nonrenewal decision. (1) If a school is notified that it is considered ineligible for renewal, or that nonrenewal is recommended, within twenty days of that notice, the school may request an opportunity to respond and present evidence challenging the determination of ineligibility or recommendation for nonrenewal. This request must be sent to the commission's executive director or designee. Failure to make this request within twenty days acts as a waiver rendering the ineligibility determination or nonrenewal recommendation final.

(2) If a school requests an opportunity to respond, the commission will designate an individual, or individuals, to preside over a recorded public proceeding at which the school may:

- (a) Submit a written response explaining why it believes that its charter contract should be renewed;
- (b) Submit documents and give testimony supporting the renewal of the charter contract;
- (c) Call witnesses on its behalf; and
- (d) Be represented by counsel.

(3) The commission may also, through staff or counsel, present documents, witnesses, and/or testimony to support the ineligibility determination or nonrenewal recommendation at the public proceeding.

(4) The presiding officer(s) shall regulate the course of the public proceeding and, in the discretion of the presiding officer(s), may impose reasonable limits on the conduct of the public proceeding including, but not limited to, limitations on the length of time that the school and commission has to present documents and evidence. The presiding officer(s) may issue deadlines and other requirements that the presiding officer(s) deem necessary for the orderly conduct of the proceeding. Unless they conflict with the Charter School((s)) Act and commission's rules, the provisions of chapter 34.05 RCW shall govern these proceedings.

(5) Within thirty days of the public proceeding, the presiding officer(s) shall make a written recommendation to the commission regarding whether the ineligibility or nonrenewal decision should stand or whether it should be altered in some manner. This recommendation will be transmitted to the commission, the school, and posted on the commission's web site.

(6) The commission will, after a reasonable period for deliberation, consider the recommendation of the presiding officer(s), as well as relevant evidence or documentation submitted during the application renewal process, and make a final determination. The commission's final determination

shall be in the form of a resolution that, in the case of a nonrenewal, clearly states the reasons for the nonrenewal.

(7) Within ten days of issuing this resolution, the commission will submit a report of action to the school and the state board of education. The resolution will be attached to the report of action and will set forth the action taken, reasons for the decision, and assurances of compliance with the commission's renewal/nonrenewal procedures.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-40-110 Revocation of charter school contract. (1) The commission may revoke a school's charter contract at any time that it determines that the school failed to comply with the Charter Schools Act or:

- (a) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;
- (b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;
- (c) Failed to meet generally accepted standards of fiscal management; or
- (d) Substantially violated any material provision of law from which the charter school is not exempt.

(2) If the commission determines that a school's charter contract should be revoked, the commission will notify the school, in writing, of the determination and the associated reasons. The school may submit a written response that must be received by the commission within thirty days of issuance of the notice.

(3) The commission, or a person designated by the commission, will review the notice, response, and any supporting information and issue a draft resolution to revoke or not revoke the school's charter contract and any conditions that are recommended if the school's contract is not to be revoked. The draft resolution will be sent to the school.

(4) The school may request an opportunity to respond to a draft resolution recommending revocation. This request must be sent to the commission's executive director, or designee, within twenty days of issuance of the draft resolution. Failure to make this request within twenty days acts as a waiver rendering the draft resolution final.

(5) If a school requests an opportunity to respond, the commission will designate an individual or individuals to preside over a recorded public proceeding at which the school may:

- (a) Submit a written response explaining why it believes that its charter contract should not be revoked;
- (b) Submit documents and give testimony opposing the revocation of the charter contract;
- (c) Call witnesses on its behalf; and
- (d) Be represented by counsel.

(6) The commission may also, through staff or counsel, present documents, witnesses and/or testimony to support the revocation at the public proceeding.

(7) The presiding officer(s) shall regulate the course of the public proceeding and, in the discretion of the presiding officer(s), may impose reasonable limits on the conduct of the public proceeding including, but not limited to, limita-

tions on the length of time that the school and commission has to present documents and evidence. The presiding officer(s) may issue deadlines and other requirements that the presiding officer(s) deems necessary for the orderly conduct of the proceeding. Unless they conflict with the Charter School((s)) Act, and commission's rules, the provisions of chapter 34.05 RCW shall govern these proceedings.

(8) Within no more than thirty days of the public proceeding, the presiding officer(s) shall make a written recommendation to the commission regarding whether the revocation decision should stand or whether it should be altered in some manner. This recommendation will be transmitted to the commission, the school, and posted on the commission's web site.

(9) The commission will, after a reasonable period for deliberation, consider the recommendation of the presiding officer(s) as well as any other evidence or documentation submitted during the revocation process, and make a final determination. The commission's final determination shall be in the form of a resolution that clearly states the reasons for the revocation or decision not to revoke.

(10) Within ten days of issuing this resolution, the commission will submit a report of action to the school, the superintendent of public instruction, and the state board of education. The resolution will be attached to the report of action and will set forth the action taken, reasons for the decision, and assurances of compliance with the commission's renewal/nonrenewal procedures.

(11) Nothing within these rules prevents the commission from engaging in contingency planning in initiating the termination protocol.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-50-020 Agency description—Contact information—Public records officer. (1) The commission authorizes high-quality ((public)) charter public schools throughout the state and ensures the highest standards of accountability and oversight for those schools. The commission's central office is located at:

Washington State Charter School Commission
1068 Washington St. S.E.
Olympia, WA 98501

(2) Any person wishing to request access to public records of the commission, or seeking assistance in making such a request should contact the ((public records officer of the commission):

Public Records Officer
~~Washington State Charter School Commission~~
~~1068 Washington St. S.E.~~
~~Olympia, WA 98501~~
~~360-725-5511~~

Colin.pippin-timeo@charterschool.wa.gov)) public disclosure officer of the office of superintendent of public instruction:

Office of Superintendent of Public Instruction
Attn: Public Disclosure Officer

Old Capital Building, 600 S. Washington
P.O. Box 47200
Olympia, WA 98504-7200
Phone: 360-725-6372
Fax: 360-753-4201
publicrecordsrequest@k12.wa.us

Information is also available at the commission's web site.

(3) The public ((records)) disclosure officer will oversee compliance with the act but ((another)) a commission staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the commission will provide the "fullest assistance" to requestors; create and maintain for use by the public and officials an index to public records of the commission; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the commission.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-50-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during customary business hours of the commission, customary office hours are from 8:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The commission is a small state agency with limited staffing. Consistent with other demands, the commission will provide fullest assistance when a request for inspection is made; to avoid inconvenience, a time to inspect the records should be scheduled with the public records officer. Records must be inspected at the commission's office.

(2) **Records index.** An index of public records is available for use by members of the public, including:

- (a) Commission monthly meetings;
- (b) Annual solicitation documents;
- (c) Charter school application documents;
- (d) Evaluation team recommendation reports;
- (e) Resolutions by the commission which are filed by resolution number, by year.

The index may be accessed online at the commission's web site.

(3) **Organization of records.** The commission will maintain its records in a reasonably organized manner. The commission will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the commission records from the commission offices. A variety of records is available on the commission web site.

Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the commission shall make the request ((in writing on the commission's request form, or by letter, fax, or e-mail

~~addressed to the public records officer and including)) by contacting the public disclosure officer at the office of superintendent of public instruction:~~

Office of Superintendent of Public Instruction
Attn: Public Disclosure Officer
Old Capital Building, 600 S. Washington
P.O. Box 47200
Olympia, WA 98504-7200
Phone: 360-725-6372
Fax: 360-753-4201
publicrecordsrequest@k12.wa.us.

and include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Adequate identification of the public records for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) No fee shall be charged for the inspection of public records. The commission may impose a reasonable charge for providing copies of public records; those charges shall not exceed the amount necessary to reimburse the commission for actual costs incident to such copying. When subject to reasonable charge, no public records will be released until and unless the requestor has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.

~~((c) A form is available for use by requestors at the office of the public records officer and online at the commission's web site.))~~

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 17-08-014
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed March 27, 2017, 9:05 a.m., effective April 27, 2017]

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

Purpose: WAC 246-08-390 Acquisition, security, retention, disclosure and destruction of health care information. RCW 70.02.290 mandates the agency to adopt rules for health care information acquisition, retention, destruction and security. A 2014 update to this law requires the rule to also cover the destruction of information. The revised rule sets standards for the destruction of information.

Citation of Existing Rules Affected by this Order: Amending WAC 246-08-390.

Statutory Authority for Adoption: RCW 70.02.290.

Adopted under notice filed as WSR 17-01-140 on December 20, 2016.

Changes Other than Editing from Proposed to Adopted Version: Editing changes only were made.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 22, 2017.

John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 92-07-080, filed 3/17/92, effective 4/17/92)

WAC 246-08-390 Acquisition, security, retention, disclosure and ~~((security))~~ destruction of health ~~((care))~~ information. ~~((This section sets forth the process by which the department of health or disciplining authority obtains and protects health care information under RCW 70.02.050. This section does not apply to health care information obtained by the department through other sources.~~

~~(1) Acquisition.~~

~~(a) The department shall request health care information in writing.~~

~~(b) Health care providers shall provide the requested information pursuant to RCW 70.02.050.~~

~~(2) Retention. The department shall maintain health care information obtained under this section as long as necessary to perform agency functions.~~

~~(3) Security. The department shall secure the records and protect confidentiality.~~

~~(a) The manager of the program within the department that requested the records shall act as the custodian of records, and shall provide access to the information only as necessary to perform agency responsibilities.~~

~~(b) The custodian shall monitor the location and security of the information.~~

~~(4) The department shall not make health care information obtained under RCW 70.02.050 available for public inspection and copying except as may be required by chapter 42.17 RCW. No health care information containing patient identifying data shall be made available for public inspection and copying under chapter 42.17 RCW. Health care information obtained under this section may be released to public agencies or entities as required by law or upon agreement by the agency or entity that the health care information will be used only for authorized statutory purposes and will not be disclosed further.)~~ This section establishes how the department acquires, secures, retains, discloses, and destroys health care information under chapter 70.02 RCW and health-related data under RCW 43.70.050.

(1) The department of health (department) is the single department in state government with the primary responsibil-

ities for the preservation of public health, monitoring health care costs, the maintenance of minimal standards for quality in health care delivery, and the general oversight and planning for all the state's activities as they relate to the health of its citizenry. In this capacity, the department regularly obtains individually identifiable health care information and health-related data necessary for the department to carry out public health activities.

(2) For the purposes of this section "health information" means "health care information" as defined in chapter 70.02 RCW and "health-related data" as described in RCW 43.70.-050.

(3) Acquisition.

(a) The department may obtain health information as authorized by state and federal law.

(b) The department will identify its statutory authority to obtain health information when the department makes a request for health information.

(c) The department will identify its statutory authority to obtain and to disclose health information when entering into a data sharing agreement.

(4) Privacy and security.

(a) The department protects the privacy of individuals and secures health information consistent with state and federal law and applicable information security standards and guidelines set by the National Institute of Standards and Technologies (NIST).

(b) The department shall appoint a chief information security officer and a privacy officer with delegated agency wide authority to protect the availability, integrity, confidentiality, and privacy of all health information acquired by the department.

(c) Managers of any programs within the department that receive health information act as the primary data steward and assure health information is protected consistent with applicable law and agency privacy, confidentiality and security policies, standards, and practices.

(d) The department will notify a person whose health information is disclosed in violation of state or federal law. The department will make a notification as soon as practicable pursuant to the department's confidential information policy and procedure.

(5) Retention. The department will retain health information in accordance with the department's records retention schedules.

(6) Public inspection and copying.

(a) Chapters 70.02 and 42.56 RCW apply to the public inspection and copying of health information.

(i) Health information that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care is not available for public inspection and copying. Health information that is not individually identifiable is described as "deidentified."

(ii) "Deidentified" has the same meaning as defined in chapter 70.02 RCW.

(iii) The department may consider analogous federal standards for deidentification of protected health information when determining if deidentification of health information is possible.

(b) Permitted disclosures of information and records related to sexually transmitted diseases and information and records related to mental health services are found in chapter 70.02 RCW.

(c) RCW 43.70.050(2) and chapter 42.56 RCW apply to the public inspection and copying of health information as described in RCW 43.70.050(2).

(i) Health information in any form where the patient or provider of health care can be identified shall not be disclosed.

(ii) The department's use of health information shall be in accordance with state and federal confidentiality laws.

(7) Sharing identifiable health information with public health partners.

The department may disclose identifiable health information, including information and records related to sexually transmitted diseases and information and records related to mental health services, for public health purposes as described in chapter 70.02 RCW or as otherwise permitted by law.

(8) Health information received by the department that the department has not requested and is not authorized to receive.

As required by RCW 70.02.290, the department will not make health information the department has not requested and the department is not authorized to receive available for public inspection and copying. The department will destroy such health care information or the department may securely return such health information to the sender if the sender is a health care facility or health care provider subject to chapter 70.02 RCW.

(9) Destruction.

The department shall destroy health information in a manner that reduces it to an illegible condition. Destruction shall take place as soon as practicable after the approved records retention period ends.

WSR 17-08-018

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 27, 2017, 1:28 p.m., effective April 27, 2017]

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

Purpose: Chapter 246-805 WAC, Applied behavior analysis, adopting new rules to create a program for certified and licensed applied behavior analysis professionals, including licensing, certification and practice standards and credentialing fees.

Statutory Authority for Adoption: Chapter 18.380 RCW.

Other Authority: RCW 18.122.050 and 43.70.250.

Adopted under notice filed as WSR 17-01-141 on December 20, 2016.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
WAC 246-805-010 Definitions.		
Proposed	(2) "Behavior Analysis Certification Board" or "BACB" means a national organization that certifies individuals as meeting education, training, supervised experience and examination standards of the behavior analytical profession.	Rule comment. Corrects the organization title and definition.
Adopted	(2) "Behavior Analysis <u>Analyst</u> Certification Board" or "BACB" means a national organization that certifies individuals as meeting education, training, supervised experience and examination standards of the behavior analytical <u>analysis</u> profession.	
Proposed	(3) "Board certified assistant behavior analyst" or "BCaBA" means a person certified with the BACB as meeting the education, training, supervised experience, and examination standards of the BACB.	Rule comment. Clarifies the definition.
Adopted	(3) "Board certified assistant behavior analyst" or "BCaBA" means a person <u>professional</u> certified with the BACB as meeting the education, training, supervised experience, and examination standards <u>to practice ABA under the supervision of a BCBA who meets the BACB supervision requirements of the BACB.</u>	
Proposed	(4) "Board certified behavior analyst" or "BCBA" means a person certified with the BACB as meeting the education, training, supervised experience and examination standards of the BACB.	Rule comment. Clarifies the definition.
Adopted	(4) "Board certified behavior analyst" or "BCBA" means a person <u>professional</u> certified with the BACB as meeting the education, training, supervised experience and examination standards <u>to practice ABA independently. It includes individuals with the designation Board Certified Behavior Analyst-Doctoral (BCBA-D) of the BACB.</u>	
Proposed	(12) "Registered behavior technician" or "RBT" means a person registered with the BACB as meeting the education and training standards of the BACB.	Rule comment. Clarifies the definition.
Adopted	(12) "Registered behavior technician" or "RBT" <u>means a person registered with the BACB as paraprofessional who is credentialed by the BACB to practice ABA under the close ongoing supervision of a BCBA or BCaBA who is responsible for the work performed by the RBT, and meets the education, examination and training standards of the BACB.</u>	
WAC 246-805-100 Licensed behavior analyst—Application requirements.		
Proposed	(4)(a) Current BACB certification as a BCBA. Department verification of the applicant's BCBA certification number is accepted as proof of current certification; or	Clarifies the source of verification.
Adopted	(4)(a) Current BACB certification as a BCBA. Department verification of the applicant's BCBA certification number is accepted as proof of current certification <u>Verification must be sent directly to the department from the BACB;</u> or	
Proposed	(4)(b)(i) A master's or doctorate degree in behavior analysis or other natural science, education, human services, engineering, medicine, or field related to behavior analysis approved by the secretary;	Clarifies the source of information.
Adopted	(4)(b)(i) A master's or doctorate degree in behavior analysis or other natural science, education, human services, engineering, medicine, or field related to behavior analysis approved by the secretary. <u>An official transcript must be provided as evidence of the degree required;</u>	

Proposed/ Adopted	WAC Subsection	Reason
Proposed	(4)(b)(ii) Successful completion of a minimum of two hundred twenty-five classroom hours of graduate level instruction in behavior analysis topics;	Clarifies the source of information.
Adopted	(4)(b)(ii) Successful completion of a minimum of two hundred twenty-five classroom hours of graduate level instruction in behavior analysis topics. <u>An official transcript must be provided as evidence of the course work required;</u>	
Proposed	(4)(iv) Successful completion of the national BACB examination as meeting the requirement in RCW 18.380.050 (1)(iv).	Clarifies specific examination.
Adopted	(4)(iv) Successful completion of the national BACB <u>BCBA</u> examination as meeting the requirement in RCW 18.380.050 (1)(iv).	
WAC 246-805-200 Licensed assistant behavior analyst—Application requirements.		
Proposed	(5)(a) Current certification as a BCaBA from the BACB. Department verification of the applicant's BCaBA certification number is accepted as proof of current certification; or	Clarifies the source of verification.
Adopted	(5)(a) Current certification as a BCaBA from the BACB. Department verification of the applicant's BCaBA certification number is accepted as proof of current certification. <u>Verification must be sent directly to the department from the BACB;</u> or	
Proposed	(5)(b)(i) Graduation from a recognized bachelor's degree program under WAC 246-805-210;	Clarifies the source of information.
Adopted	(5)(b)(i) Graduation from a recognized bachelor's degree program under WAC 246-805-210. <u>An official transcript must be provided as evidence of the degree required;</u>	
Proposed	(5)(b)(ii) Proof of successful completion of a minimum of one hundred thirty-five classroom hours of instruction in behavior analysis topics described in WAC 246-805-220. An official transcript must be provided as evidence of the course work required; and	Clarifies the source of information.
Adopted	(5)(b)(ii) Proof of successful completion of a minimum of one hundred thirty-five classroom hours of instruction in behavior analysis topics described in WAC 246-805-220. <u>An official transcript must be provided as evidence of the course work required;</u> and	
WAC 246-805-230 Licensed assistant behavior analyst—Supervised experience.		
Proposed	(3)(c) At least five percent of the total monthly hours of supervised experience must be under the supervision of a LBA or BCBA.	Rule comment. Provides clarification of the type of supervision.
Adopted	(3)(c) At least five percent of the total monthly hours of supervised experience must be under the supervision, <u>as defined in subsection (5) of this section,</u> of a LBA or BCBA.	
Proposed	(4) A person is qualified to supervise a LABA trainee if he or she: (a) Holds an active license in good standing as a LBA, or holds a current certification as a BCBA and meets the BACB supervisory requirements; (b) Has practiced by providing at least one thousand five hundred hours of behavior analytic services to clients as a LBA or a BCBA; and	Rule comment. Clarifies supervisor standards and makes the rule consistent with WAC 246-805-300.
Adopted	(4) A person is qualified to supervise <u>an</u> LABA trainee if he or she: (a) Holds an active license in good standing as <u>an</u> LBA <u>with at least one year of full-time equivalency practice,</u> or holds a current certification as a BCBA and meets the BACB supervisory requirements; <u>or</u>	

Proposed/ Adopted	WAC Subsection	Reason
	(b) Holds a current certification as a BCBA and meets the BACB supervisory requirements has practice by providing at least one thousand five hundred hours of behavior analytic services to clients as a LBA; or a BCBA who meets the supervision requirements of the BACB; and	
WAC 246-805-300 Certified behavior technician—Application requirements.		
Proposed	(5)(a) Current registration as a RBT from the BACB. Department verification of the RBT registration number is accepted as proof of current registration; or	Clarifies the source of verification.
Adopted	(5)(a) Current registration as a RBT from the BACB. Department verification of the RBT registration number is accepted as proof of current registration <u>Verification must be sent directly to the department from the BACB; or</u>	
Proposed	(5)(b) Current behavior technician registration or certification from a nationally accredited professional credentialing entity accepted by the secretary; or	Clarifies the source of verification.
Adopted	(5)(b) Current behavior technician registration or certification from a nationally accredited professional credentialing entity accepted by the secretary. <u>Verification must be sent directly to the department from the credentialing entity; or</u>	
Proposed	(5)(c) Successful completion of a behavior technician training program outlined in WAC 246-805-320;	Clarifies requirements by referencing subsections of WAC 246-805-310.
Adopted	(5)(c) Successful completion of a behavior technician training program outlined in WAC 246-805- 320 310 <u>to include:</u> <u>(i) Classroom, online, or supervisor-led instruction with the content outlined in subsection (3)(a) of this section;</u> <u>(ii) Experiential learning as outlined in subsection (3)(b) of this section;</u> <u>and</u> <u>(iii) Evaluation and assessment as outlined in subsection (3)(c) of this section.</u>	
WAC 246-805-310 Behavior technician training program.		
Proposed	An applicant who does not hold RBT registration under WAC 246-805-300 (5)(a) or other behavior technician registration or certification accepted by the secretary under WAC 246-805-300 (5)(b) may qualify for a CBT credential by completing a behavior technician training program.	Clarifies section content.
Adopted	An applicant who does not hold RBT registration under WAC 246-805-300 (5)(a) or other behavior technician registration or certification accepted by the secretary under WAC 246-805-300 (5)(b) may qualify for a CBT credential by completing a behavior technician training program <u>meeting the following requirements described in this section.</u>	
Proposed	(2)(a) The behavior technician training program must be affiliated with a postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education; or (b) The behavior technician training program must be through an agency, business or individual meeting the following criteria:	Clarifies what type of organizations are authorized to offer the training program.
Adopted	(2) (a) <u>The behavior technician training program must be:</u> (a) The behavior technician training program must be <u>Affiliated with a postsecondary school or college accredited by a regional or national</u>	

Proposed/ Adopted	WAC Subsection	Reason
	accrediting organization recognized by the U.S. Department of Education; or (b) Affiliated with The behavior technician training program must be through an agency, business, or an individual that: meeting the following criteria:	
Proposed	(2)(b)(i) Has a supervisor within sight and hearing and available for immediate intervention when the trainee is working with clients. (ii) Has a supervisor that is: (A) A LBA who holds a current and active credential in good standing with at least one year of full-time equivalency; or an active BCBA with at least one year of full-time equivalency who meets the supervisor requirements of the BACB. (B) Responsible for the conduct of the trainee at all times when working with clients under his or her supervision. (iii) Responsible for the training program, who will be referred to as the "training program supervisor," and shall: (A) Be unrelated, subordinate to, or employed by the supervisee during the training period. Employment does not include compensation received by the supervisor from the supervisee for supervision services. (B) Be responsible for determining the content of the training, adherence to the training, and ascertaining the competency of the trainee. (C) Supervise the trainee until he or she demonstrates entry level competency, as provided in subsection (2)(a)(v) of this section.	Clarifies requirements.
Adopted	(2)(b)(i) Has a supervisor within sight and hearing and available for immediate intervention when the trainee is working with clients. (ii) Has a supervisor that <u>who</u> is: (A) <u>An</u> LBA who holds a current and active credential in good standing with at least one year of full-time equivalency; or an active BCBA who meets the supervisor requirements of the BACB. (B) Responsible for the conduct of the trainee at all times when working with clients under his or her supervision; <u>and</u> (C) Responsible for the training program, who will be referred to as the "training program supervisor," and shall: (A) (I) Be unrelated <u>Not be related to</u> , subordinate to, or employed by the supervisee <u>trainee</u> during the training period. Employment does not include compensation received by the supervisor from the supervisee <u>trainee</u> for supervision services. (B) (II) Be responsible for determining the content of the training, adherence to the training, and ascertaining the competency of the trainee. (C) (III) Supervise the trainee until he or she demonstrates entry level competency, as provided in subsection (2)(a)(v) (3)(c) of this section.	
Proposed	(2)(C)(iv) The behavior technician training program must include at least forty hours of classroom, online or supervisor-led instruction in the following content areas: (A) Measurement; (B) Assessment; (C) Skill acquisition; (D) Behavior reduction; (E) Documentation and reporting; and (F) Professional conduct and scope of practice.	Clarifies components of training program.

Proposed/ Adopted	WAC Subsection	Reason
	<p>(v) Supervisor-led instruction: (A) Practicing techniques in a simulated situation incorporating content areas in this subsection (b)(iv). (B) Observing and performing behavior analytic services with clients incorporating content areas in this subsection (b)(iv). (vi) Evaluation and assessment of knowledge and skills of this subsection (b)(iv) and (v) by the training program supervisor demonstrating entry level competency of the trainee.</p>	
Adopted	<p>(2)(C)(iv) <u>(3)</u> The behavior technician training program must <u>be</u> at least forty hours in <u>duration and include</u>: <u>(a) Classroom, online or supervisor-led instruction in the following content areas:</u> (A) (i) Measurement; (B) (ii) Assessment; (C) (iii) Skill acquisition; (D) (iv) Behavior reduction; (E) (v) Documentation and reporting; and (F) (vi) Professional conduct and scope of practice; <u>(v) (b) Experiential learning that includes:</u> (A) (i) Practicing techniques in a simulated situation incorporating content areas in subsection (b)(iv) <u>(a) of this subsection</u>; and (B) (ii) Observing and performing behavior analytic analysis <u>analysis</u> services with clients incorporating content areas (b)(iv) <u>(a) of this subsection</u>; <u>and</u> (vi) (c) Evaluation and assessment of knowledge and skills of this subsection (b)(iv) and (v) <u>of the trainee's demonstrated demonstrating</u> entry level competency of the trainee in the knowledge and skills under (a) and (b) of this subsection.</p>	
Proposed	<p>(3) Trainees who only complete the forty hours through classroom or online instruction in the content areas in subsection (2)(b)(iv) of this section, from a training provider who is not a training program supervisor affiliated with an agency, business, or individual, must meet the requirements of subsection (2)(b)(v) of this section.</p>	<p>After clarifying subsection (2), this requirement is deleted as redundant. Other subsections are renumbered accordingly.</p>
Adopted	<p>(3) Trainees who only complete the forty hours through classroom or online instruction in the content areas in subsection (2)(b)(iv) of this section, from a training provider who is not a training program supervisor affiliated with an agency, business, or individual, must meet the requirements of subsection (2)(b)(v) of this section.</p>	
Proposed	<p>(4) After the trainee demonstrates entry level competency, as provided in subsection (2)(b)(vi) of this section, supervision may be provided by any behavior analyst who meets the requirements of subsection (2)(b)(i) and (ii) of this section.</p>	<p>Clarifies requirements.</p>
Adopted	<p>(4) After the trainee demonstrates entry level competency, as provided in subsection (2)(b)(vi) <u>(3) (c)</u> of this section, supervision may be provided by any behavior analyst who meets the requirements of subsection (2)(b)(i) and (ii) <u>(A) and (B)</u> of this section.</p>	
Proposed	<p>(5) Prior to or at the time of the first visit with a client, the supervisor shall make sure that the client or client's parent or legal guardian is notified in writing that the trainee is participating in a behavior technician training program. The notification must be within the client's treatment</p>	<p>Clarifies requirements.</p>

Proposed/ Adopted	WAC Subsection	Reason
	plan or other documentation that must include the supervisor's name and contact information.	
Adopted	(5) Prior to or at the time of the first visit with a client, the supervisor shall make sure <u>ensure</u> that the client or client's parent or <u>legal</u> guardian is notified in writing that the trainee is participating in a behavior technician training program. The notification must be within the client's treatment plan or other documentation that must include the supervisor's name and contact information.	
Proposed	(7) Documentation of all behavior analytic training, supervision, duties, and responsibilities of the trainee must be completed and signed by the training program supervisor and the trainee, and placed in the trainee's personnel file. Copies of the documentation will be maintained by both the trainee and the training program supervisor.	Rule comment. Clarifies term.
Adopted	(7) Documentation of all behavior analytic <u>analysis</u> training, supervision, duties, and responsibilities of the trainee must be completed and signed by the training program supervisor and the trainee, and placed in the trainee's personnel file. Copies of the documentation will be maintained by both the trainee and the training program supervisor.	
Proposed	(8) Upon successful completion of the training program, the training program supervisor will sign an attestation that the trainee has completed the behavior technician training.	Clarifies requirements.
Adopted	(8) (4) Upon successful completion of the training program, the training program supervisor will attest that the trainee has completed the behavior technician training <u>by meeting all the requirements in subsection (3) of this section.</u>	
WAC 246-805-330 Certified behavior technician—Continuing supervision.		
Proposed	(3) The CBT and the supervisor must develop a supervision plan before the CBT begins to provide any behavior analytic tasks. A copy of the supervision plan must be maintained both by the supervisor and CBT. The supervision plan must include, but not be limited to:	Clarifies the type of document.
Adopted	(3) The CBT and the supervisor must develop a supervision plan <u>agreement</u> before the CBT begins to provide any behavior analytic tasks. A copy of the supervision plan <u>agreement</u> must be maintained both by the supervisor and CBT. The supervision plan <u>agreement</u> must include, but not be limited to:	

A final cost-benefit analysis is available by contacting Brett Lorentson, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4611, fax (306) [(360)] 236-2901, email Brett.Lorentson@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 11, Amended 0, Repealed 0.

Date Adopted: March 27, 2017.

John Wiesman, DrPH, MPH
Secretary

Chapter 246-805 WAC

LICENSED BEHAVIOR ANALYST

APPLIED BEHAVIOR ANALYSIS

NEW SECTION

WAC 246-805-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly states otherwise:

- (1) "ABA" means applied behavior analysis.
- (2) "Behavior Analyst Certification Board" or "BACB" means a national organization that certifies individuals as meeting education, training, supervised experience and examination standards of the behavior analysis profession.
- (3) "Board certified assistant behavior analyst" or "BCaBA" means a professional certified with the BACB as meeting the education, training, supervised experience, and examination standards to practice ABA under the supervision of a BCBA who meets the BACB supervision requirements.
- (4) "Board certified behavior analyst" or "BCBA" means a professional certified with the BACB as meeting the education, training, supervised experience and examination standards to practice ABA independently. It includes individuals with the designation board certified behavior analyst-doctoral (BCBA-D) of the BACB.
- (5) "Certified behavior technician" or "CBT" means a person certified under chapter 18.380 RCW.
- (6) "Close, ongoing supervision" means procedures or tasks that are performed under a supervisor's overall direction and control. The supervisor must be accessible, but the supervisor's presence is not required during the performance of the procedures or tasks.
- (7) "Department" means the Washington state department of health.
- (8) "In good standing" means an active credential issued by the department of health without:
 - (a) Conditions;
 - (b) Current discipline;
 - (c) Pending discipline; or
 - (d) Restrictions on the practice of ABA.
- (9) "Licensed assistant behavior analyst" or "LABA" means a person licensed under chapter 18.380 RCW.
- (10) "LABA trainee" means a person participating in a supervised experience described in WAC 246-805-230.
- (11) "Licensed behavior analyst" or "LBA" means a person licensed under chapter 18.380 RCW.
- (12) "Registered behavior technician" or "RBT" means a paraprofessional who is credentialed by the BACB to practice ABA under close ongoing supervision of a BCBA or BCaBA who is responsible for the work performed by the RBT, and meets the education, examination and training standards of the BACB.
- (13) "Secretary" means the secretary of the department of health or the secretary's designee.
- (14) "Trainee" means a person participating in a behavior technician training program described in WAC 246-805-310.

NEW SECTION

WAC 246-805-100 Licensed behavior analyst—Application requirements. An applicant for initial licensure as an LBA shall submit the following to the department:

- (1) A completed application on forms provided by the department;
- (2) Proof of completion of at least four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;
- (3) Fees as required in WAC 246-805-990; and
- (4) Proof of:
 - (a) Current BACB certification as a BCBA. Verification must be sent directly to the department from the BACB; or
 - (b) Meeting the requirements in RCW 18.380.050 (1)(a) including:
 - (i) A master's or doctorate degree in behavior analysis or other natural science, education, human services, engineering, medicine, or field related to behavior analysis approved by the secretary. An official transcript must be provided as evidence of the degree required;
 - (ii) Successful completion of a minimum of two hundred twenty-five classroom hours of graduate level instruction in behavior analysis topics. An official transcript must be provided as evidence of the course work required;
 - (iii) Successful completion of a supervised experience requirement, consisting of a minimum of one thousand five hundred hours; and
 - (iv) Successful completion of the national BCBA examination as meeting the requirement in RCW 18.380.050 (1)(iv).

LICENSED ASSISTANT BEHAVIOR ANALYST

NEW SECTION

WAC 246-805-200 Licensed assistant behavior analyst—Application requirements. An applicant for initial licensure as an LABA shall submit the following to the department:

- (1) A completed application on forms provided by the department;
- (2) Proof of completing at least four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;
- (3) Proof of supervision;
- (4) Fees as required in WAC 246-805-990; and
- (5) Proof of:
 - (a) Current certification as a BCaBA from the BACB. Verification must be sent directly to the department from the BACB; or
 - (b) Meeting the requirements in RCW 18.380.050 (1)(b):
 - (i) Graduation from a recognized bachelor's degree program under WAC 246-805-210. An official transcript must be provided as evidence of the degree required;
 - (ii) Proof of successful completion of a minimum of one hundred thirty-five classroom hours of instruction in behavior analysis topics described in WAC 246-805-220. An official transcript must be provided as evidence of the course work required; and

(iii) Proof of successful completion of a supervised experience requirement under WAC 246-805-230.

NEW SECTION

WAC 246-805-210 Licensed assistant behavior analyst—Recognized educational programs. The department will accept a bachelor's degree in any discipline from an institution accredited by the council for higher education accreditation or United States Department of Education as meeting the requirements under RCW 18.380.050 (1)(b)(i) for applicants applying for an LABA credential.

NEW SECTION

WAC 246-805-220 Licensed assistant behavior analyst—Required topics for classroom hours. (1) An applicant for initial licensure as an LABA shall complete one hundred thirty-five classroom hours of instruction in specific behavior analysis topics from a recognized educational institution in compliance with WAC 246-805-210. Topics must include the following content areas and the minimum number of hours specified:

- (a) Ten hours of ethical considerations;
 - (b) Forty hours of definitions and characteristics and principles, processes, and concepts;
 - (c) Twenty hours of experimental evaluation of interventions, measurement of behavior, and displaying and interpreting behavioral data;
 - (d) Twenty-five hours of behavioral assessment and selecting intervention outcomes and strategies; and
 - (e) Forty hours of behavior change procedures and systems support.
- (2) Classroom hours under this section may be taken as part of or in addition to the applicant's bachelor's degree program.

NEW SECTION

WAC 246-805-230 Licensed assistant behavior analyst—Supervised experience. (1) Prior to submitting an application to the department, an applicant for initial licensure for an LABA license shall complete a minimum of one thousand hours of supervised experience in behavior analysis.

(2) The LABA trainee must be enrolled in or have completed the requirements contained in WAC 246-805-220 to be eligible to begin the required supervised experience as an LABA trainee.

(3)(a) The LABA trainee must complete his or her supervised experience within five years of the start date of the supervised experience.

(b) When actively participating in a supervised experience, the LABA trainee must participate in supervised experience at least ten hours and no more than thirty hours per week.

(c) At least five percent of the total monthly hours of supervised experience must be under the supervision, as defined in subsection (5) of this section, of an LBA or BCBA.

(d) Supervision must be conducted at least every two weeks.

(4) A person is qualified to supervise an LABA trainee if he or she:

(a) Holds an active license in good standing as an LBA with at least one year of full-time equivalency practice; or

(b) Holds a current certification as a BCBA and meets the BACB supervisory requirements; and

(c) Is not related to, subordinate to, or employed by the LABA trainee during the supervised experience period. Employment does not include compensation received by the supervisor from the LABA trainee for supervision services.

(5) Supervision shall include:

(a) Observing and providing feedback to the LABA trainee on his or her behavior analytic activities with a client in the natural environment;

(b) Observing the LABA trainee by synchronous (real time) web camera, video conferencing, or similar means when the supervisor is not physically present; and

(c) Supervising in small groups of up to six LABA trainees for no more than half of the total supervision required in subsection (3) of this section.

(6) The LABA trainee shall perform the following activities during the supervised experience:

(a) Directly implementing behavioral programs delivering therapeutic and instructional procedures, which may not exceed fifty percent of the total accrued experience hours; and

(b) Designing and systematically monitoring behavioral programs, naturalistic observation, staff and caregiver training, researching literature related to the program, and conducting assessments related to the need for behavioral intervention.

(7) Supervised experience must include the following content areas:

- (a) Ethics and professional conduct;
- (b) Measurement;
- (c) Experimental design;
- (d) Behavior-change considerations;
- (e) Fundamental elements of behavior change;
- (f) Behavior-change procedures;
- (g) Behavior-change systems;
- (h) Problem identification;
- (i) Assessment;
- (j) Intervention;
- (k) Implementation, management and supervision;
- (l) Philosophical assumptions of behavior analysis;
- (m) Verbal operants; and
- (n) Respondent and operant conditioning.

(8) The supervisor and LABA trainee must develop a supervision plan before the LABA trainee begins performing any behavior analytic tasks. The supervision plan must be maintained in the LABA trainee's file for seven years after completion of supervised experience. The supervision plan shall include:

- (a) Types of duties and responsibilities the LABA trainee will perform;
- (b) Dates, time and duration of supervision;
- (c) Type of supervision, as described in subsection (5) of this section;
- (d) Brief description of supervision activities; and
- (e) Signatures of both the supervisor and LABA trainee.

(9) A supervised experience under this section may be completed as part of or in addition to the LABA trainee's bachelor's degree program.

BEHAVIOR TECHNICIAN CERTIFICATION

NEW SECTION

WAC 246-805-300 Certified behavior technician—Application requirements. An applicant for initial certification as a CBT shall submit the following to the department:

- (1) A completed application on forms provided by the department;
- (2) Proof of being at least eighteen years of age;
- (3) Proof of a high school diploma or equivalent;
- (4) Proof of completing at least four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;
- (5) Proof of:
 - (a) Current registration as a RBT from the BACB. Verification must be sent directly to the department from the BACB; or
 - (b) Current behavior technician registration or certification from a nationally accredited professional credentialing entity accepted by the secretary. Verification must be sent directly to the department from the credentialing entity; or
 - (c) Successful completion of a behavior technician training program outlined in WAC 246-805-310 to include:
 - (i) Classroom, online, or supervisor-led instruction with the content outlined in subsection (3)(a) of this section;
 - (ii) Experiential learning as outlined in subsection (3)(b) of this section; and
 - (iii) Evaluation and assessment as outlined in subsection (3)(c) of this section.
- (6) Proof of supervision that meets the requirements of WAC 246-805-330; and
- (7) Fees as required in WAC 246-805-990.

NEW SECTION

WAC 246-805-310 Behavior technician training program. An applicant who does not hold RBT registration under WAC 246-805-300 (5)(a) or other behavior technician registration or certification accepted by the secretary under WAC 246-805-300 (5)(b) may qualify for a CBT credential by completing a behavior technician training program meeting the requirements described in this section.

- (1) Behavior technician training programs meeting the requirements described in this section are approved by the secretary.
- (2) The behavior technician training program must be:
 - (a) Affiliated with a postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education; or
 - (b) Affiliated with an agency, business or individual that:
 - (i) Has a supervisor within sight and hearing and available for immediate intervention when the trainee is working with clients.
 - (ii) Has a supervisor who is:
 - (A) An LBA who holds a current and active credential in good standing with at least one year of full-time equivalency;

or an active BCBA who meets the supervisor requirements of the BACB;

(B) Responsible for the conduct of the trainee at all times when working with clients under his or her supervision; and

(C) Responsible for the training program, who will be referred to as the "training program supervisor," and shall:

(I) Not be related to, subordinate to, or employed by the trainee during the training period. Employment does not include compensation received by the supervisor from the trainee for supervision services.

(II) Be responsible for determining the content of the training, adherence to the training, and ascertaining the competency of the trainee.

(III) Supervise the trainee until he or she demonstrates entry level competency, as provided in subsection (3)(c) of this section.

(3) The behavior technician training program must be at least forty hours in duration and include:

(a) Classroom, online or supervisor-led instruction in the following content areas:

- (i) Measurement;
- (ii) Assessment;
- (iii) Skill acquisition;
- (iv) Behavior reduction;
- (v) Documentation and reporting; and
- (vi) Professional conduct and scope of practice.

(b) Experiential learning that includes:

(i) Practicing techniques in a simulated situation incorporating content areas in (a) of this subsection; and

(ii) Observing and performing behavior analysis services with clients incorporating content areas in (a) of this subsection.

(c) Evaluation and assessment by the training program supervisor of the trainee's demonstrated entry level competency in the knowledge and skills under (a) and (b) of this subsection.

(4) After the trainee demonstrates entry level competency, as provided in subsection (3)(c) of this section, supervision may be provided by any behavior analyst who meets the requirements of subsection (2)(b)(i) and (ii)(A) and (B) of this section.

(5) Prior to or at the time of the first visit with a client, the supervisor shall ensure that the client or client's parent or legal guardian is notified in writing that the trainee is participating in a behavior technician training program. The notification must be within the client's treatment plan or other documentation that must include the supervisor's name and contact information.

(6) A trainee must complete the training program and submit an application to the department on a form provided by the department within one hundred eighty days of starting the training program.

(7) Documentation of all behavior analysis training, supervision, duties, and responsibilities of the trainee must be completed and signed by the training program supervisor and the trainee, and placed in the trainee's personnel file. Copies of the documentation will be maintained by both the trainee and the training program supervisor.

(8) Upon successful completion of the training program, the training program supervisor will sign an attestation that the trainee has completed the behavior technician training.

NEW SECTION

WAC 246-805-320 Certified behavior technician—Tasks. (1) A CBT shall not:

- (a) Initiate or implement a treatment program with a client until the client has been evaluated by an LBA or LABA, and a written treatment and instructional program has been prepared by an LBA or LABA;
- (b) Independently perform a client assessment or evaluation, but may assist in the process under the direction of an LBA or LABA; and
- (c) Independently design or modify client treatment plans or instructional programs.

(2) A CBT shall:

- (a) Monitor the need for reassessment and report changes in status that may warrant reassessment or referral by or under the direction of an LBA or LABA; and
- (b) Immediately discontinue and notify the supervising LBA or LABA about any treatment procedure that appears harmful to the client.

NEW SECTION

WAC 246-805-330 Certified behavior technician—Continuing supervision. (1) A CBT must work under close, ongoing supervision of an LBA or LABA for each client receiving ABA services.

(2) A supervisor:

- (a) Must hold an active license in good standing as an LBA or LABA; and
 - (b) Shall be responsible for the conduct of the CBT at all times when working with clients under his or her supervision.
- (3) The CBT and the supervisor must develop a supervision agreement before the CBT begins to provide any behavior analytic tasks. A copy of the supervision agreement must be maintained both by the supervisor and CBT. The supervision agreement must include, but not be limited to:
- (a) Duties and responsibilities the CBT will perform;
 - (b) Type and frequency of supervision, as described in subsection (5) of this section; and
 - (c) Signature of both the supervisor and supervisee.
- (4) The supervisor shall review the CBT's progress with the CBT as necessary but at least every six months.

(5) The supervisor shall:

- (a) Meet in person with the CBT to provide guidance in working with new clients;
- (b) Provide supervision for a minimum of five percent of the CBT's hours with clients per month;
- (c) Conduct at least two face-to-face contacts per month with the CBT. Face-to-face contact may occur in-person, on-site or by videoconferencing;
- (d) Observe the CBT at least once per month when CBT is providing services to clients. Observation may occur in-person, on-site or by videoconferencing; and
- (e) Observe the CBT with each client on his or her caseload at least once every three months.

NEW SECTION

WAC 246-805-990 Applied behavior analysis fees and renewal cycle. (1) Credentials in this section must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Licensed behavior analyst	
Initial application	
Application and initial license	\$250.00
Active license renewal	
Renewal	350.00
Late renewal penalty	175.00
Duplicate license	30.00
Verification of license	30.00
Licensed assistant behavior analyst	
Initial application	
Application and initial license	160.00
Active license renewal	
Renewal	175.00
Late renewal penalty	90.00
Duplicate license	30.00
Verification of license	30.00
Certified behavior technician	
Original application	
Application and initial license	95.00
Active license renewal	
Renewal	150.00
Late renewal penalty	75.00
Duplicate license	30.00
Verification of license	30.00

**WSR 17-08-020
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed March 27, 2017, 2:14 p.m., effective April 27, 2017]

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

Purpose: Chapter 246-790 WAC, Special supplemental nutrition program for women, infants, and children (WIC), establishing new sections for WIC participant compliance. The adopted rule supports the department of health's (department) compliance with federal and state WIC program obligations, and supports WIC participants in receiving clear, comprehensive information about WIC program requirements, violations and sanctions, and the appeals process.

Statutory Authority for Adoption: RCW 43.70.120.

Adopted under notice filed as WSR 17-01-112 on December 19, 2016.

A final cost-benefit analysis is available by contacting Troy Parks, Department of Health, P.O. Box 47886, Olympia, WA 98504-7886, phone (360) 236-3610, fax (360) 236-2345, email troy.parks@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 8, Amended 0, Repealed 0; Federal Rules or Standards: New 8, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 8, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 8, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 0.

Date Adopted: March 27, 2017.

John Wiesman, DrPH, MPH
Secretary

PARTICIPANT COMPLIANCE

NEW SECTION

WAC 246-790-500 Definitions related to participant compliance. The definitions in this section apply to this section through WAC 246-790-570 unless the context clearly indicates otherwise.

(1) "Appeal" means a formal proceeding where a participant who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department.

(2) "Applicant" means any pregnant woman, postpartum woman, infant or child, or caregiver of an infant or child who is applying to receive WIC program benefits, and a breastfeeding infant of an applicant breastfeeding woman. Applicants include individuals who are currently participating in the program but are applying because their certification period is about to expire.

(3) "Authorized supplemental foods" means those supplemental foods authorized by the department for issuance to a particular participant.

(4) "Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for participation in the WIC program.

(5) "C.F.R." means Code of Federal Regulations.

(6) "Claim" means a type of sanction demanding repayment for misuse of WIC/FMNP benefits by a WIC participant.

(7) "Deliberate" means acting intentionally, knowingly and voluntarily and not because of mistake or accident.

(8) "Department" means the Washington state department of health.

(9) "Disqualification" means the act of ending the WIC program participation of a participant whether as a punitive sanction or for administrative reasons.

(10) "Dual participation" means program participation in one or more than one WIC clinic.

(11) "Eligibility criteria" means the reasons people qualify for WIC program benefits as described in 7 C.F.R. Sec. 246.7(c).

(12) "Farmers' market nutrition program (FMNP)" means a program to provide fresh, unprepared, locally grown fruits and vegetables to WIC participants, and to expand the awareness, use of, and sales at farmers' markets.

(13) "Food instrument" means the method of payment used by a participant to obtain WIC approved foods. This method may include WIC checks, cash value vouchers, or electronic benefit transfer (EBT) payment.

(14) "Local agency" means:

(a) A public or private nonprofit health or human services agency that provides health services either directly or through contract with the department to provide services, in accordance with 7 C.F.R. Sec. 245.5;

(b) An Indian health services unit in contract with the department to provide services;

(c) An Indian Tribe, band or group recognized by the department; and/or

(d) An intertribal council or group that is an authorized representative of Indian Tribes, bands or groups.

(15) "Notice of violation" means a written document given to a participant, or caregiver of an infant or child participant, when the department determines a participant or caregivers of an infant or child participant, have not complied with WIC program requirements, federal WIC regulations, this chapter, or the participant rights and responsibilities form. This notice is a type of sanction which explains the violation and provides a warning about repercussions of subsequent violations.

(16) "Nutritional risk" means detrimental or abnormal nutritional conditions detectable by biochemical or anthropomorphic measurements; other documented nutritionally related medical conditions; dietary deficiencies that impair or endanger health; conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions including, but not limited to, homelessness and migrancy, as specified in 7 C.F.R. Sec. 246.2.

(17) "Participant" means a woman, infant or child receiving WIC benefits.

(18) "Participant violation" means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program.

(19) "Proxy" means an individual who is designated by a participant or a child or infant participant's parent, guardian, or caretaker to receive food instruments and to redeem food instruments for the participant and whose name is on file at the local agency.

(20) "Restitution" means reimbursement to the department of the cash value of the WIC program benefits received by a participant as the result of a sanction imposed for a violation.

(21) "Sanction" means a penalty imposed by the department of health WIC program because of a violation. The

three types of sanctions are notice of violation, disqualification, and claim.

(22) "SNAP" means the federal Supplemental Nutrition Assistance Program. SNAP was previously known as the Food Stamp Program.

(23) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state WIC program to provide WIC approved foods to WIC participants.

(24) "Violation" means any deliberate action of a WIC participant or caregiver of an infant or child participant, including actions listed in WAC 246-790-520 that violate federal or state statutes, regulations, policies or procedures governing the WIC program.

(25) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. Sec. 246.

(26) "WIC benefits" means benefits a participant receives that include, but are not limited to, food, formula, and breast pumps.

(27) "WIC Participant Rights and Responsibilities form" means a document a WIC participant or proxy has signed showing she or he has been advised of and agrees to WIC program rights and obligations.

NEW SECTION

WAC 246-790-501 Participant purpose. (1) The federal special supplemental nutrition program for women, infants, and children (WIC) provides supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income through payment of cash grants to states that operate WIC food delivery systems. The department operates a WIC retail food delivery system in which WIC participants obtain authorized supplemental foods by submitting a food instrument to a retail business that has entered into a contract with the department to provide such service. The department's WIC operations comply with the most current version of 7 C.F.R. Sec. 246. Copies are available from the Department of Health, P.O. Box 47886, Olympia, WA 98504-7886, or by calling the WIC nutrition program at 800-841-1410.

(2) The purpose of this chapter is to establish:

(a) Requirements an applicant must meet to be certified as a WIC participant;

(b) Circumstances and process for verifying and sharing WIC applicant information;

(c) Participant violations and the sanctions that will be applied when violations occur;

(d) The circumstances in which a monetary claim will be imposed, the process for establishing a claim, and the consequences for failing to pay, or make arrangements to pay, a claim;

(e) The circumstances in which participants are disqualified; and

(f) The participant appeal process.

NEW SECTION

WAC 246-790-510 Participant certification requirements. (1) To be eligible for the WIC program, at the time of application an applicant must:

(a) Be a pregnant woman, a breastfeeding woman up to one year after delivery, postpartum woman through six months after delivery, an infant up to one year of age, or a child from age one through the end of the month he or she turns five years of age;

(b) Reside within the state of Washington;

(c) Meet the department's income eligibility criteria as described in 7 C.F.R. Sec. 246.7; and

(d) Be at nutritional risk as defined by the department.

(2) At the time of enrolling in the WIC program, the applicant must:

(a) Provide truthful and accurate information to WIC agency staff;

(b) Present proof of residency, identity, and income; and

(c) Review and sign the department's "Rights and Responsibility" form acknowledging that the applicant has read and agrees to the rules governing WIC participants.

(3) WIC participants may participate in only one WIC clinic at a time.

(4) The department may remove a participant from the WIC program if the WIC participant no longer meets the WIC eligibility requirements.

(5) A WIC participant is eligible to receive farmers' market nutrition program (FMNP) food instruments if the participant meets all of the following eligibility criteria on the date the food instrument is issued:

(a) The WIC participant is currently receiving WIC pursuant to 7 C.F.R. Sec. 246 and this chapter.

(b) The WIC participant belongs to eligible WIC categories described in 7 C.F.R. Sec. 246.7 with the exception that the child must be one year of age or older.

(6) WIC participants must notify the department of any changes in status including, but not limited to, change in household income; change in eligibility status in an adjunct eligibility program, including basic food program, temporary assistance to needy families (TANF), food distribution program to Indian reservations (FDPIR), or medical assistance program; change of number in household; or change in breastfeeding status.

(7) The department will notify WIC participants of their program rights and responsibilities, program rules, and that there are sanctions should they deliberately violate a program rule.

NEW SECTION

WAC 246-790-520 Participant information verification and sharing. (1) The department and local WIC agency staff may verify any of the information provided by any person applying for or receiving WIC benefits.

(2) When a WIC participant moves to a new service area or state, the WIC agency staff or state staff will share the participant's eligibility information with staff at the new WIC agency or the state.

(3) The department may provide information to law enforcement agencies when it is determined that a participant violated program rules.

erately violates the federal or state statutes, regulations, policies or procedures governing the WIC program, the department will initiate appropriate enforcement action which may include establishment of claims under WAC 246-790-550 or disqualification under WAC 246-790-560. Violations and applicable sanctions are listed below:

NEW SECTION

WAC 246-790-530 WIC participant violations and sanctions. (1) When any WIC participant or caregiver delib-

Violations	1st Instance	2nd Instance	Subsequent Instances
Redeeming or attempting to redeem a food instrument for unauthorized foods or formula.	Notice of violation	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim
Returning or attempting to return foods purchased with a food instrument to a WIC vendor in exchange for money or a different food.	Notice of violation	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim
Redeeming a food instrument reported as lost or stolen, and then replaced.	Notice of violation	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim
Destruction of vendor or farmer property during a WIC transaction.	Notice of violation if replacement or repair cost is less than \$100 6-month disqualification if replacement or repair cost is more than \$100	1-year disqualification	1-year disqualification
Destruction of state or local agency property during a WIC visit.	Notice of violation if replacement or repair cost is less than \$100 6-month disqualification if replacement or repair cost is more than \$100	1-year disqualification	1-year disqualification
Altering a food instrument.	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim	1-year disqualification and claim
Making false or misleading statements or deliberately misrepresenting, concealing or withholding facts to obtain or increase benefits.	Notice of violation and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim	1-year disqualification and claim

Violations	1st Instance	2nd Instance	Subsequent Instances
Participating in and spending WIC food instruments from more than one WIC clinic during the same time period (dual participation).	Notice of violation and claim if claim is less than \$100; termination from one of the WIC clinics 1-year disqualification and claim if claim is over \$100	1-year disqualification and claim	1-year disqualification and claim
Threatening to harm or physically harming clinic, farmer or vendor staff during a WIC visit.	6-month disqualification	1-year disqualification	1-year disqualification
Failure to comply with department or local agency request for information required to verify eligibility.	1-year disqualification	1-year disqualification	1-year disqualification
Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell or exchange food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other non-food items (trafficking). This includes verbally, in print or online through web sites and social media.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim
Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell or exchange a WIC multi-user breast pump for cash, credit, merchandise, favors, or other items (trafficking). This includes verbally, in print or online through web sites and social media.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim
Theft of a food instrument by a WIC participant.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim

(2) During each certification visit, participants will be informed of their rights and responsibilities, program rules and that there are sanctions should they deliberately violate a program rule.

(3) Whenever the department assesses a claim of misappropriated WIC program benefits of one hundred dollars or more resulting from a participant violation, assesses a claim for dual participation, or assesses a second or subsequent claim of any amount resulting from a participant violation, the department must disqualify the participant for one year.

(4) The department may decide not to impose a disqualification if, within thirty days of the date the letter was mailed demanding repayment, full restitution is made or a repayment schedule is agreed upon. In the case of a violation committed by the parent or caretaker of an infant or child participant, or by a participant under the age of eighteen, the department

may approve the designation of a proxy in order to continue program benefits to these participants.

(5) Participants may reapply for benefits at any time after the disqualification period is over.

(6) The department must consider designating a substitute caregiver instead of disqualification for infants, children, and women under eighteen years of age.

(7) Second and subsequent instances of violations are assessed based on a twelve-month period from the first notice that a violation has occurred.

NEW SECTION

WAC 246-790-550 Participant claims. (1) If the department determines that a WIC participant has committed a violation listed in WAC 246-790-530 which involves the misuse of WIC benefits, the department shall establish a

claim against the participant for the full value of such benefits.

(2) The department shall provide a written notice to the WIC participant of the claim, describing the violation, and demanding a specific repayment amount.

(3) If the WIC participant does not appeal the claim as provided in WAC 246-790-570, make full restitution, or agree to a repayment schedule within thirty days of receiving the letter, the department may take additional collection actions as authorized by law, unless the department determines that further collection actions would not be cost-effective.

NEW SECTION

WAC 246-790-560 Participant disqualification. (1) In addition to the disqualifications set forth in the table under WAC 246-790-530, whenever the department assesses a claim under WAC 246-790-550 of one hundred dollars or more, or assesses a second or subsequent claim of any amount resulting from a participant violation, the department must disqualify the participant for one year. In addition, a claim may be assessed for misuse of WIC/FMNP benefits.

(2) The department will count any violation occurring within the consecutive twelve-month period following the first notice of violation as a second or subsequent violation.

(3) The department will count any second or subsequent violation as a second or subsequent violation even if:

(a) Another member of the WIC participant's household commits the violation; or

(b) The violation affects the WIC benefits of another WIC participant in the same household.

(4) The department shall provide a written notice to the WIC participant describing the violations and specifying the sanction.

(5) For a violation involving a claim, the department may decline to impose a disqualification if the WIC participant makes full restitution, or agrees to a repayment schedule within thirty days of the date the notice of disqualification was sent.

(6) Where a parent or caregiver of an infant or child participant or a WIC participant under the age of eighteen has committed the violation, the department must consider designating a substitute caregiver to continue providing WIC benefits to the participant.

(7) Participants may reapply for benefits at any time after the end of the disqualification period.

NEW SECTION

WAC 246-790-570 Participant appeal process. (1) An applicant or WIC participant may file an appeal of the department's decision to deny an applicant, establish a claim, or disqualify a person from receiving WIC benefits.

(2) At the time the department determines an applicant ineligible, issues a disqualification, or establishes a claim, the department shall provide written notice of appeal rights informing the person of how to file the appeal and that the person may represent themselves personally or be represented by a spokesperson. The spokesperson does not need to be a member of the Washington state bar.

(3) The applicant or WIC participant must file the appeal within sixty calendar days of service of the notice of adverse action. Proceedings under WAC 246-790-500 through this section must be in accordance with 7 C.F.R. Sec. 246.9 and chapter 246-10 WAC including, at a minimum:

(a) A hearing conducted by an impartial official;

(b) A scheduling order that sets the time and dates of steps in the hearing process;

(c) A prehearing conference in which the hearing official explains the procedures and establishes the conduct at hearing;

(d) A hearing in which the appellant and the department's WIC program can present evidence and cross-examine witnesses.

(4) Participants who appeal the termination of benefits within fifteen days of service of the adverse action notice must continue to receive program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible during a certification period may appeal the denial of WIC certification or disqualification within sixty days, but must not receive benefits while awaiting the hearing or its results.

(5) If a provision of chapter 246-10 WAC conflicts with 7 C.F.R. Sec. 246.9, federal regulation prevails.

WSR 17-08-024

PERMANENT RULES

BENTON CLEAN AIR AGENCY

[Filed March 28, 2017, 11:06 a.m., effective April 28, 2017]

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

Purpose: The changes in Articles 1, 2, 3, 6, 7, and 9 were primarily administrative in nature, such as including sections of RCW/WAC in Regulation 1 to consolidate and align wording with RCW/WAC or renumbering subsections for consistency throughout Regulation 1. Article 4 was updated to require notification to the Benton Clean Air Agency (BCAA) of projects which destabilize soil in Benton County, improving our ability to contact responsible parties of dust emissions from these projects. Article 8, concerning asbestos, was overhauled to include more thorough asbestos surveying and notification requirements, more detailed requirements concerning hazardous asbestos containing materials, more detailed work requirements for alternative means of compliance, and new regulations concerning disposal of asbestos containing materials. Articles 2 and 10 were amended to remove the fee schedules for registered sources from Regulation 1 and refer to a fee schedule adopted by board resolution.

Citation of Existing Rules Affected by this Order: Amending Sections 1.01, 3.02, 4.01, 4.02, 6.01, 6.02, 7.01, 7.02, 8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07, 9.01, 10.05, 10.06, 10.07, 10.08, and 10.09.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 16-18-088 on September 6, 2016.

Changes Other than Editing from Proposed to Adopted Version: Adopted as submitted: Adopted changes to Articles 1, 2, 3, 4, 6, 7, 9, and 10 as submitted to the register.

Changes made for clarification: Minor changes to provide clarification were made to Sections 8.01, 8.02, 8.03, 8.04, 8.05, and 8.08 after review of comments received during the public comment period. The comments generally asked for clarification of the intent of changes to Article 8 and/or the necessity of changes to Article 8. BCAA reviewed the comments and made changes for clarification where it was appropriate. BCAA then responded to the author of the comments directly.

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

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

Date Adopted: March 23, 2017.

Robin Priddy
Director/Control Officer

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 17-10 issue of the Register.

WSR 17-08-037
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 29, 2017, 11:29 a.m., effective April 29, 2017]

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

Purpose: Amends WAC 181-79A-231 to address certain limited certifications allowing alternatives for certain roles that are in the process of obtaining full certification.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-231.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 17-02-062 on January 3, 2017.

Changes Other than Editing from Proposed to Adopted Version: Emergency certificates for educational service associates are no longer to be issued.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252,

Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, email david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2017.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 16-16-044, filed 7/26/16, effective 8/26/16)

WAC 181-79A-231 Limited certificates. Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on short-ages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment. Districts or approved private schools employing a teacher holding a substitute certificate in any one assignment for more than thirty days must within twenty days develop a plan of professional learning for the individual that is appropriate to the assignment and designed to support their professional growth and enhance instructional knowledge and skills to meet district needs and better assist students in meeting the state learning goals. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators who hold or have held a regular state of Washington certificates: Provided, educational staff associates may only substitute in the role of their certificate; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d); or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for ~~((specific positions))~~ the roles of principal, teacher, school counselor, school psychologist, and school social worker may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold ~~((the appropriate degree and have substantially completed a program of))~~ a bachelor's degree and are enrolled in a state-approved preparation program for the role in accordance with Washington requirements for certification and shall be the best qualified of the candidates for the position as verified by the employing school district: Provided, That a qualified person who holds regular certification for the requested role is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That ~~((a candidate for emergency certification as a school counselor, school psychologist, or social worker shall be the best qualified of the candidates for the position as verified by the employing school district and shall have completed all course work for the required master's degree with the exception of the internship))~~ an emergency certificate issued with a special education endorsement may be reissued once for one school year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program: Provided further, That a candidate for emergency certification as a principal holds a master's degree and has substantially completed the state-approved preparation program: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in ~~((an))~~ a state-approved school psychologist preparation program, shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(c) To ensure that related services personnel deliver special education services in their respective discipline or profession, the office of superintendent of public instruction may not issue emergency substitute certificates for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher

must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing or residency certificate has expired according to WAC 181-85-040 or 181-79A-251 may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must successfully complete the external assessment established by the professional educator standards board within two years of the date the holder was issued the transitional certificate in order to continue to be employed: Provided, one year has elapsed since the final renewal expired and the teacher registers and passes the professional certificate assessment within the two years under WAC 181-79A-251. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

(8) Provisional alternative administrative certificate.

(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.

(b) The certificate is valid for one year from date of issue.

(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.

WSR 17-08-061
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed March 31, 2017, 10:05 a.m., effective August 1, 2017]

Effective Date of Rule: August 1, 2017.

Purpose: WAC 246-808-990 Chiropractic fees and renewal cycle, the amended rule reduces initial license and renewal fees for chiropractors. The new fee levels are expected to more closely align licensing revenue with costs of administering the chiropractic profession over time. The amended rule also updates the term "certification" to "verification" of chiropractic licensure and chiropractic X-ray technician registration, and clarifies the jurisprudence exam fee.

Citation of Existing Rules Affected by this Order: Amending WAC 246-808-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Adopted under notice filed as WSR 17-05-044 on February 8, 2017.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 28, 2017.

John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 15-19-145, filed 9/22/15, effective 1/1/16)

WAC 246-808-990 Chiropractic fees and renewal cycle. (1) Licenses and registrations must be renewed on the practitioner's birthday every year as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for chiropractic licensure:

Title of Fee	Fee
Original application	
Application	\$((380.00)) <u>330.00</u>
Jurisprudence examination <u>and reexamination</u>	100.00
UW online access fee (HEAL-WA)	16.00

Title of Fee	Fee
Temporary practice permit	
90-day permit	105.00
Preceptorship - Initial and renewal	155.00
Active license renewal	
Renewal	((432.00)) <u>380.00</u>
Late renewal penalty	((216.00)) <u>190.00</u>
Expired license reissuance	302.00
UW online access fee (HEAL-WA)	16.00
Inactive license renewal	
Renewal	257.00
Expired license reissuance	157.00
Duplicate license	30.00
((Certification)) Verification of license	30.00

(3) The following nonrefundable fees will be charged for chiropractic X-ray technician registration:

Title of Fee	Fee
Application	47.00
Original registration	47.00
Renewal	62.00
Late renewal penalty	62.00
Expired registration reissuance	62.00
Duplicate registration	30.00
((Certification)) Verification of registration	30.00

WSR 17-08-065
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed March 31, 2017, 2:18 p.m., effective May 1, 2017]

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

Purpose: The department is adding two new sections to chapter 388-71 WAC, Home and community services and programs, amending one section in chapter 388-106 WAC, Long-term care services, and creating a new chapter as chapter 388-114 WAC, Travel time and work week limitations for individual providers, as a result of the passage of E2SHB 1725.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-1458.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.270.

Other Authority: E2SHB 1725.

Adopted under notice filed as WSR 16-21-107 on October 19, 2016.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-114-0080(3) was changed to clarify that the department allows exceptions to the rule imposing an eighty hour cap on work week, using the criteria in WAC 388-440-0001 and where these exceptionally long work weeks did not jeopardize client health or safety due to, for example, caregiver fatigue or overwork. During the pendency of the emergency rules, which incorporated the eighty hour work week limit, the department has become aware that some department staff, individual providers, and department clients were not aware that exceptions to the eighty hour work week limit could be made. In other situations, where it was known that exceptions to the eighty hour work week limit cap were possible, such exceptions have been made in appropriate cases. The department is modifying the final rule from the proposed rule to make the department's practice and original intent clear and to promote consistency throughout the state.

WAC 388-114-0080 (1)(d) was added to make clear that the department may authorize a small temporary increase to a provider's work week limit to enable a client to assign an individual provider the same number of hours in months with thirty days as are assigned in months with thirty-one days under stipulated provisions.

WAC 388-114-0120, the words suspension and suspend were added to WAC 388-114-0120 (1)(c) and (d) to allow the department the flexibility to take a less severe action than a contract termination.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 15, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 15, Amended 1, Repealed 0.

Date Adopted: March 30, 2017.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-71-0507 What responsibilities do clients have related to individual provider work week limits? Clients must comply with WAC 388-114-0090.

NEW SECTION

WAC 388-71-0518 What responsibilities do individual providers have related to work week limitation? Individual providers must comply with WAC 388-114-0100.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

WAC 388-106-1458 How do I create and use my spending plan? (1) You create your spending plan with the assistance of the care consultant using the new freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the care consultant.

(3) You and your care consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month).

(4) The value of those units is deducted from your new freedom budget.

(5) The rest of the funds can be used for other covered goods and services or saved.

~~((a))~~ (6) Once a service month begins, the number of personal care units may not be altered during that month.

~~((b))~~ (7) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

~~((c))~~ (8) Prior to the service month, you may elect to use savings funds to buy additional personal care.

~~((d))~~ (9) You ~~((can))~~ may choose to have your personal care provided by an individual provider (IP) or a home care agency.

(10) Each unit will be deducted from your new freedom budget at the average IP wage rate including mileage.

~~((e))~~ (11) The balance of your individual new freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

~~((f))~~ (12) If you have a change of condition or situation and your new freedom budget increases due to a new assessment or exception to rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

~~((g))~~ (13) You may assign your predetermined personal care units to a different provider during the month of service.

(14) Under chapter 388-114 WAC, individual providers for one or more department clients who work more than forty hours in a work week, are entitled to overtime and the responsibility for paying the extra cost as follows:

(a) If the department approves the individual provider to work more than forty hours per week as described in WAC 388-114-0080, the department will pay the extra cost for overtime up to the number of service hours the individual provider is approved to work and the payment for these extra costs will not be charged to your budget; and

(b) If you assign more overtime hours to your individual provider than the department approved, you must pay the extra costs for the unapproved overtime hours and the additional cost will impact your monthly budget and may reduce the number of service hours you are able to purchase from it.

Chapter 388-114 WAC

TRAVEL TIME AND WORK WEEK LIMITATIONS FOR INDIVIDUAL PROVIDERS

NEW SECTION

WAC 388-114-0010 What is the purpose of this chapter? The purpose of this chapter is to describe:

- (1) The number of hours the department may approve an individual provider to work in a work week;
- (2) How the department determines work week limitations;
- (3) When the department may approve an individual provider to work more than the permanent work week limit;
- (4) Client responsibilities regarding work week limits;
- (5) Individual provider responsibilities around work week limits;
- (6) What happens when a family or household member works more hours than are authorized in the client's plan of care;
- (7) What happens when an individual provider works more than the work week limit or submits claims for unauthorized travel time;
- (8) How the department approves and authorizes travel time; and
- (9) Travel time limitations.

NEW SECTION

WAC 388-114-0020 What definitions apply to this chapter? The following definitions apply to chapter 388-114 WAC:

"Approve" means the department, either in advance or after the fact, has reviewed the circumstances, applied the rules in this chapter, and has authorized the individual provider to work more than forty hours in a work week.

"Client specific work week limit" means a temporary increase to the individual provider's permanent work week limit for one of the reasons listed in WAC 388-114-0080.

"Family member" includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

"Household member" means the individual provider lives with the client and has a relationship with the client that existed before the client was assessed and approved for department paid personal care services as defined in WAC 388-106-0010.

"Overtime" means the number of hours an individual provider works in a work week that is more than forty hours. When required by law, the overtime wage is one and one half times the individual provider's regular wage rate. Paid time off does not accrue as overtime pay.

"Service hours" means the time individual providers are paid by the department to provide personal care, relief care, skills acquisition training, or respite services under medicaid state plan and 1915(c) waiver programs, roads to community living, the veterans directed home services program, and programs solely funded by the state. Service hours do not include hours paid for training, travel, or paid time off.

"Travel time" means the direct one way travel time from one worksite to another in the same workday. Direct one way travel is the amount of time it takes to travel the most direct route between two specific worksites on the same day, as verified by using an online mapping tool.

"Worksite" means the location where an individual provider provides authorized care to a department client or attends required training. An individual provider's residence is not a worksite for the purposes of travel time, whether or not the client lives there.

"Work week" begins at 12:00 a.m. Sunday morning and ends at 11:59 p.m. the following Saturday night.

"Work week limit" means the total number of service hours an individual provider may provide in a work week. Travel time and required IP training time hours are not included in the work week limit.

NEW SECTION

WAC 388-114-0030 How does the department determine an individual provider's permanent work week limit? (1) An individual provider's permanent work week limit is:

- (a) Forty service hours per week; or
- (b) Subject to any expenditure limitations required by RCW 74.39A.270(10), if the department paid the individual provider for one hundred seventy-four or more service hours of work performed in January 2016, the individual provider's permanent work week is calculated by dividing the individual provider's January paid service hours by 4.33 and rounding to the nearest quarter hour.

(2) Unless additional hours are approved for one of the reasons listed in WAC 388-114-0080, an individual provider's maximum permanent work week limit cannot exceed the amount identified in RCW 74.39A.270(5).

NEW SECTION

WAC 388-114-0040 How many hours may the department approve an individual provider to work in a work week? Subject to the expenditure limitations of RCW 74.39A.270(10), the department may approve an individual provider to work more than a total of forty hours in a work week for one or more of the following reasons:

- (1) The individual provider has a higher permanent work week limit as described under WAC 388-114-0030(2);
- (2) The individual provider has a client specific work week limit because the department determined that the additional hours are necessary for the client for one of the reasons listed in WAC 388-114-0080;
- (3) It is allowable travel time as described in WAC 388-114-0130 and WAC 388-114-0140;
- (4) The individual provider attends required training during the work week.

NEW SECTION

WAC 388-114-0050 What if the service hours the individual provider was paid for in January 2016 does not accurately represent the individual provider's work history in February and March 2016? If the individual pro-

vider's service hours paid in January 2016 do not accurately represent the individual provider's work history for the first three months of 2016:

(1) The individual provider may appeal the determination by submitting a request to the client's case manager to review the permanent work week limit calculated under WAC 388-114-0030, but the IP is not entitled to an administrative hearing under chapter 34.05 RCW.

(2) The department will review the permanent work week limit if:

(a) The individual provider was contracted with the department;

(b) The individual provider was employed by a client in January 2016; and

(c) The total monthly service hours the individual provider was paid in January 2016 is less than the total monthly service hours the individual provider was paid in either February or March 2016 and the average in those months was above forty hours.

(3) The department will not review the permanent work week limit of an individual provider who was not contracted with the department or was not employed by a client in January 2016.

(4) The department will evaluate individual provider service hours appeals for review as follows:

(a) Calculate the individual provider's average number of weekly service hours paid in January 2016 by dividing the total January service hours paid by 4.33 which is the average number of weeks in a month;

(b) Calculate the average number of weekly service hours the individual provider was paid for February and March 2016 as follows:

(i) The average weekly service hours for February equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month;

(ii) The average weekly service hours for March equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month; and

(iii) Add the average weekly service hours for February and March 2016 together and divide the total by two to get the average weekly service hours for February and March; and

(c) If the average weekly service hours for January 2016 is less than the average weekly service hours for February and March 2016, the department will use the average weekly service hours for February and March 2016 as the individual provider's permanent work week limit.

NEW SECTION

WAC 388-114-0070 May an individual provider work more than his or her permanent work week limit?

An individual provider with a permanent work week limit of:

(1) Forty service hours per week may only exceed the permanent work week limit as described in WAC 388-114-0080;

(2) More than forty service hours has flexibility to work more than his or her permanent work week limit in a given week if:

(a) Requested by the client to meet a specific need;

(b) Doing so would not exceed the client's monthly authorized hours;

(c) The total number of service hours worked over forty for each work week in a calendar month does not exceed the amount of overtime the individual provider would receive if he or she worked his or her permanent work week limit every week of the calendar month; and

(d) The use of more service hours in a given week will not result in a client going without essential care in other weeks of the month.

NEW SECTION

WAC 388-114-0080 When may the department temporarily approve a client specific increase to an individual provider's work week limit? (1) The department may temporarily increase an individual provider's work week limit if it determines the increase is necessary:

(a) Due to a lack of available providers who are able to adequately meet a client's care needs, as evaluated by the department in its consideration of:

(i) The overall availability of providers in the geographic region;

(ii) Whether the client has complex medical or behavioral needs;

(iii) Whether the client requires a provider with specific language skills; and

(iv) The client's good faith efforts and cooperation to manage his or her service hours and locate and select additional providers, examples of which may include:

(A) Making schedule adjustments within the work week limits of current providers who are providing services;

(B) Seeking a qualified family or friend to contract as an individual provider;

(C) Utilizing the home care referral registry; and

(D) Requesting a worker through a home care agency, unless doing so would cost more than paying the individual provider overtime;

(b) To protect a client's health and safety, as evaluated by the department in its consideration of:

(i) Whether the request is to approve service hours the individual provider spent caring for the client because of an emergent condition;

(ii) The nature and severity of the emergent condition; and

(iii) Whether the need could have been postponed until another provider could have arrived;

(c) To prevent an increased risk that the client will be unable to remain in a home or community based setting, except in cases where there are additional qualified providers available to select and the client has chosen not to select them; or

(d) To enable a client to assign to an individual provider the same number of hours in months with thirty days as are assigned in months with thirty-one days, provided that:

(i) The client is unable to assign the same number of the hours due to the individual provider's permanent work week limit;

(ii) There is no other qualified provider assigned that can work the hours within his or her permanent work week limit;

(iii) The increase does not result in a monthly total that exceeds the number of hours assigned to an individual provider in a thirty-one day month; and

(iv) The increase does not exceed two and one-half hours per week.

(2) When a client specific increase is no longer approved by the department, the individual provider's work week limit will revert back to the permanent work week limit described in WAC 388-11-0030.

(3) The department may only approve a client specific work week limit in excess of eighty service hours per week for an individual provider if the client's circumstances meet the criteria set out in WAC 388-440-0001(1)(a) through (e) and where the department is unaware of any reason that the individual provider will be unable to appropriately meet the needs of the client.

(4) The department will not approve additional service hours to any individual provider's permanent work week limit that would result in a monthly total that exceeds the client's monthly service hours.

(5) The individual provider is not entitled to an administrative hearing under chapter 34.05 RCW regarding the department's decision on whether to approve or continue a client specific temporary increase to the work week limit.

NEW SECTION

WAC 388-114-0090 How does the individual provider work week limit affect the client's responsibilities listed in WAC 388-71-0505? In addition to the responsibilities detailed in WAC 388-71-0505, the client must:

(1) Manage his or her individual providers' work time to stay within each individual provider's total work week limit described in this chapter and within the total number of monthly authorized hours in the client's plan of care;

(2) Contact his or her case manager and participate in the search, selection, and hiring of additional providers when necessary to comply with subsection (1) of this section; and

(3) Choose a different provider when an individual provider is already working for one or more clients and the individual provider would exceed his or her work week limit by working for the client.

NEW SECTION

WAC 388-114-0100 How does the individual provider work week limit affect the individual provider's responsibilities in WAC 388-71-0515? In addition to the responsibilities detailed in WAC 388-71-0515, the individual provider must:

(1) Communicate and coordinate with each of his or her clients about how many service hours the individual provider is allowed and available to work each week; and

(2) Not accept assignments or changes in schedules for clients that would require the individual provider to work more than his or her work week limit unless it is to respond to an unexpected health or safety need of the client that cannot be postponed.

NEW SECTION

WAC 388-114-0110 What happens when an individual provider, who is a family member or household member, provides more care or services than authorized in the client's plan of care? The department will not pay an individual provider who is also a family or household member for care hours or services beyond the monthly authorized hours in the client's plan of care.

NEW SECTION

WAC 388-114-0120 What happens if an individual provider works more service hours in a work week than the individual provider's work week limit or claims unapproved travel or service hours or non-required training time? (1) If an individual provider works more service hours in a work week than the work week limit approved by the department or submits a claim for unapproved travel or service hours or non-required training time, the department may take any of the following actions:

(a) Contact the individual provider to discuss the client's care needs and the individual provider's responsibilities under department rules and the individual provider's contract;

(b) Provide additional technical assistance to the individual provider and the client on how to comply with department rules and the individual provider contract;

(c) Give the individual provider and the client notice that continued failure by the individual provider to comply may result in termination or suspension of the individual provider's contract;

(d) Terminate or suspend the individual provider's contract and assist the client in finding another individual provider.

(2) Individual providers do not have a right to an administrative hearing under chapter 34.05 RCW to appeal contract terminations under this section.

NEW SECTION

WAC 388-114-0130 How is travel time approved and authorized? (1) Individual providers must provide an estimate of planned travel time and request approval from the department in advance of travel. The reasonableness of the request may be verified by the department using an online mapping tool.

(2) Travel time is calculated based upon the actual time to travel directly between worksites during each work day and is rounded to the nearest fifteen minutes. If more than one trip between worksites is made in a day, direct travel times are added together and rounded to the nearest fifteen minutes once each day.

(3) Regardless of the estimated travel time, individual providers may only bill for actual time spent traveling as calculated in subsection (2) of this section.

(4) If the individual provider has unexpected or unplanned travel time, the individual provider must contact the department to request approval and authorization for payment of the unplanned travel. The department will approve unplanned travel time requests related to client health and

safety or due to traffic conditions outside the individual provider's control.

NEW SECTION

WAC 388-114-0140 Are there limitations on travel time? The department will not approve an individual provider to provide care for a client if the department determines, based on an online mapping tool, that the individual provider would regularly travel for more than sixty minutes between worksites or exceed a total of seven hours of travel time per work week.

WSR 17-08-076
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed April 3, 2017, 3:34 p.m., effective May 4, 2017]

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

Purpose: WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts.

WAC 458-20-189 was amended to:

- Incorporate legislative changes from HB 1550, 2015 regular session (chapter 169, Laws of 2015);
- Update existing definitions and include a new definition for the term "user fee";
- Add subsection titles for readability purposes;
- Remove outdated examples and add a new example of an enterprise activity;
- Update statutory and rule references.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 17-03-083 on January 12, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: April 3, 2017.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

WAC 458-20-189 Sales to and by the state of Washington(§) and municipal corporations, including counties, cities, towns, school districts, and fire districts. (1) **Introduction.** This ((section)) rule discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington and municipal corporations including, but not limited to, counties, cities, towns, school districts, ((and)) fire districts, and other special districts. ((Hospitals or similar institutions operated by the state of Washington, or a municipal corporation thereof, should refer to WAC 458-20-168 (Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities). School districts should also refer to WAC 458-20-167 (Educational institutions, school districts, student organizations, and private schools). Persons providing physical fitness activities and amusement and recreation activities should also refer to WAC 458-20-183 (Amusement, recreation, and physical fitness services).))

Persons providing public utility services may also want to refer to the following sections:

- (a) WAC 458-20-179 (Public utility tax);
- (b) WAC 458-20-180 (Motor transportation, urban transportation);
- (c) WAC 458-20-250 (Solid waste collection tax); and
- (d) WAC 458-20-251 (Sewerage collection and other related activities).))

(a) **Other rules that may apply.** Readers may also want to refer to other rules for additional information, including the following:

- (i) WAC 458-20-106 Casual or isolated sales—Business reorganizations.
- (ii) WAC 458-20-118 Sale or rental of real estate, license to use real estate.
- (iii) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools.
- (iv) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.
- (v) WAC 458-20-179 Public utility tax.
- (vi) WAC 458-20-180 Motor carriers.
- (vii) WAC 458-20-201 Interdepartmental charges.
- (viii) WAC 458-20-250 Solid waste collection tax.
- (ix) WAC 458-20-251 Sewerage collection and other related activities.

(b) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Definitions.** For the purposes of this ((section)) rule, the following definitions apply:

- (a) **"Enterprise activity"** means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

(b) **"Municipal corporations"** means counties, cities, towns, school districts, ~~(and) fire districts, and other special districts including, but not limited to, park and recreation districts, water and sewer districts, and library districts~~ of the state of Washington.

~~((b))~~ (c) **"Public service business"** means any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, ~~(among others and without limiting the scope hereof)~~ but is not limited to, water distribution, light and power, public transportation, and sewer collection.

~~((e))~~ (d) **"Subject to control by the state,"** as used in ~~((b))~~ (c) of this subsection, means control by the utilities and transportation commission or any other state department required by law to ~~(exercise control of)~~ regulate a business of a public service nature as to rates charged or services rendered.

~~((d))~~ "Enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.) (e) **"User fee"** as used in this rule, means a charge imposed on individuals or entities to access facilities, receive services, or participate in activities.

(3) ~~((Persons taxable under))~~ **Application of the business and occupation tax.**

(a) **Sales to the state of Washington and municipal corporations.** Sellers are subject to the B&O tax ~~(upon)~~ on sales to the state of Washington, its departments and institutions, or to municipal corporations ~~(of the state)~~.

(b) **Sales by the state of Washington.** The state of Washington ~~(, and its departments and institutions, as distinct from its corporate agencies or instrumentalities,)~~ are not subject to the provisions of the B&O tax ~~(,)~~ under RCW 82.04.030.

(c) **Sales by municipal corporations.**

(i) **Governmental activities.** Municipal corporations are not subject to the B&O tax ~~(upon)~~ on amounts ~~(derived)~~ received from activities ~~(which)~~ that are exclusively governmental ~~(,)~~ under RCW 82.04.419. ~~((Thus, the B&O tax does not apply to))~~ Income from activities that are exclusively governmental include, but are not limited to, license and permit fees(,); inspection fees(,); fees for copies of public records, reports, and studies(,); pet adoption and license fees(,); processing fees (involving) for fingerprinting and environmental impact statements(, and); and fees for on-street metered parking and on-street parking permits. Income received from taxes, fines, ((or)) penalties, and interest ((thereon. Also exempt are fees for on-street metered parking and on-street parking permits.)) imposed on exclusively governmental activities is also exempt from the B&O tax.

(ii) **Interdepartmental charges.** Charges between departments of a particular municipal corporation are interdepartmental charges and are not subject to the B&O tax.

(iii) **Grant income.** Municipal corporations are ~~((also))~~ exempt from the B&O tax on grants received from the state of Washington, or the United States government ~~(,)~~ under RCW 82.04.418.

~~((d))~~ (iv) **Public service business activities.** Municipal corporations engaging in public service business activities should refer to the rules mentioned in subsection (1)(a) of this rule to determine their B&O tax liability.

(v) **Enterprise activities.** Municipal corporations ~~((deriving))~~ receiving income, however designated, from any enterprise ~~((or public service business))~~ activity for which a specific charge is made are subject to the ~~((provisions of the B&O or public utility tax. Charges between departments of a particular municipal corporation are interdepartmental charges and not subject to tax. (See also WAC 458-20-201 on interdepartmental charges.))~~

(i) **B&O tax.**

(A) When determining whether an activity is an enterprise activity, user fees ~~(derived)~~ received from the activity must be measured against total costs attributable to providing the activity, including direct and indirect overhead. This review should be performed at the budget level for all activities included in the budget, and on the fiscal or calendar year basis used by the entity in maintaining its books of account.

~~((For example,))~~ **Example 1.** A city ~~((operating an athletic and recreational facility))~~ determines that ~~((the facility))~~ its community center, which is operated under a single budget, generated two hundred fifty thousand dollars in user fees for the fiscal year. The total cost ~~((s for operating))~~ to operate the facility ~~((were))~~ was four hundred thousand dollars ~~((This figure)),~~ which includes direct operating costs ~~(and)~~, direct and indirect overhead, ~~((including))~~ asset depreciation, and interest payments for the retirement of bonds issued to fund the facility's construction. The principal payments for the retirement of the bonds are not included because these costs are a part of the asset depreciation costs. The facility's operation is an enterprise activity because it is more than fifty percent $(\$250,000/\$400,000 = 63\%)$ funded by user fees.

~~((ii))~~ (B) An enterprise activity ~~((which))~~ that is operated as ~~((a))~~ part of a governmental or nonenterprise activity is subject to the B&O tax. ~~((For example, City operates Community Center, a large athletic and recreational facility,))~~

Example 2. A city owns a large community center and three smaller neighborhood centers. The community center operates with its own budget, and the three neighborhood centers ~~((are lumped together and operated))~~ operate under a single separate budget. The community center and the neighborhood centers are operated as a part of ~~((an))~~ the overall parks and recreation ~~((system))~~ department, which is not more than fifty percent funded by user fees.

Each budget must be independently reviewed to determine whether these facilities are operated as enterprise activities. The operation of the community center ~~((would be))~~ is an enterprise activity only if the user fees account for more than fifty percent of the community center's operating budget. The total user fees generated by the three neighborhood centers ~~((would be))~~ are compared to the total costs of operating the three centers to determine whether they, as a whole, ~~((were operated as))~~ are an enterprise activity. Had each neighborhood center operated under ~~((an))~~ individual bud-

gets, the user fees generated by each neighborhood center would ~~((have been))~~ be compared to the costs of operating that center.

(4) Business and occupation tax classifications for enterprise activities.

(a) ~~((Municipal corporations engaging in public service business activities should refer to the sections of chapter 458-20 WAC mentioned in subsection (1)(a) through (d) of this section to determine their B&O tax liability.))~~ Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other ~~((business))~~ activities tax.** Amounts ~~((derived))~~ received from, but not limited to, ~~((special))~~ event admission fees for concerts and exhibits, ~~((user))~~ admission charges to a zoo or wildlife park, fees charged for the use of lockers ~~((and checkrooms))~~ at a facility not considered an "athletic or fitness facility" as defined in RCW 82.04.050, charges for moorage (less than thirty days), and the granting of a license to use real property are subject to the service and other ~~((business))~~ activities B&O tax ~~((if these activities are considered enterprise activities. (See also WAC 458-20-118 on the sale or rental of real estate.))~~ The service tax applies to fees charged for instruction in amusement and recreation activities, such as tennis or swimming lessons.

Physical fitness activities are retail sales. These activities include weight lifting, exercise facilities, aerobic classes, etc. ~~((See also WAC 458-20-183 on amusement and recreation activities, etc.))~~ under RCW 82.04.290(2).

(ii) **Extracting tax.** The extracting of natural products for sale or for commercial use is subject to the extracting B&O tax under RCW 82.04.230. The measure of tax is the value of products. (See WAC 458-20-135 on extracting.) Counties and cities are not, however, subject to the extracting B&O tax ~~((upon))~~ on the cost of labor and services performed in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned by or leased to the county or city when these products are either stockpiled for placement or are placed on a street, road, place, or highway of the county or city by the county or city itself. ~~((Nor does))~~ In addition, the extracting B&O tax does not apply to the cost of or charges for such labor and services if the sand, gravel, or rock is sold by the county or city to another county or city at actual cost for placement on a publicly owned street, road, place, or highway ~~((:))~~ under RCW 82.04.415.

(iii) **Manufacturing tax.** The manufacturing of products for sale or for commercial use is subject to the manufacturing B&O tax under RCW 82.04.240. The measure of tax is the value of products. (See WAC 458-20-136 on manufacturing.) The manufacturing B&O tax does not apply to the value of materials printed by counties, cities, towns, ~~((or))~~ school districts, educational districts, or library or library district facilities solely for their own use ~~((RCW 82.04.397))~~ under RCW 82.04.600.

(iv) **Wholesaling tax.** The wholesaling B&O tax applies to the gross proceeds ~~((derived))~~ received from sales or rentals of tangible personal property to persons who resell the same without intervening use under RCW 82.04.270. The wholesaling tax does not, however, apply to casual sales. ~~((See WAC 458-20-106 on casual sales.))~~ Sellers must

obtain ~~((resale certificates for sales made before January 1, 2010, or))~~ a reseller permit ~~((s for sales made on or after January 1, 2010.))~~ from their customer ~~((s))~~ to document the wholesale nature of any sale as provided in ~~((WAC 458-20-102A (Resale certificates) and))~~ WAC 458-20-102 (Reseller permits). ~~((Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.))~~

(v) **Retailing tax.** Amounts received from, but not limited to, user fees for off-street parking and garages, ~~((and))~~ charges for the sale or rental of tangible personal property to consumers, fees for providing recreational services and activities, charges for operating an athletic or fitness facility, and other retail services and activities as provided in RCW 82.04.050, are taxable under the retailing B&O tax under RCW 82.04.250. The retailing B&O tax does not, however, apply to casual sales. ~~((See WAC 458-20-106.))~~ Fees for amusement and recreation activities, such as golf, swimming, raequetball, and tennis, are retail sales and subject to the retailing tax if the activities are considered enterprise activities. Charges for instruction in amusement and recreation activities are subject to the service tax. ~~((See also WAC 458-20-183 and (a)(i) of this subsection.))~~

Charges for physical fitness and sauna services are classified as retail sales and subject to the retailing tax. While a retail sales tax exemption for physical fitness classes provided by local governments is available ~~((see subsection (6)(h) of this section)),~~ the retailing B&O tax continues to apply ~~((:))~~

(b) Persons selling products ~~((which))~~ that they have extracted or manufactured must report, unless exempt by law, under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. ~~((f))~~ See WAC 458-20-19301 on multiple activities tax credits. ~~((g))~~

(5) Application of the retail sales tax.

(a) **Sales to the state of Washington and municipal corporations.** The retail sales tax ~~((generally))~~ applies to ~~((all))~~ retail sales made to the state of Washington, including its departments and institutions, and to municipal corporations ~~((of the state))~~ unless a specific exemption applies.

(b) **Sales by the state of Washington and municipal corporations.** The state of Washington, including its departments and institutions, and all municipal corporations ~~((are required to))~~ must collect retail sales tax on all retail sales of tangible personal property or ~~((services classified as))~~ retail services unless a specific exemption ~~((s apply))~~ applies. Retail sales tax must be collected and remitted even ~~((though))~~ if the sale ~~((may be))~~ is exempt from the retailing B&O tax. ~~((For example,))~~

Example 3. A city police department must collect retail sales tax on casual sales of unclaimed property to consumers, even though this activity is not subject to the B&O tax because these sales are considered casual sales. ~~((See also WAC 458-20-106.))~~

Example 4. A city owns and operates a zoo. One budget is maintained for the care and maintenance of the wildlife and facilities, and a separate budget is maintained for the gift

shop and concessions. The wildlife and facilities budget is less than fifty percent funded by admission fees, while the gift shop and concessions budget is almost entirely funded by the proceeds from sales. The admission fees are not subject to the B&O tax, but the income from the gift shop and concession sales are subject to the retailing B&O tax and the city must collect retail sales tax. In this example, had the entire zoo been operated under a single budget and less than fifty percent of the budget was funded by user fees, then no part of the zoo would be considered an enterprise activity. If the zoo is not an enterprise activity, then B&O tax would not apply to the admission fees, the gift shop sales, or the concession sales. However, retail sales tax must still be collected on the gift shop and concession sales.

(c) **Sales between the state of Washington and a municipal corporation.** Sales between a department or institution of the state and a municipal corporation (~~(-or-between municipal corporations)~~) are retail sales and are subject to the retail sales tax. (~~(For example,)~~)

Example 5. State Agency sells office (~~(supplies)~~) equipment to County. State Agency is making a retail sale (~~(-State Agency)~~) and must collect and remit retail sales tax upon the amount charged, even though the B&O tax does not apply to this sale. The amount of retail sales tax must be separately itemized on the sales invoice (~~(-)~~) under RCW 82.08.050. State Agency may claim a tax paid at source deduction for any retail sales or use tax previously paid on the (~~(acquisition)~~) purchase of the office (~~(supplies)~~) equipment provided there was no intervening use of the office equipment by State Agency. If intervening use occurred, State Agency may not claim the tax paid at source deduction, as described in WAC 458-20-102 (Reseller permits), for any retail sales or use tax it previously paid when purchasing the office equipment.

(d) **Sales between municipal corporations.** Sales between municipal corporations are retail sales subject to the retail sales tax.

(e) **Sales between departments or institutions of the state of Washington.** Departments or institutions of the state of Washington are not considered sellers when making sales to other departments or institutions of the state because the state is considered to be a single entity (~~(-)~~) under RCW 82.08.010(2). Therefore, the "selling" department or institution is not required (~~(by statute)~~) to collect the retail sales tax on these sales.

All departments or institutions of the state of Washington are, however, considered "consumers (~~(-)~~)" under RCW 82.08.010(3). A department or institution of the state purchasing tangible personal property from another department or institution is required to remit to the department of revenue the retail sales or use tax upon that purchase, unless it can document that the "selling" institution previously paid (~~(the appropriate)~~) retail sales or use tax on that item.

(6) **Retail sales tax exemptions.** The retail sales tax does not apply to the following:

(a) Sales to city or county housing authorities (~~(which were)~~) created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. However, prime contractors and subcontractors working for city or county housing authorities should refer to WAC 458-20-17001 (Government contracting—Construction, installations, or

improvements to government real property) to determine their tax liability.

(b) Charges to the state of Washington and municipal corporations (~~(and the state of Washington)~~) for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended (~~(-)~~), under RCW 82.08.0271.

(c) Sales of (~~(the)~~) an entire or complete integral section of operating property of a publicly or privately owned public utility (~~(-or-of-a-complete-operating-integral-section-thereof,))~~) to the state of Washington or to a municipal corporation (~~(thereof)~~) for use in conducting any public service business, except a tugboat business (~~(-)~~), under RCW 82.08.0256.

(d) Sales of or charges made for labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned or leased to a county or city, when the materials are either stockpiled in the pit or quarry, placed on the public road by the county or city itself, or sold at cost to another county or city for use on public roads (~~(-)~~) under RCW 82.08.0275.

(e) Sales to one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation or incorporation of any part of the territory of one municipal corporation by another (~~(-)~~) under RCW 82.08.0278.

(f) Sales to the state of Washington (~~(-)~~) or a municipal corporation (~~(in the state,)~~) of ferry vessels and component parts thereof, and charges for labor and services in respect to construction or improvement of such vessels (~~(-)~~) under RCW 82.08.0285.

(g) Sales to the United States. (~~(However,)~~) Sales to federal employees, however, are subject to the retail sales tax (~~(-)~~) even if the federal employee will be reimbursed for the cost by the federal government. (See WAC 458-20-190 on sales to the United States.)

(h) Charges for physical fitness classes, such as aerobics classes, provided by local governments (~~(-)~~) under RCW 82.08.0291. (~~(Local governments must collect retail sales tax on charges for other physical fitness activities such as weight lifting, exercise equipment, and running tracks.~~)

This exemption does not apply if a person other than a local government provides the physical fitness class, even if the class is conducted at a local government facility.)) For more information on charges for physical fitness classes provided by local governments, refer to the department's web site at dor.wa.gov.

(7) (~~(Deferred sales or)~~) **Application of the use tax.**

(a) (~~(If the seller fails to collect the appropriate retail sales tax,))~~ The state of Washington, including its departments and institutions, and (~~(all)~~) municipal corporations are required to pay the (~~(deferred sales or)~~) use tax directly to the department of revenue if the retail sales tax was not paid on the value of the item or service at the time of purchase. Refer to WAC 458-20-178 (Use tax and the use of tangible personal property) for more information.

(b) Purchases of cigarette stamps, vehicle license plates, license plate tabs, disability decals, or other items to evidence

payment of a license, tax, or fee are purchases for consumption by the state or municipal corporation(;) and subject to the retail sales or use tax.

(c) ~~((Where tangible personal property or taxable services are purchased by))~~ If the state of Washington(;) or its departments and institutions(~~(, for the purpose of resale)~~) purchase tangible personal property or retail services to resell to any other department or institution of the state of Washington, or ~~((for the purpose of consuming the property purchased))~~ to consume as an ingredient or component part in manufacturing or producing for use ~~((or)), a new article~~ for resale to any other department or institution of the state of Washington ~~((a new article of which such property is an ingredient or component part)),~~ the transaction is ~~((deemed))~~ a retail purchase ~~((at retail))~~ and ~~((the))~~ subject to retail sales or use tax ~~((applies)).~~

(d) ~~((Persons producing or manufacturing))~~ The state of Washington or a municipal corporation that produces or manufactures products for commercial or industrial use are required to remit use tax upon the value of those products under RCW 82.12.020, unless a specific use tax exemption applies. ~~((RCW 82.12.020.))~~ This value must correspond as nearly as possible to the gross proceeds from retail sales of similar products. (See WAC 458-20-112 and 458-20-134 on value of products and commercial or industrial use, respectively.)

~~((For example,))~~ **Example 6.** A municipal corporation ~~((operating))~~ that operates a print shop and ~~((producing))~~ produces forms or other documents for its own use must remit use tax upon the value of those products, even though a B&O tax exemption is provided by RCW ~~((82.04.397. The municipal corporation may claim a credit for))~~ 82.04.600. The value of the products subject to use tax may be reduced by any retail sales tax previously paid on materials, such as paper or ink, which are incorporated into the manufactured product. ~~((The process of putting an internal communication, such as a memorandum to employees, on a blank form or document is not considered a manufacturing activity, even when multiple copies of the resulting internal communication are reproduced for wide distribution to employees.))~~

(i) Counties and cities are not subject to use tax ~~((upon))~~ on the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads(~~(-))~~) under RCW 82.12.0269.

(ii) If a department or institution of the state of Washington manufactures or produces tangible personal property for use or resale to any other department or institution of the state, use tax must be remitted ~~((upon))~~ on the value of that article even though the state is not subject to the B&O tax.

~~((For example,))~~ **Example 7.** State Agency manufactures office furniture ~~((for resale))~~ to resell to other departments or institutions of the state of Washington. State Agency ~~((will also on occasion use))~~ sometimes uses office furniture it has manufactured for its own offices. Use tax is due on the office furniture sold to the other departments or institutions ~~((of this state)),~~ and on the office furniture State Agency puts to its own use. The taxable value of the office furniture sold to the other departments or institutions ~~((of this~~

~~state))~~ is the selling price. The taxable value for the office furniture State Agency puts to its own use is the selling price at which State Agency sells comparable furniture to other departments or institutions ~~((of the state)).~~ When computing and remitting use tax upon the value of manufactured furniture, State Agency may ~~((claim a credit for))~~ reduce the value by any retail sales or use taxes it previously remitted on materials incorporated into that furniture. A department or institution ~~((of this state))~~ purchasing office furniture from State Agency must remit use tax ~~((upon))~~ on the value of that furniture, unless it can document that State Agency paid use tax upon the appropriate value of the furniture. (See also subsection (5)~~((d))~~) (e) of this ~~((section))~~ rule.

(e) A use tax exemption ~~((is available to state or local governmental entities using tangible personal property donated to them.))~~ applies to the use by the state or local governments of donated personal property under RCW 82.12.02595. The donor, however, remains liable for the retail sales or use tax on the donated property~~((, even though the state or local governmental entity's use of the property is exempt of tax)).~~

(8) ~~((Persons subject to))~~ **Application of the public utility tax.**

(a) Persons ~~((deriving))~~ receiving income subject to the ~~((provisions of the))~~ public utility tax may not claim a deduction for amounts received as compensation for services rendered to the state of Washington, its departments and institutions, or to municipal corporations thereof.

(b) The public utility tax does not apply to income received by the state of Washington(;) or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses should refer to ~~((WAC 458-20-179 (Public utility tax), WAC 458-20-180 (Motor transportation, urban transportation), WAC 458-20-250 (Solid waste collection tax) and WAC 458-20-251 (Sewerage collection and other related activities))~~) the rules mentioned in subsection (1)(a) of this rule to determine their public utility tax liability.

~~((9))~~ **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(a) ~~City operates a community center which provides a number of activities and services. The center charges fees for court activities including tennis and racquetball, general admission to the swimming pool, swimming lessons, aerobics classes, and the use of weight equipment. The community center also provides programs targeted at youth and senior populations. These programs include arts and craft classes, dance instruction classes, and day camps providing a wide variety of activities such as picnics, nature walks, volleyball, and other games. The center provides banquet and meeting rooms to civic groups for a fee, but does not provide a meal service with the banquet facilities. The community center's operation is an enterprise activity, because it is more than fifty percent funded by user fees.~~

City's tax liability for the fees charged by the community center are as follows:

(i) Retailing B&O and retail sales taxes apply to all charges for the court activities, general admission to the swimming pool, and the use of weight equipment;

(ii) The retailing B&O tax applies to fees charged for aerobics classes. Retail sales tax does not apply because of the sales tax exemption for physical fitness classes provided by local governments;

(iii) Service and other business activities B&O tax applies to all fees for swimming lessons, the arts and crafts classes, dance instruction classes, day camps, and the rental of the banquet and meeting rooms. Retail sales tax does not apply to any part of the charge for the day camp because the portion of the day camp activities considered to be retail is minimal.

(b) City operates a swimming pool located at a high school. This swimming pool is open to the public in the evenings. City charges user fees for swimming lessons, water exercise classes, and general admission to the pool. City will occasionally "rent" the pool to a private organization for the organization's own use. In these cases, the private organization controls the overall operation and admission to the facility. City has no authority to control access and/or use when "renting" the pool to these organizations. City compares the user fees generated by the swimming pool to the total costs associated with the operation of the pool on an annual basis. The user fees never total "more than fifty percent" of the cost of pool operation, therefore the operation of the pool is not an enterprise activity.

City must collect and remit retail sales tax on all retail sales for which a retail sales tax exemption is not available, even though the B&O tax does not apply. Retail sales tax must be charged and collected on all general admission charges. Retail sales tax does not apply to the water exercise classes because of the retail sales tax exemption provided for physical fitness classes provided by local governments. City would not collect retail sales tax on the charges for the swimming lessons or the "rental" of the pool to private businesses (license to use real estate) because these charges are not retail sales.

(c) City sponsors various baseball leagues as a part of City's efforts to provide recreational activities to its citizens. Teams joining a league are charged a "league fee." Individual participants are charged a "participation fee." The league fee entitles a team to join the league, and reserve the use of the ball fields for league games. The participation fee entitles an individual team member to participate in the baseball activity. City does not account for the operation of the ball fields under a single specific budget. The user fees generated from the baseball fields, as well as the costs of operating and maintaining these fields, are accounted for in City's overall parks and recreation system budget, which is not an enterprise activity.

The participation fees are retail sales and subject to the retail sales tax, because the team members pay these fees for the right to actually engage in an amusement and recreation activity. The league fees are not retail sales, because they simply entitle the teams to join an association of baseball teams that compete amongst themselves. (Refer also to WAC 458-20-183 on amusement and recreational activities.) The participation fees and league fees are not subject to the B&O

tax, because these baseball fields are not operated as an enterprise activity. Had these fields been operated as an enterprise activity, the participation fees and league fees would also have been subject to the retailing and service and other business activities B&O tax classifications, respectively.

(d) Jane Doe enters into a contract with City to provide an aerobics class at City's community center. Jane is responsible for providing the aerobics class. City merely "rents" a room to Jane under a license to use agreement.

Jane Doe must collect and remit retail sales tax upon the charges for the aerobics classes. The charges for the aerobics classes do not qualify for the retail sales tax exemption provided by RCW 82.08.0291 merely because the classes are held at a local government facility. Jane Doe is not entitled to the retail sales tax exemption available to local governments.))

WSR 17-08-079

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed April 4, 2017, 8:31 a.m., effective May 5, 2017]

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

Purpose: Chapter 43.371 RCW directs the office of financial management (OFM) to establish a statewide all-payer health care claims database to support transparent public reporting of health care information[.] RCW 43.371.070 [(1)](d) and (e) provide[s] that the OFM director shall adopt rules necessary to implement this chapter including:

(d) Procedures for ensuring that all data received from data suppliers are securely collected and stored in compliance with state and federal law;

(e) Procedures for ensuring compliance with state and federal privacy laws (privacy rules).

The purpose of this is to provide the procedures for ensuring that privacy and security standards are met. These standards may be set by federal or state law, or by the Washington state office of chief information officer. In all events, it is necessary to ensure that the privacy of the data is maintained and that the security standards are understood and met to safeguard the public's data.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 82-75-030].

Statutory Authority for Adoption: Chapter 43.371 RCW. Adopted under notice filed as WSR 17-04-082 on January 31, 2017.

Changes Other than Editing from Proposed to Adopted Version: In response to comments presented both at the hearing and in writing, changes were made to five proposed rules. These changes are not material nor are the final rules substantially different from the proposed rules. The changes [shown below] are generally to clarify the provisions:

- WAC 82-75-410 (1)(b) was changed to add that the provision in the data vendor contract that requires the vendor to keep logs and documentation on activities conducted pursuant to the security plan must be consistent with the state records retention requirements.

- WAC 82-75-410 (1)(c) was changed to add that the detailed security process should include but not [be] limited to details regarding security risk assessments and correction action plans when deficiencies are discovered.
- WAC 82-75-420(3) was changed to clarify that the unique set of login credentials for each active data supplier is a unique set of login credentials for each individual acting on behalf of or at the direction of the data supplier, and not one login credential for the data supplier as an entity.
- WAC 82-75-450 (3)(d) was changed from "requester" to "the data recipient" as that term is the correct one.
- WAC 82-75-470 was changed to clarify that both the office of chief information officer and OFM may request the information listed. It was also clarified that this request is to be made to the lead organization.

Number of Sections Adopted in Order to Comply with Federal Statute: New 8, Amended 1, Repealed 0; Federal Rules or Standards: New 8, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 8, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 1, Repealed 0.

Date Adopted: April 4, 2017.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-22-062, filed 11/1/16, effective 12/2/16)

WAC 82-75-030 Additional definitions authorized by chapter 43.371 RCW. The following additional definitions apply throughout this chapter unless the context clearly indicates another meaning.

"Claim" means a request or demand on a carrier, third-party administrator, or the state labor and industries program for payment of a benefit.

"Coinsurance" means the percentage or amount an enrolled member pays towards the cost of a covered service.

"Copayment" means the fixed dollar amount a member pays to a health care provider at the time a covered service is provided or the full cost of a service when that is less than the fixed dollar amount.

"Data management plan" or "DMP" means a formal document that outlines how a data requestor will handle the WA-APCD data to ensure privacy and security both during and after the project.

"Data release committee" or "DRC" is the committee required by RCW 43.371.020 (5)(h) to establish a data release process and to provide advice regarding formal data release requests.

"Data submission guide" means the document that contains data submission requirements including, but not limited to, required fields, file layouts, file components, edit specifications, instructions and other technical specifications.

"Data use agreement" or "DUA" means the legally binding document signed by the lead organization and the data requestor that defines the terms and conditions under which access to and use of the WA-APCD data is authorized, how the data will be secured and protected, and how the data will be destroyed at the end of the agreement term.

"Deductible" means the total dollar amount an enrolled member pays on an incurred claim toward the cost of specified covered services designated by the policy or plan over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

"Director" means the director of the office of financial management.

"Health benefits plan" or "health plan" has the same meaning as in RCW 48.43.005.

"Health care" means care, services, or supplies related to the prevention, cure or treatment of illness, injury or disease of an individual, which includes medical, pharmaceutical or dental care. Health care includes, but is not limited to:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

(b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

"Lead organization" means the entity selected by the office of financial management to coordinate and manage the database as provided in chapter 43.371 RCW.

"Member" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

"Office" means the Washington state office of financial management.

"PFI" means the proprietary financial information as defined in RCW 43.371.010(12).

"PHI" means protected health information as defined in the Health Insurance Portability and Accountability Act (HIPAA). Incorporating this definition from HIPAA, does not, in any manner, intend or incorporate any other HIPAA rule not otherwise applicable to the WA-APCD.

"Subscriber" means the insured individual who pays the premium or whose employment makes him or her eligible for coverage under an insurance policy or member of a health benefit plan.

"WA-APCD" means the statewide all payer health care claims database authorized in chapter 43.371 RCW.

"Washington covered person" means any eligible member and all covered dependents where the state of Washington has primary jurisdiction, and whose laws, rules and regula-

tions govern the members' and dependents' insurance policy or health benefit plan.

PRIVACY AND SECURITY PROCEDURES

NEW SECTION

WAC 82-75-400 Privacy and security. (1) RCW 43.371.070 (1)(d) authorizes the director of the office of financial management to adopt rules providing procedures for ensuring that all data received from data suppliers are securely collected and stored in compliance with applicable state and federal law.

(2) RCW 43.371.070 (1)(e) authorizes the director of the office of financial management to adopt rules providing procedures for ensuring compliance with state and federal privacy laws.

(3) WAC 82-75-410 through 82-75-470 provide the procedures required in subsections (1) and (2) of this section.

NEW SECTION

WAC 82-75-410 Requirements for data vendor. (1) The data vendor must enter into an agreement with the lead organization that contains the following requirements:

(a) A provision that the data vendor is responsible for ensuring compliance of all aspects of WA-APCD operations with all applicable federal and state laws, and the state's security standards established by the office of the chief information officer;

(b) Provisions that the data vendor is required to keep logs and documentation on activities conducted pursuant to the security plan consistent with the state records retention requirements, which the office can request to verify that the security protocols are being followed;

(c) A provision that requires a detailed security process, which should include, but is not limited to, details regarding security risk assessments and corrective actions plans when deficiencies are discovered;

(d) Provisions that require secure file transfer for all receipt and transmission of health care claims data; and

(e) Provisions for encryption of data both in motion and at rest using latest industry standard methods and tools for encryption, consistent with the standards of the office of the chief information officer.

(2) The data vendor must enter into a legally binding data use and confidentiality agreement with the lead organization. The agreement must include provisions that restrict the access and use of data in the WA-APCD to that necessary for the operation and administration of the database as authorized by chapter 43.371 RCW.

(3)(a) The data vendor must annually engage the services of an independent third-party security auditor to conduct a security audit to verify that the infrastructure, environment and operations of the WA-APCD are in compliance with federal and state laws, Washington state information technology security standards, and the contract with the lead organization. The data vendor must prepare a plan to correct any deficiency found in the annual security audit.

(b) The data vendor must submit its latest HITRUST common security framework (CSF) report and the latest

statement on standards for attestation engagements (SSAE) No. 16 service organization control 2 (SOC 2) Type II audit report covering the data vendor's third-party data center, to the office within thirty calendar days of receiving the final report. The data vendor must develop and implement an appropriate corrective action plan, including remediation timelines, when necessary, and provide the corrective action plan to the office or the office of the state chief information security officer upon request.

NEW SECTION

WAC 82-75-420 Data submission. (1) All data suppliers must submit data to the WA-APCD using a secure transfer protocol and transmission approach approved by the office of the state chief information security officer.

(2) All data suppliers must encrypt data using the latest industry standard methods and tools for encryption consistent with the data vendor's requirements for data encryption as required in WAC 82-75-410.

(3) The data vendor must provide a unique set of login credentials for each individual acting on behalf of or at the direction of an active data supplier.

(4) The data vendor must ensure that the data supplier can only use strong passwords consistent with the state standards when securely submitting data or accessing the secure site.

(5) The data vendor must automatically reject and properly dispose of any files from data suppliers that are not properly encrypted.

NEW SECTION

WAC 82-75-430 WA-APCD infrastructure. (1) The data vendor must limit access to the secure site. Personnel allowed access must be based on the principle of least privilege and have an articulable need to know or access the site.

(2) The data vendor must conduct annual penetration testing and have specific requirements around the timing of penetration and security testing of infrastructure used to host the WA-APCD by the outside firm. The results of penetration and security testing must be documented and the data vendor must provide the summary results, along with a corrective action plan and remediation timelines, to the office and the office of the state chief information security officer within thirty calendar days of receipt of the results.

NEW SECTION

WAC 82-75-440 Accountability. (1) The data vendor must submit an annual report to the lead organization, the office, and the office of the state chief information security officer that includes the following information:

(a) Summary results of its independent security assessment; and

(b) Summary of its penetration testing and vulnerability assessment results.

(2) The data vendor, upon reasonable notice, must allow access and inspections by staff of the office of the state chief information security officer to ensure compliance with state standards.

(3) The data vendor, upon reasonable notice, must allow on-site inspections by the office to ensure compliance with laws, rules and contract terms and conditions.

(4) The data vendor must have data retention and destruction policies that are no less stringent than that required by federal standards, including the most current version of NIST *Special Publication 800-88, Guidelines for Media Sanitization*.

NEW SECTION

WAC 82-75-450 Data vendor and lead organization compliance with privacy and security requirements. (1) To ensure compliance with privacy and security requirements, the data vendor must immediately report to the office and the office of the state chief information security officer any data breach of the WA-APCD or knowledge that a data recipient is not complying with confidentiality requirements in accordance with OFM-approved data breach notification procedures. The data vendor may not unilaterally disclose any information related to a breach of the WA-APCD without written permission from the office and the state chief information security officer.

(2) Upon receiving approval from the office and the state chief information security officer, the data vendor must notify the data supplier if the data it supplied has been the subject of a data breach for which the reporting requirements in subsection (1) of this section apply. The data vendor is responsible for complying with the applicable notification provisions in state and federal law.

(3) To ensure compliance with privacy and security requirements, the lead organization must:

(a) Conduct follow-up with data recipients of PHI or PFI on a schedule developed by the lead organization;

(b) Request data recipients share any manuscripts, reports, or products with lead organization and office;

(c)(i) Require data recipients to complete a project completion form, attesting that the project has terminated and data have been destroyed in accordance with the data use agreement;

(ii) Require the data recipient to provide the written verification that the data has been destroyed in a manner no less stringent than is required in WAC 82-75-440(4).

(d) Track all requests and research projects and follow up with the data recipient when the research or project is expected to be completed; and

(e) Follow up and require written verification that data is destroyed.

NEW SECTION

WAC 82-75-460 Additional requirements. (1) The data vendor will ensure access to the WA-APCD data is strictly controlled and limited to authorized staff with appropriate training, clearance, background checks, and confidentiality agreements.

(2) All data vendor employees who are provided access to data submitted to the WA-APCD must attend security and privacy training before actual access to data is allowed. The training will cover the relevant privacy and security requirements in state and federal law.

NEW SECTION

WAC 82-75-470 State oversight of compliance with privacy and security requirements. In order to ensure compliance with privacy and security requirements and procedures, the office or the office of chief information officer or both may request from the lead organization any or all of the following:

(1) Audit logs pertaining to accessing the WA-APCD data;

(2) Completion of a security design review as required by Washington state IT security standards;

(3) Documentation of compliance with OCIO security policy (OCIO policy 141.10 Securing information technology assets standards);

(4) All data use agreements.

WSR 17-08-090

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed April 5, 2017, 8:35 a.m., effective May 6, 2017]

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

Purpose: This rule-making order amends chapter 16-302 WAC, General rules for seed certification and chapter 16-303 WAC, Seed assessment, fees for seed services and seed certification. These amendments modify the existing seed certification rules to include industrial hemp by establishing the requirements, standards, and fees for participation in the voluntary industrial hemp seed certification program.

RCW 15.120.030(3) allows the department to adopt rules for administration of an industrial hemp seed certification program pursuant to chapter 15.49 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-050, 16-302-460, 16-302-465, 16-302-470, 16-303-200, and 16-303-320.

Statutory Authority for Adoption: RCW 15.120.030(3), 15.49.021, and 15.49.310.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-05-113 on February 15, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 6, Repealed 0.

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

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

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

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

Date Adopted: April 5, 2017.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-050 Submitting an application for seed certification. (1) Seed certification application due dates are:

(a) For seed certified by the department: Alfalfa, clover, grasses and rapeseed (seedling applications) - Within sixty days of planting. Seedling applications will not be accepted if received more than one hundred five days after planting.

(b) Hybrid canola or hybrid rapeseed - Fall plantings February 1st; Spring plantings - Twenty-one days after planting.

(c) Sunflower twenty-one days after planting.

(d) Notification of a seedling field to be harvested for certification the same year of planting is due July 31st with the required fees.

(i) Bean - July 1st.

(ii) Corn - June 1st.

(iii) Industrial hemp - Twenty-one days after planting.

(2) For seed certified by the Washington state crop improvement association (WSCIA):

(a) Field pea, chickpea, lentil, millet, and small grains (both winter and spring varieties) - June 1st.

(b) Buckwheat and soybean - July 1st.

(c) Sorghum - July 15th.

(d) Forest tree seed certification - Refer to specific crop requirements in chapter 16-319 WAC.

(3) An application for seed certification must be submitted to the certifying agency each year a grower plans to produce seed for certification of annual crops (beans, peas, grain).

(4) A renewal application for seed certification must be submitted to the certifying agency after a stand is established each year that a grower plans to produce seed for certification of perennial crops (alfalfa, clover, grass). Due dates for renewal applications are as follows:

(a) Alfalfa and clover - June 15th.

(b) Grass - May 1st.

(5) Applications received after the due date are assessed a late application fee.

(6) No renewal application for seed certification may be accepted after the due date if a field inspection cannot be conducted prior to harvest except at the discretion of the certifying agency.

Woody Plants and ~~((Forbes))~~ Forbs Certification Standards

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-460 Standards for woody plants, ~~((Forbes))~~ forbs, and other reclamation species certification. (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-465 through 16-302-470 constitute the standards for woody plants and ~~((Forbes))~~ forbs certification.

(2) Fees for seed certification are assessed ~~((by the certifying agency))~~ as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-465 Land requirements and field standards for woody plants, ~~((Forbes))~~ forbs, and other reclamation species. (1) The life of a stand shall be unlimited as long as seventy-five percent of the plants present in the stand are those that were planted originally.

(2) To be eligible for the production of certified class of seed, a field must not have grown or been seeded to the same species during the previous four years for foundation, three years for registered, and two years for certified.

(3) A seed field inspection must be made the year of establishment and at least once each year that seed is to be harvested. This inspection will be made at a time when plant development allows for the detection of factors such as off-type varieties and weed contamination.

(4) Isolation for seed production the minimum distance from a different variety or wild hybridizing populations are as follows:

	Minimum of isolation-feet:	
	Fields of 2 acres or less	Fields of more than 2 acres
Foundation & registered	400	200
Certified	200	100

Volunteer plants may be cause for rejection or reclassification of a seed field.

(5) Specific field tolerances:

Factor	Maximum ((ration)) ratio of heads or plants		
	Foundation	Registered	Certified
Other varieties & off type	1/1000	1/500	1/250
Other kinds	1/2000	1/1000	1/500
(Inseparable other species)			
Prohibited noxious weeds	None found	None found	None found

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-470 Seed standards for woody plants, (~~Forbes~~) forbs, and other reclamation species.

SEED STANDARDS

Crop	Minimum % Germination		Minimum % Pure seed		Maximum % Inert		Maximum % Weeds (a)		Maximum % Other crops	
	F/R	C	F/R	C	F/R	C	F/R	C	F/R	C
Small burnet	80	80	95	95	5	5	0.10	.2	.1	.25
Purple prairie clover	60(b)	60(b)	95	95	5	5	0.20	.5	.1	.25
Bitterbrush, antelope	75	75	95	95	5	5	0.10(a)	0.20	0.40 0.15(g)	1.25 0.50(g)
Balsamroot, arrowleaf sclerotinia	85	85	99	98	1.00 0	2.00 1/lb	0.02	0.04	0.10	0.20
Saltbush, four-wing	30	30	85	85	15	15	0.25(a)	.5(a)	.40 .15(g)	1.25 .50(g)
Gallardia(d)	60	60	90	90	10	10	0.20(a)	1.00(a)	.20 .10(g)	2.00 .25(g)
Prairie blazingstar or Gayfeather, thickspike (<i>Liatris pycnostachya</i>)(d)	60	60	85	80	15	20	0.30(a)	0.30(a)	0.20 0.10(g)	2.00 0.25(g)
Kochia, prostrate, forage Restricted noxious weeds	35	35	65	65	35	35	0.10 45/lb	0.20 91/lb	9/lb	25/lb
Artemesia sage, Louisiana sagebrush, big mountain sage, pitcher's (<i>Salvia</i>)	30 50	30 50	80 10	80 10	20 90	20 90	0.25 0.25(a)	0.50(a) 0.50(a)	0.40 0.40 0.25(g)	1.25 1.25 0.75(g)
Milkvetch, cicer Alfalfa & sweet clover Restricted noxious Sclerotia	75	70	99	98	1 0.10	2 0.10	0.01(a) None	0.20(a) 9/lb	0.01 9/lb 0.10(g)	0.20 45/lb 0.50(g)
Lupine Restricted noxious	80	80	98	98	2	2	0.25 0	0.50 9/lb	0.10	0.40
Mountain mahogany	60	60	85	85	15	15	0.25(a)	0.50(a)	0.40 0.15(g)	1.25 0.75(g)
<i>Penstemon</i> spp.	80(d)	80(d)	90	90	10	10	0.20	1.00	0.20(c) 90/lb(e)	2.00(c) 180/lb(e)
Prairie-coneflower	60	60	90	90	10	10	0.20(a)	1.00 (a)	0.20(c) 0.10(g)	2(c) 2.00(g)
Safflower	-	85	-	99	-	1	-(a)	10(a)	- 1 in 2lbs(f)	0.10 1 in 1 lb(f)
Sainfoin Restricted noxious weeds	-	80	99	99	1	2	0.10(a)	0.20 9/lb	0	0.10
Sand-reed, prairie	70	70	90	90	0.10	0.10	0.10	0.25	0.10	0.50
Winterfat	40	40	60	60	40	40	0.25	0.50	40 0.15(g)	1.25 0.75(g)

(a) Must be free prohibited and restricted noxious weed seed.

(b) Includes total germination and hard seed.

- (c) Never to exceed 0.25% other ((Forbes)) forbs.
- (d) Total viability by TZ.
- (e) Sweet clover.
- (f) Barley, oats, rye, triticale, or wheat.
- (g) Other varieties or kinds.

Standards for ((Certified)) Industrial Hemp Seed Certification

NEW SECTION

WAC 16-302-840 Standards for industrial hemp seed production. (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-845 through 16-302-865 constitute the standards for industrial hemp seed certification.

(2) Fees for seed certification are assessed as established in chapter 16-303 WAC.

(3) All growers of industrial hemp certified seed crops are required to be licensed under the department's industrial hemp licensing rules adopted under chapter 15.120 RCW.

(4) Only varieties of industrial hemp approved by the department shall be eligible for certification. An approved variety must be a variety recognized by an international organization recognized by the department, such as the association of official seed certifying agencies or the organization for economic cooperation and development (OECD) seed scheme.

(5) The allowable area of an industrial hemp seed crop area or seed production field may be determined and limited by the department under the terms of rules adopted under chapter 15.120 RCW.

(6) All industrial hemp fields established for seed certification shall be planted with thirty-inch row spacing to facilitate inspection, roguing, and harvesting.

(7) Growers must post signage approved by the department on at least four sides, including the main entry point of each authorized field.

(8) Growers are required to obtain tetrahydrocannabinol (THC) test results as required by rules adopted under chapter 15.120 RCW.

NEW SECTION

WAC 16-302-845 Definitions specific to industrial hemp seed production. "Dioecious type" means a type of industrial hemp that has male and female flowers on separate plants.

"Industrial hemp" means all parts and varieties of the genera Cannabis, cultivated or possessed by a grower, whether growing or not, that contain a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants of the genera Cannabis that meet the definition of "marijuana" as defined in RCW 69.50.101.

"Industrial hemp seed production" means an industrial hemp seed production field established with an appropriate generation of certified seed intended to produce a subsequent generation of certified seed.

"Monoecious type" means a type of industrial hemp that has male and female flowers on the same plant.

"Too male" means an intersexual plant that exceeds the ratio of male and female flowers as described in the variety description.

"Unisexual female" means a monoecious type of industrial hemp plant that has sterile male and fertile female flowers.

"Unisexual female hybrid" means a hybrid where the A line is a unisexual female type and the B line produces male fertile flowers.

"Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

"Volunteer plant" means an industrial hemp plant that results from a previous crop.

NEW SECTION

WAC 16-302-850 Land requirements for industrial hemp seed certification. Land requirements for the production of an industrial hemp seed crop are as follows:

(1) Crops must not be planted on land where foreseeable volunteer growth from a previous crop may cause contamination detrimental to certification.

(2) Fields for foundation and registered classes must not be planted on land which in the previous five years grew a different crop of industrial hemp or marijuana.

(3) Crops for certified class must not be planted on land which in the previous three years produced a crop of industrial hemp or marijuana.

NEW SECTION

WAC 16-302-855 Isolation requirements for industrial hemp seed certification. Isolation requirements for industrial hemp seed production are as follows:

(1) Isolation areas must be kept free of any harmful plants that can cause contamination. Not more than one plant per eleven square feet of harmful contaminants (species that can cross pollinate with the inspected crop) is permitted within the required isolation distance(s) adjacent to the inspected crop. The conditions of each crop are assessed by the department, which may alter this standard, usually by reducing the number of contaminant plants permitted per square yard, according to identified contamination risks.

(2) Foundation, registered and certified industrial hemp must be isolated from any marijuana production licensed by the liquor and cannabis board by a distance of fifteen miles.

(3) Industrial hemp seed production crops for certification must be isolated from all other industrial hemp varieties

or fields not meeting the varietal purity requirements for certification as follows:

Inspected Crop	Isolation Factor	Isolation Distance in Feet
Dioecious type: Foundation and Registered	Different varieties of industrial hemp	16,150
	Noncertified industrial hemp	16,150
	Lower certified class of same variety	6,460
	Same class of same variety	3
Dioecious type: Certified	Different varieties of industrial hemp	16,150
	Noncertified industrial hemp	16,150
	Certified class of the same variety	3
Monoecious type and hybrids: Foundation and Registered	Dioecious variety of industrial hemp	16,150
	Noncertified industrial hemp	16,150
	Different varieties of monoecious or female hybrid	6,460
	Certified class of same variety	3
Monoecious type and hybrids: Certified	Dioecious variety of industrial hemp	3,230
	Noncertified industrial hemp	3,230
	Different varieties of monoecious or female hybrid	646
	Certified class of same variety	3

NEW SECTION

WAC 16-302-860 Field inspection standards and tolerances for industrial hemp seed certification. (1) Industrial hemp seed production crop fields shall be inspected by the department in three stages.

(a) The first inspection should be conducted before female (pistillate) flowers of the inspected crop are receptive and after the formation of male (staminate) flowers before pollen is shed.

(b) The second inspection should be conducted during the receptive stage of the female plants in the inspected field, normally within three weeks of first inspection.

(c) The third inspection should be conducted within ten days prior to harvest. The grower must notify the department of anticipated harvest date. Fields not harvested within ten days of the third inspection will require an additional inspection and THC test.

(d) Isolation areas will be inspected for volunteer plants and harmful contaminants at each department inspection.

(2) Off-type male flowers must be removed by the grower prior to producing pollen and evidence of removal must be identifiable during the department's crop inspection.

Rogued male flowers must be removed from the field and buried or otherwise destroyed by the grower to prevent pollen production.

(3) If dioecious male plants start flowering before removal from field, all plants around them must be destroyed by the grower within a radius of ten feet for foundation seed, six feet for registered seed and three feet for certified seed.

If dioecious male plants or if other off-type male flowers are found to be shedding pollen during any inspection, an additional inspection will be required within seven days to verify adequate control of detrimental pollen. An additional reinspection fee will be assessed by the department.

(4) Plant samples will be taken by the department for THC testing at the third inspection. Test results in excess of 0.3% THC will be cause for rejection and the field may be subject to destruction.

The seed crop for certification may be harvested after the third inspection and the THC sample has been submitted for testing. However, no seed or other industrial hemp by-products may be transported off of the registered land area until THC testing with a result of 0.3% THC or less has been received and a release notice to the grower has been issued by the department.

(5) Intersexual plant type ratios shall not exceed the limits when defined in the variety description by the breeder.

(6) Excessive weeds or other factors that prevent varietal purity and identity determination shall be cause for the department to reject the affected field for certification purposes.

(7) Fields planted in such a manner that prevents inspector access shall be cause for the department to reject the affected field for certification purposes unless the grower remedies the condition in a timely manner as required by the department.

(8) Maximum impurity standards must not be exceeded based on six replicated counts of ten thousand plants according to the following table:

	Maximum impurity standards per 10,000 plants		
	Maximum number of "too male" monoecious plants	Maximum number of dioecious male plants shedding pollen	Maximum number of other impurities including other varieties
Dioecious type: Foundation	-	-	3
Dioecious type: Registered and Certified	-	-	10
Monoecious: Foundation	500	1	3
Monoecious: Registered	1000	2	10
Monoecious: Certified	2000	100	10

NEW SECTION

WAC 16-302-865 Seed standards for industrial hemp seed certification. Seed standards for industrial hemp seed production crops are as follows:

	Foundation	Registered	Certified
Pure seed (minimum)	98.00%	98.00%	98.00%
Other crop (maximum)	0.01%	0.03%	0.08%
Inert matter (maximum)*	2.00%	2.00%	2.00%
Weed seed (maximum)	0.10%	0.10%	0.10%

	Foundation	Registered	Certified
Other kinds (maximum)	0.01%	0.03%	0.07%
Other kinds (maximum)	2 per lb.	6 per lb.	10 per lb.
Other varieties (maximum)**	None found	0.01%	0.05%
Germination (minimum)	80.00%	80.00%	80.00%

* Inert matter shall not contain more than 0.50% of material other than seed fragments.

** Other varieties when distinguishable.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-200 Seed program testing fees. Seed testing fees are as follows:

((+))

Category	Crop kind	PURITY	GERM/1	TZ	Additional Crops in each Category/2
1	Agricultural Grasses	40.00	25.00	45.00	Alkaligrass, Bermudagrass, Canarygrass, Foxtail, Switchgrass, Timothy, Zoysia
2	Alfalfa & Clover	31.00	27.00	45.00	Alfalfa, Black Medic, Clover, Lupine, Milkvetch, Sainfoin, Trefoil
3	Beans	29.00	27.00	45.00	Beans
4	Beets	42.00	47.00	45.00	Beets, Swiss chard, Spinach
5	Bentgrass, redtop	72.00	38.00	45.00	Bentgrass, Redtop
6	Bluegrass	49.00	33.00	45.00	Bluegrass, all types
7	Brassica Species	75.00	38.00	45.00	Brassica Species
8	Brome	51.00	27.00	45.00	Brome: Mountain, Smooth, Meadow
9	Fescue	40.00	27.00	45.00	Fescue: Tall and Meadow
10	Fescue, all others	49.00	27.00	45.00	Fescue: Arizona, Blue, Blue Hard, Chewings, Creeping, Hard, Idaho, Red, Sheep
11	Flax	31.00	27.00	45.00	Lewis flax

Category	Crop kind	PURITY	GERM/1	TZ	Additional Crops in each Category/2
12	<u>Industrial hemp</u>	<u>50.00</u>	<u>40.00</u>	<u>45.00</u>	
13	Orchardgrass	55.00	29.00	45.00	Orchardgrass
(13) <u>14</u>	Peas and other large seeded legumes	31.00	27.00	45.00	Peas, Chickpeas, Lentil, Vetch
(14) <u>15</u>	Primrose	31.00	27.00	45.00	Primrose
(15) <u>16</u>	Ryegrass	49.00	25.00	45.00	Ryegrass, (Perennial or Annual)
(16) <u>17</u>	Small burnet	31.00	27.00	45.00	Small burnet
(17) <u>18</u>	Sudangrass	31.00	27.00	45.00	Sudangrass
(18) <u>19</u>	Vegetables	31.00	27.00	49.00	Vegetables: Arugula, Asparagus, Cantaloupe, Carrot, Celery, Corn, Coriander, Cucumber, Dill, Eggplant, Endive, Leek, Lettuce, Okra, Onion, Parsley, Parsnip, Pepper, Pumpkin, Radish, Squash, Tomato, Watermelon
(19) <u>20</u>	Grains	31.00	27.00	45.00	Wheat, Triticale, Sunflower, Sorghum, Safflower, Rye, Rice, Millet, Buckwheat, Barley, Oats, Emmer, Spelt
(20) <u>21</u>	Wheatgrass, Wildrye, other native species Group A	84.00	33.00	45.00	Bluestem, Buffalograss, Lovegrass, Penstemon, Sand dropseed, Sideoats, Squirreltail; Intermediate, Pubescent, Tall, Thickspike, Slender, and Western wheatgrasses; Small-seeded wildrye
<u>22</u>	Wheatgrass, Wildrye, other native species and flowers Group B	75.00	33.00	45.00	Bitterbrush, Echinacea, Indian ricegrass, Junegrass, Kochia, Oatgrass, Indian ricegrass, Blue and other large-seeded wildrye, Crested and Siberian wheatgrasses
<u>23</u>	Wheatgrass, Wildrye, other native species and flowers Group C	75.00	123.00((*)) <u>3</u>	45.00	Green needlegrass, Needle & Thread, Penstemon ((*(Germination requires 400 seed TZ according to AOSA Rules)))

/1 Standard 400 seed germination test.

~~((2))~~ /2 Crops not listed in the above table will be charged by the category that they fit into.

/3 Germination requires 400 seed TZ according to AOSA rules.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-320 Certification fees for seed certified by the department. Seed certification fees apply to seed classes identified in WAC 16-302-015, as follows:

(1) Fees apply to both new and renewal applications.

The seed processor is responsible for seed certification fees including sampling, testing, production and final certification fees, and may accept responsibility for any other additional fees associated with certification. Fees for services such as O.E.C.D. and sod quality, etc., are in addition to the fees listed in this section.

Seed	Application Fee 1/	Seedling field inspection fee	Seedling producing or field inspection Fee 2/	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Production Fee (includes tagging) 7/10/11/	Seed shipped Out-of-State (uncleaned)
Alfalfa, Red clover, White clover and Trefoil	\$32.25 per variety per grower	\$54.00 per field	\$2.00 per acre	\$50.00	\$58.00 per field	\$0.57/cwt. 5/	\$0.22/cwt.
<u>Annual grasses</u>	<u>\$32.25 per field</u>	<u>N/A</u>	<u>\$2.00 per acre</u>	<u>\$50.00 per field</u>	<u>\$58.00 per field</u>	<u>\$0.45/cwt.</u>	<u>\$0.22</u>
Bean	\$32.25 per variety per grower	N/A	\$2.00 per acre 3/ (one inspection) \$4.00 per acre 4/ (two inspections)	\$50.00	\$58.00 per field	\$0.57/cwt.	\$0.22/cwt.
((Turnip, Rutabaga, Kale	\$32.25 per field	N/A	\$4.00 per acre (two inspections)	\$50.00	\$58.00 per field	\$0.57/cwt.	\$0.22))
Corn	\$32.25 per field	N/A	\$55.00 first acre \$12.00 ea. additional acre except hybrid corn \$5.35 ea. additional acre	\$50.00	=====	\$0.15 per tag issued	\$4.00 per document
<u>Industrial hemp</u>	<u>\$32.25 per field</u>	<u>N/A</u>	<u>Hourly rate, travel time and mileage as established in WAC 16-303-250</u>	<u>\$50.00</u>	<u>Additional inspections: Hourly rate, travel time and mileage as established in WAC 16-303-250</u>	<u>\$0.15 per tag issued; \$15.00 minimum fee</u>	<u>N/A</u>
Perennial Grasses 6/	\$32.25 per field	\$54.00 per field	\$54.00 per field	\$50.00	\$58.00 per field	Option A \$0.91/cwt. for all grass except tall fescue \$0.55/cwt. tall fescue Option B \$1.26/cwt. (min. \$12.54)	\$0.34
((Corn	\$32.25 per field	N/A	\$55.00 first acre \$12.00 ea. additional acre except hybrid corn \$5.35 ea. additional acre	\$50.00	=====	\$0.15 per tag issued	\$4.00 per document
<u>Annual grasses</u>	<u>\$32.25 per field</u>	<u>N/A</u>	<u>\$2.00 per acre</u>	<u>\$50.00 per field</u>	<u>\$58.00 per field</u>	<u>\$0.45/cwt.</u>	<u>\$0.22))</u>
Rapeseed, Canola, and Mustard	\$32.25 per variety per grower	N/A	\$2.00 per acre (one inspection)	\$50.00 per grower	\$58.00 per field	\$0.57/cwt.	\$0.22
<u>Turnip, Rutabaga, Kale</u>	<u>\$32.25 per field</u>	<u>N/A</u>	<u>\$4.00 per acre (two inspections)</u>	<u>\$50.00</u>	<u>\$58.00 per field</u>	<u>\$0.57/cwt.</u>	<u>\$0.22</u>

- 1/ Seed certification application due dates can be found in WAC 16-302-050.
- 2/ Seedling producing or field inspection fees are refundable if the acreage is withdrawn before the inspection is completed. In the case of bean seed, fees are required of seedling fields to be harvested for certification the year of planting.
- 3/ One inspection is required for Great Northern Red Mexican, pinto, pink, and small white bean.

- 4/ Includes windrow inspection which is required for certification of snap beans, kidney beans, and eligibility for shipment into the state of Idaho.
- 5/ Production fees are billed at completion of laboratory analysis tests. If no seed is tagged, \$0.10 of the \$0.57 per cwt. production fee is refundable.
- 6/ Option A: Inspection and final certification fees are based on pounds sampled and billed upon completion of required laboratory tests.

Option B: Inspection and final certification fees are based on pounds tagged after required laboratory tests are completed. Those dealers requesting sampling and tagging privileges and/or participation in Option B must sign a memorandum of agreement that shall expire on June 30 of each year. The memorandum may be terminated by the director if the conditioner violates certification standards or requirements of memorandum.

- 7/ Does not include shipping and handling charge for tags.
- 8/ Service inspection of seed fields
Service inspection will be charged the established hourly rate inclusive of travel time and inspection time. This excludes the seedling inspection which is charged according to the above chart.
Service inspections will be charged a mileage fee based upon the OFM mileage rate.
- 9/ Hybrid inspections (pollen counts)
All crops except corn and industrial hemp:
(a) \$48.50 per inspection if done at the time of the certification inspection.
(b) \$135.00 per inspection if not conducted at the time of the certification inspection.
- 10/ Minimum tagging fee is \$13.00.
- 11/ For seed lots in packages of less than 25 lbs., tags are \$0.15 per tag in addition to the production fee.

(2) Other fees associated with grass seed certification:
Out-of-state origin seed tagged with interagency certification tags.

Grass Option A:	\$0.33 per cwt.
Grass Option B:	\$0.73 per cwt.

(3) Reissuance of certification tags is \$0.15 per tag or a minimum fee of \$13.00.

WSR 17-08-097
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed April 5, 2017, 10:24 a.m., effective May 6, 2017]

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

Purpose: WAC 246-310-010 Certificate of need—Definitions section of the rule, the department deleted the definition of "sale, purchase, or lease" of a hospital to comply with the Washington state supreme court's 2015 judgment and ruling, No. 90486-3.

Citation of Existing Rules Affected by this Order:
Amending WAC 246-310-010.

Statutory Authority for Adoption: RCW 70.38.115 and 70.38.135.

Adopted under notice filed as WSR 16-23-097 on November 16, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 31, 2017.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 14-02-040, filed 12/23/13, effective 1/23/14)

WAC 246-310-010 Definitions. For the purposes of chapter 246-310 WAC, the following words and phrases have the following meanings unless the context clearly indicates otherwise.

(1) "Acute care facilities" means hospitals and ambulatory surgical facilities.

(2) "Affected person" means an interested person who:

(a) Is located or resides in the applicant's health service area;

(b) Testified at a public hearing or submitted written evidence; and

(c) Requested in writing to be informed of the department's decision.

(3) "Alterations," see "construction, renovation, or alteration."

(4) "Ambulatory care facility" means any place, building, institution, or distinct part thereof not a health care facility as defined in this section and operated for the purpose of providing health services to individuals without providing such services with board and room on a continuous twenty-four-hour basis. The term "ambulatory care facility" includes the offices of private physicians, whether for individual or group practice.

(5) "Ambulatory surgical facility" means any free-standing entity, including an ambulatory surgery center that operates primarily for the purpose of performing surgical procedures to treat patients not requiring hospitalization. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using the facility is not extended to physicians or dentists outside the individual or group practice.

(6) "Applicant," means:

(a) Any person proposing to engage in any undertaking subject to review under chapter 70.38 RCW; or

(b) Any person or individual with a ten percent or greater financial interest in a partnership or corporation or other

comparable legal entity engaging in any undertaking subject to review under chapter 70.38 RCW.

(7) "Bed banking" means the process of retaining the rights to nursing home bed allocations which are not licensed as outlined in WAC 246-310-395.

(8) "Bed supply" means within a geographic area the total number of:

(a) Nursing home beds which are licensed or certificate of need approved but not yet licensed or beds banked under RCW 70.38.111 (8)(a) or where the need is deemed met under RCW 70.38.115 (13)(b), excluding:

(i) Those nursing home beds certified as intermediate care facility for the mentally retarded (ICF-MR) the operators of which have not signed an agreement on or before July 1, 1990, with the department of social and health services department of social and health services to give appropriate notice prior to termination of the ICF-MR service;

(ii) New or existing nursing home beds within a CCRC which are approved under WAC 246-310-380(5); or

(iii) Nursing home beds within a CCRC which is excluded from the definition of a health care facility per RCW 70.38.025(6); and

(iv) Beds banked under RCW 70.38.115 (13)(b) where the need is not deemed met.

(b) Licensed hospital beds used for long-term care or certificate of need approved hospital beds to be used for long-term care not yet in use, excluding swing-beds.

(9) "Bed-to-population ratio" means the nursing home bed supply per one thousand persons of the estimated or forecasted resident population age seventy and older.

(10) "Capital expenditure": Except for WAC 246-310-280, capital expenditure means an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting and other services which, under generally accepted accounting principles, are not properly chargeable as an expense of operation and maintenance) shall be considered capital expenditures. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required certificate of need review if the acquisition had been made by purchase, this acquisition shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility, which if acquired directly by the facility, would be subject to review under this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to the review.

(11) "Certificate of need" means a written authorization by the secretary's designee for a person to implement a proposal for one or more undertakings.

(12) "Certificate of need program" means that organizational program of the department responsible for the management of the certificate of need program.

(13) "Commencement of the project" means whichever of the following occurs first: In the case of a construction

project, giving notice to proceed with construction to a contractor for a construction project provided applicable permits have been applied for or obtained within sixty days of the notice; beginning site preparation or development; excavating or starting the foundation for a construction project; or beginning alterations, modification, improvement, extension, or expansion of an existing building. In the case of other projects, initiating a health service.

(14) "Construction, renovation, or alteration" means the erection, building, remodeling, modernization, improvement, extension, or expansion of a physical plant of a health care facility, or the conversion of a building or portion thereof to a health care facility.

(15) "Continuing care contract" means a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services. The contract is conditioned on the transfer of property, the payment of an entrance fee to the provider of the services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(16) "Continuing care retirement community (CCRC)" means any of a variety of entities, unless excluded from the definition of health care facility under RCW 70.38.025(6), which provides shelter and services based on continuing care contracts with its residents which:

Maintains for a period in excess of one year a CCRC contract with a resident which provides or arranges for at least the following specific services:

- (a) Independent living units;
- (b) Nursing home care with no limit on the number of medically needed days;
- (c) Assistance with activities of daily living;
- (d) Services equivalent in scope to either state chore services or medicaid home health services;
- (e) Continues a contract, if a resident is no longer able to pay for services;
- (f) Offers services only to contractual residents with limited exception during a transition period; and
- (g) Holds the medicaid program harmless from liability for costs of care, even if the resident depletes his or her personal resources.

(17) "Days" means calendar days. Days are counted starting the day after the date of the event from which the designated period of time begins to run. If the last day of the period falls on a Saturday, Sunday, or legal holiday observed by the state of Washington, a designated period runs until the end of the first working day following the Saturday, Sunday, or legal holiday.

(18) "Department" means the Washington state department of health.

(19) "Effective date of facility closure" means:

- (a) The date on which the facility's license was relinquished, revoked or expired; or
- (b) The date the last resident leaves the facility, whichever comes first.

(20) "Enhance the quality of life for residents" means, for the purposes of voluntary bed banking, those services or

facility modifications which have a direct and immediate benefit to the residents. These include, but are not limited to: Resident activity and therapy facilities; family visiting rooms; spiritual rooms and dining areas. These services or facility modifications shall not include those that do not have direct and immediate benefit to the residents, such as: Modifications to staff offices; meeting rooms; and other staff facilities.

(21) "Established ratio" means a bed-to-population ratio of forty beds per one thousand persons of the estimated or forecast resident population age seventy and older established for planning and policy-making purposes. The department may revise this established ratio using the process outlined in WAC 246-310-370.

(22) "Estimated bed need" means the number of nursing home beds calculated by multiplying the planning area's forecasted resident population by the established ratio for the projection year.

(23) "Estimated bed projection" means the number of nursing home beds calculated by the department statewide or within a planning area, by the end of the projection period.

(24) "Ex parte contact" means any oral or written communication between any person in the certificate of need program or any other person involved in the decision regarding an application for, or the withdrawal of, a certificate of need and the applicant for, or holder of, a certificate of need, any person acting on behalf of the applicant or holder, or any person with an interest regarding issuance or withdrawal of a certificate of need.

(25) "Expenditure minimum" means one million dollars for the twelve-month period beginning with July 24, 1983, adjusted annually by the department according to WAC 246-310-900.

(26) "Health care facility" means hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers including freestanding dialysis units, ambulatory surgical facilities, continuing care retirement communities, hospices and home health agencies, and includes the facilities when owned and operated by a political subdivision or instrumentality of the state and other facilities as required by federal law and rules, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy.

(a) In addition, the term "health care facility" does not include any nonprofit hospital:

(i) Operated exclusively to provide health care services for children;

(ii) Which does not charge fees for the services; and

(iii) If not contrary to federal law as necessary to the receipt of federal funds by the state.

(b) In addition, the term "health care facility" does not include a continuing care retirement community which:

(i) Offers services only to contractual residents;

(ii) Provides its residents a contractually guaranteed range of services from independent living through skilled

nursing, including some form of assistance with activities of daily living;

(iii) Contractually assumes responsibility for costs of services exceeding the resident's financial responsibility as stated in contract, so that, with the exception of insurance purchased by the retirement community or its residents, no third party, including the medicaid program, is liable for costs of care even if the resident depletes personal resources;

(iv) Offers continuing care contracts and operates a nursing home continuously since January 1, 1988, or obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the department of social and health services assuring financial liability for services to residents, including nursing home services, shall not fall upon the department of social and health services;

(vi) Does not operate, and has not undertaken, a project resulting in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has undertaken no increase in the total number of nursing home beds after January 1, 1988, unless a professional review of pricing and long-term solvency was obtained by the retirement community within the prior five years and fully disclosed to residents.

(27) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, Section 1310(d) of the Public Health Service Act; or

(b) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;

(c) Is compensated (except for copayments) for the provision of the basic health care services listed in this subsection to enrolled participants by a payment made on a periodic basis without regard to the date the health care services are provided and fixed without regard to the frequency, extent, or kind of health service actually provided; and

(d) Provides physicians' services primarily:

(i) Directly through physicians who are either employees or partners of the organization; or

(ii) Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(28) "Health service area" means a geographic region appropriate for effective health planning including a broad range of health services.

(29) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services.

(30) "Home health agency" means an entity which is, or has declared its intent to become, certified as a provider of home health services in the medicaid or medicare program.

(31) "Hospice" means an entity which is, or has declared its intent to become, certified as a provider of hospice services in the medicaid or medicare program.

(32) "Hospital" means any institution, place, building or agency or distinct part thereof which qualifies or is required to qualify for a license under chapter 70.41 RCW, or as a psychiatric hospital licensed under chapter 71.12 RCW.

(33) "Inpatient" means a person receiving health care services with board and room in a health care facility on a continuous twenty-four-hour-a-day basis.

(34) "Interested persons" means:

(a) The applicant;

(b) Health care facilities and health maintenance organizations providing services similar to the services under review and located in the health service area;

(c) Third-party payers reimbursing health care facilities in the health service area;

(d) Any agency establishing rates for health care facilities and health maintenance organizations in the health service area where the proposed project is to be located;

(e) Health care facilities and health maintenance organizations which, in the twelve months prior to receipt of the application, have submitted a letter of intent to provide similar services in the same planning area;

(f) Any person residing within the geographic area to be served by the applicant; and

(g) Any person regularly using health care facilities within the geographic area to be served by the applicant.

(35) "Licensee" means an entity or individual licensed by the department of health or the department of social and health services. For the purposes of nursing home projects, licensee refers to the operating entity and those persons specifically named in the license application as defined under chapter 388-97 WAC.

(36) "Net estimated bed need" means estimated bed need of a planning area changed by any redistribution as follows:

(a) Adding nursing home beds being redistributed from another nursing home planning area or areas; or

(b) Subtracting nursing home beds being redistributed to another nursing home planning area or areas.

(37) "New nursing home bed" means a nursing home bed never licensed by the state or beds banked under RCW 70.38.115(13), where the applicant must demonstrate need for the previously licensed nursing home beds. This term does not include beds banked under RCW 70.38.111(8).

(38) "Nursing home" means any entity licensed or required to be licensed under chapter 18.51 RCW or distinct part long-term care units located in a hospital and licensed under chapter 70.41 RCW.

(39) "Obligation," when used in relation to a capital expenditure, means the following has been incurred by or on behalf of a health care facility:

(a) An enforceable contract has been entered into by a health care facility or by a person on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset; or

(b) A formal internal commitment of funds by a health care facility for a force account expenditure constituting a capital expenditure; or

(c) In the case of donated property, the date on which the gift is completed in accordance with state law.

(40) "Offer," when used in connection with health services, means the health facility provides one or more specific health services.

(41) "Over the established ratio" means the bed-to-population ratio is greater than the statewide current established ratio.

(42) "Person" means an individual, a trust or estate, a partnership, any public or private corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(43) "Planning area" means each individual county designated by the department as the smallest geographic area for which nursing home bed need projections are developed, except as follows:

(a) Clark and Skamania counties shall be one planning area.

(b) Chelan and Douglas counties shall be one planning area.

(44) "Predevelopment expenditures" means capital expenditures, the total of which exceeds the expenditure minimum, made for architectural designs, plans, drawings, or specifications in preparation for the acquisition or construction of physical plant facilities. "Predevelopment expenditures" exclude any obligation of a capital expenditure for the acquisition or construction of physical plant facilities and any activity which the department may consider the "commencement of the project" as this term is defined in this section.

(45) "Professional review of continuing care retirement community pricing and long-term solvency" means prospective financial statements, supported by professional analysis and documentation, which:

(a) Conform to Principles and Practices Board Statement Number 9 of the Healthcare Financial Management Association, "Accounting and Reporting Issues Related to Continuing Care Retirement Communities"; and

(b) Project the financial operations of the continuing care retirement community over a period of ten years or more into the future; and

(c) Are prepared and signed by a qualified actuary as defined under WAC 284-05-060 or an independent certified public accountant, or are prepared by management of the continuing care retirement community and reviewed by a qualified actuary or independent certified public accountant who issues a signed examination or compilation report on the prospective financial statements; and

(d) Include a finding by management that the intended expansion project of the continuing care retirement project is financially feasible.

(46) "Project" means all undertakings proposed in a single certificate of need application or for which a single certificate of need is issued.

(47) "Project completion" for projects requiring construction, means the date the facility is licensed. For projects not requiring construction, project completion means initiating the health service.

(48) "Projection period" means the three-year time interval following the projection year.

(49) "Projection year" for nursing home purposes, means the one-year time interval preceding the projection period.

(50) "Public comment period" means the time interval during which the department shall accept comments regarding a certificate of need application.

(51) "Redistribution" means the shift of nursing home bed allocations between two or more planning areas or the shift of nursing home beds between two or more nursing homes.

(52) "Replacement authorization" means a written authorization by the secretary's designee for a person to implement a proposal to replace existing nursing home beds in accordance with the eligibility requirements in WAC 246-310-044 and notice requirements in WAC 246-310-396.

(53) "Resident population" for purposes of nursing home projects, means the number of residents sixty-five years of age and older living within the same geographic area which:

(a) Excludes contract holders living within a recognized CCRC:

(i) With approval for new nursing home beds under WAC 246-310-380(4); or

(ii) Excluded from the definition of a health care facility per RCW 70.38.025(6);

(b) Is calculated using demographic data obtained from:

(i) The office of financial management; and

(ii) Certificate of need applications and exemption requests previously submitted by a CCRC.

(54) ~~("Sale, purchase, or lease" means any transaction in which the control, either directly or indirectly, of part or all of any existing hospital changes to a different person including, but not limited to, by contract, affiliation, corporate membership restructuring, or any other transaction.~~

~~(55))~~ "Secretary" means the secretary of the Washington state department of health or the secretary's designee.

~~(56))~~ (55) "State Health Planning and Resources Development Act" means chapter 70.38 RCW.

~~(57))~~ (56) "Statewide current ratio" means a bed-to-population ratio computed from the most recent statewide nursing home bed supply and the most recent estimate of the statewide resident population.

~~(58))~~ (57) "Swing beds" means up to the first five hospital beds designated by an eligible rural hospital which are available to provide either acute care or nursing home services.

~~(59))~~ (58) "Tertiary health service" means a specialized service meeting complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

~~(60))~~ (59) "Transition period" means the period of time, not exceeding five years, between the date a CCRC is inhabited by a member, and the date it fully meets the requirements of a CCRC.

~~(61))~~ (60) "Under the established ratio" means the bed-to-population ratio is less than the statewide current established ratio.

~~(62))~~ (61) "Undertaking" means any action subject to the provisions of chapter 246-310 WAC.

~~(63))~~ (62) "Working days" excludes Saturdays, Sundays, and legal holidays observed by the state of Washington. Working days are counted in the same way as calendar days.

WSR 17-08-099
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed April 5, 2017, 11:01 a.m., effective May 6, 2017]

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

Purpose: Rules are needed to implement 2016 legislation.

Citation of Existing Rules Affected by this Order: Amending WAC 314-02-103, 314-05-020, 314-38-020, 314-38-080, and 314-38-090.

Statutory Authority for Adoption: RCW 66.08.030, 66.20.010.

Adopted under notice filed as WSR 17-04-037 on January 25, 2017.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 5, Repealed 0.

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

Date Adopted: April 5, 2017.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-02-103 What is a wine retailer reseller endorsement? (1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license or the holder of a beer and/or wine specialty shop license to allow the sale of wine at retail to on-premises liquor licensees.

(2) For holders of a grocery store license: No single sale to an on-premises liquor licensee may exceed twenty-four liters. ~~((Single sales to an on-premises licensee are limited to one per day.))~~

(3) For holders of a beer and/or wine specialty shop license:

(a) No single sale may exceed twenty-four liters, unless the sale is made by a licensee that was formerly a state liquor store or contract liquor store.

(b) May sell a maximum of five thousand liters of wine per day for resale to retailers licensed to sell wine for consumption on the premises.

(4) A grocery store licensee or a beer and/or wine specialty shop licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

~~((4))~~ (5) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee or a beer and/or wine specialty shop licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee or beer and/or wine specialty shop licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

~~((5))~~ (6) The annual fee for the wine retailer reseller endorsement for a grocery store licensee is one hundred sixty-six dollars.

(7) The annual fee for the wine retailer reseller endorsement for a beer and/or wine specialty shop licensee is one hundred ten dollars.

(8) Sales made under the reseller endorsement are not classified as retail sales for taxation purposes.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-05-020 What is a special occasion license?

(1) Per RCW 66.24.380, a special occasion license allows a nonprofit organization to sell, at a specified date, time, and place:

(a) Spirits, beer, and wine by the individual serving for on-premises consumption; ~~(and)~~

(b) Spirits, beer, and wine in original, unopened containers for off-premises consumption; and

(c) Wine in original, unopened containers for on-premises consumption if permission is obtained from the WSLCB prior to the event.

(2) Special occasion licensees are limited to twelve days per calendar year (see RCW 66.24.380(1) for an exception for agricultural fairs).

(3) The fee for this license is \$60 per day, per event. Multiple alcohol service locations at an event are an additional sixty dollars per location.

(4) Per RCW 66.24.375, all proceeds from the sale of alcohol at a special occasion event must go directly back into the nonprofit organization, except for reasonable operating costs for actual services performed at compensation levels comparable to like services within the state.

(5) A charitable nonprofit organization or a local winery industry association is not disqualified from obtaining a special occasion license even if its board members are also officers, directors, owners, or employees of either a licensed domestic winery or a winery certificate of approval holder. The charitable nonprofit organization must be registered

under section 501 (c)(3) of the Internal Revenue Code, and the local wine industry association must be registered under section 501 (c)(6) of the Internal Revenue Code.

(6) If a winery is taking orders and accepting payment for product of its own production from consumers at a special occasion event to be delivered at a later date from one of its authorized locations, the special occasion shall include the name of the winery on the special occasion license application.

NEW SECTION

WAC 314-24-245 Domestic wineries at special occasion licensed events. (1) A domestic winery may take orders and accept payment for product of its own production from consumers at a special occasion event, to be delivered at a later date from one of its authorized locations.

(2) A domestic winery must be invited and/or authorized by the special occasion licensee in order to attend the special occasion event in this capacity.

(3) The special occasion licensee is the only licensee allowed to sell wine to be consumed on the premises.

(4) The winery is not allowed to give free tastings of wine of their own production to consumers.

AMENDATORY SECTION (Amending WSR 84-14-028, filed 6/27/84)

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 are hereby established as follows:

(1) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(1).

(2) The fee for a special permit as authorized by RCW 66.20.010(2) for purchase of five gallons or less is established as five dollars and for purchase of over five gallons is established as ten dollars.

(3) A fee for a banquet permit, as authorized by RCW 66.20.010(3), is established in WAC 314-18-040.

(4) The fee for a special business permit, as authorized by RCW 66.20.010(4), is established in WAC 314-38-010(2).

(5) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(5).

(6) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(6).

(7) A special permit as authorized by RCW 66.20.010(7) shall be issued without charge to those eligible entities.

(8) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(8).

(9) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(9).

(10) The fee of thirty dollars is established for a special permit as authorized by RCW 66.20.010(10).

(11) The fee of seventy-five dollars is established for a special permit as authorized by RCW 66.20.010(11).

(12) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(13).

(13) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(14).

(14) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(15).

(15) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(16).

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-38-080 Class 18 special winery permit. (1)

The special winery permit is for domestic wineries.

(2) A special winery permit allows a manufacturer of wine to ~~((have))~~ be present at a private event not open to the general public at a specific place and date for the purpose of tasting wine and selling wine of its own production for off-premises consumption.

~~(3) ((The activities at the event are limited to the activities allowed on the winery premises.~~

~~(4))~~ The winery must obtain the special permit by submitting an application for a class 18 special winery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

~~((5))~~ (4) The winery is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-38-090 Class 19 special distillery permit.

(1) A special distillery/craft distillery permit is for Washington distillers only.

(2) A special distillery/craft distillery permit allows a manufacturer of spirits to ~~((have))~~ be present at a private event not open to the general public at a specific place and date for the purpose of tasting spirits and selling spirits of its own production for off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the distillery/craft distillery premises.

(4) The distillery or craft distillery must obtain the special permit by submitting an application for a class 19 special distillery/craft distillery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(5) The licensee is limited to twelve events per calendar year.

NEW SECTION

WAC 314-38-095 Class 20 special brewery permit.

(1) A special brewery/microbrewery permit is for Washington brewers only.

(2) A special brewery/microbrewery permit allows a manufacturer of beer to be present at a private event not open to the general public at a specific place and date for the purpose of tasting beer and selling beer of its own production for off-premises consumption.

(3) The brewery or microbrewery must obtain the special permit by submitting an application for a class 20 special

brewery/microbrewery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(4) The licensee is limited to twelve events per calendar year.

NEW SECTION

WAC 314-38-100 Accommodation sale permit. (1)

An accommodation sale permit is for an individual or business to sell a private collection of wine or spirits to another individual or business.

(2) The seller must complete an application for accommodation sale permit and submit with a fee of twenty-five dollars to the WSLCB.

(3) Once the WSLCB verifies the information on the application, a permit for the sale will be issued to the seller.

(4) The seller must wait at least five business days after receiving the permit to release the wine and/or spirits to the buyer.

(5) Within twenty calendar days of the sale, the seller must complete an accommodation sale inventory report and submit it to the WSLCB.

(6) The following are definitions for the purpose of this section:

(a) "Accommodation sale" means the sale of a private collection of wine or spirits to an individual or business. Both the seller and the buyer must be located in Washington state.

(b) "Buyer" means the individual or business buying a private collection of wine or spirits. A buyer may be a liquor licensee.

(c) "Private collection" means a privately owned collection of wine or spirits. There is no minimum or maximum quantity to be considered a collection.

(d) "Seller" means the individual or business selling a private collection of wine or spirits. The seller cannot be a liquor licensee.