

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of Transportation

(agency name)

Administrative Order No. 80

(1) I, Duane Berentson, Secretary of Transportation

do promulgate and adopt at Transportation Building, Olympia, Washington (place)

the annexed rules relating to:

State operated airports, operating rules and standards.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. WSR 83-08-039 filed with the code reviser on March 31, 1983. These rules shall take effect: [x] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2). [] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[x] (a) This rule is promulgated pursuant to RCW 47.68.100 and RCW 47.68.210 and is intended to administratively implement that statute.

[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency) has authority to implement the provisions of

(name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the

(agency) as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

STATE OF WASHINGTON APPROVED AND ADOPTED FILED

May 16, 19 83

MAY 18 1983

By Duane Berentson

Secretary of Transportation Title

CODE REVISER'S OFFICE

WSR 83-11-041

Chapter 12-40 WAC

STATE AIRPORT RULES

WAC

12-40-010	Definitions.
12-40-020	Aeronautics division to manage.
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12-40-040	Controlled operations.
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12-40-060	Nondiscrimination.
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12-40-100	State/federal agreements controlling.
12-40-110	Grounds for refusal to grant agreement.
12-40-120	Pre-existing agreements.
12-40-130	All use at own risk.
12-40-140	Temporary rules.
12-40-150	Accident notification.
12-40-160	Hazard notification.
12-40-170	Littering.

NEW SECTION

WAC 12-40-010 DEFINITIONS. (1) "State airport" means any airport operated by the department of transportation, whether by agreement or ownership, including all real and personal property associated with the operation of the airport whether or not such property is owned by the department of transportation.

(2) "Controlled user" means any user of the airport whose use is controlled by an agreement with the department of transportation, including other governmental agencies.

(3) "Noncontrolled user" means any other person not included in subsection (2) of this section.

(4) "Special use permit" means any permit issued by the department of transportation to any person for the conduct of activities at a state airport which are noncommercial in nature, such as (but not limited to) testing equipment, temporary easements, and long term parking of vehicles other than aircraft. A fee may or may not be charged.

(5) "Letter of agreement" means a letter issued to a person by the department of transportation trading the services of that person at a state airport for some benefit to that person. No fee will be charged.

(6) "NOTAM" means a notice to airmen issued by the Federal Aviation Administration.

(7) "Flowage fee" means a fee charged by the department of transportation on the amount of fuel delivered into aircraft at a state airport.

NEW SECTION

WAC 12-40-020 AERONAUTICS DIVISION TO MANAGE. The assistant secretary for aeronautics shall exercise all management powers incident to the operation of state airports.

NEW SECTION

WAC 12-40-030 OPENING AND CLOSING OF AIRPORTS. (1) Because of surface conditions and/or snow cover, the following state airports will be closed to all traffic (except in an emergency) from approximately October 1 to June 1 of each year, by NOTAM.

- (a) Bandera
- (b) Lester
- (c) Nason Creek
- (d) Stehekin
- (e) Avey
- (f) Lake Wenatchee
- (g) Copalis
- (h) Sullivan Lake
- (i) Tieton
- (j) Ranger Creek
- (k) Skykomish
- (l) Easton

(2) The following state airports may be closed during the winter due to conditions, by NOTAM.

- (a) Winthrop/Intercity
- (b) Little Goose
- (c) Lower Granite
- (d) Quillayute
- (e) Lower Monumental
- (f) Woodland

(3) Opening and closing dates may change at some airports, and pilots shall check NOTAMS prior to using any state airport. It is strongly suggested that even when open, pilots should check with the aeronautics division on current conditions, especially at those airports located in mountainous areas.

NEW SECTION

WAC 12-40-040 CONTROLLED OPERATIONS. (1) The department of transportation may enter into any contract, lease, special use permit, letter of agreement, or other arrangement with any person for controlled operations at state airports.

(2) All controlled operations shall be conducted only under an agreement with the department of transportation.

(3) The following operations require the execution of an agreement, lease, special use permit, or other arrangement as appropriate, between the department of transportation, and the controlled user:

- (a) Any construction on a state airport;
- (b) The permanent, semipermanent or seasonal use of hangars or tie-downs on a state airport, except transient use;
- (c) Any right-of-ground access other than by public roadway or easement, so called "through the fence" operations;
- (d) Fuel sales or storage at a state airport;
- (e) Long term parking of vehicles or storage of property;
- (f) Exchange of services between the department of transportation and a person or group;
- (g) Any commercial operation, except transient nonscheduled air taxi operations;
- (h) Any use of airport property which is not incidental to normal airport operations;
- (i) Glider towing, parachuting, ballooning, and ultralight use at state airports, except transient;
- (j) Any other use as may be designated by the department of transportation.

NEW SECTION

WAC 12-40-050 FEES. (1) Any contract, lease, or special use permit executed may require the payment of fees to the department of transportation. Services may be accepted in lieu of fees, but only by prior agreement. No services will be applied to past fees incurred.

(2) All fees collected under this section by the department of transportation will be credited towards maintenance of all state airports.

(3) Fees for commercial operations will be commensurate with the value of the opportunity to do business on or at the airport and the services and facilities furnished by the state at the airport for which no separate charge is made.

NEW SECTION

WAC 12-40-060 NONDISCRIMINATION. No controlled user shall discriminate on the basis of race, sex, age, or national origin in the hiring and dismissal of employees, or in the use of his facilities.

NEW SECTION

WAC 12-40-070 EXCLUSIVE GRANTS PROHIBITED. The department of transportation will not grant exclusive use rights of any kind at a state airport.

NEW SECTION

WAC 12-40-080 REPRESENTATIONS. No controlled user shall, in connection with raising any investment funds or advertising, represent to anyone that they have the endorsement, support, or approval of the state for any development or plan of action unless and until such endorsement has been given in writing.

NEW SECTION

WAC 12-40-090 PROVISIONS IN AGREEMENTS. All leases, special use permits, letters of agreement, or other documents shall contain the following provisions, as applicable:

(1) Transferability of any agreement is contingent on approval by the department of transportation. This shall include the sale of stock in a controlled user which would change the management of that use;

(2) All applicable Federal Aviation Administration regulations will be adhered to, and any violation of those regulations may be deemed a violation of the controlled user's agreement;

(3) In the event of violation of the terms of any agreement, the department of transportation will serve notice of the violation and where appropriate, notice of the corrective action that must be taken by the controlled user or notice of intention to forfeit said agreement. Provided, no forfeiture shall be taken before the expiration of

ten days, during which time the controlled user may give notice of appeal to the secretary of transportation, who shall hear such appeal at a public meeting within thirty days and render a decision within five days of the public meeting;

(4) Commercial users shall, if deemed necessary by the department of transportation, give bond in favor of the state of Washington for the value of one year's fees, or the total of the value of the agreement if less than one year in term;

(5) Facilities constructed on state property under any agreement with the department of transportation shall become property of the department of transportation at the conclusion of the agreement including any renewals, extensions, or renegotiations of the agreement;

(6) Any disputes between a controlled user and the department of transportation, except violations of agreements for which forfeiture is sought, shall be submitted in writing to the secretary of transportation. The secretary shall provide a written decision within ten days which shall be the final, binding disposition of the the dispute;

(7) All facilities shall be open to inspection of department of transportation personnel at all times;

(8) Controlled users shall, as appropriate:

(a) Maintain insurance against fire, windstorm, and other hazards and, if applicable, hangar-keepers insurance;

(b) Maintain policies of public liability insurance in such amount as the department of transportation shall require;

(c) Hold the state harmless for all claims of liability arising from their use, and provide the department of transportation with certificate evidencing their insurance coverage and naming the state of Washington as an additional insured.

NEW SECTION

WAC 12-40-100 STATE/FEDERAL AGREEMENTS CONTROLLING. Where the state of Washington has entered into an agreement with the federal government concerning a specific airport, that agreement will control, where applicable, any agreement sought or subsequently granted to a controlled user.

NEW SECTION

WAC 12-40-110 GROUNDS FOR REFUSAL TO GRANT AGREEMENT. The department of transportation may refuse to grant an operating agreement to any person if:

(1) Safety will be compromised;

(2) The proposed operation is not consistent with airport purposes;

(3) The proposed operation is not in the best interests of the state of Washington; or

(4) The proposed operation is in conflict with prior agreements.

NEW SECTION

WAC 12-40-120 PRE-EXISTING AGREEMENTS. Any agreements existing on the date of this section shall continue in force under the terms of

the agreement. All subsequent or renewal agreements will be made in conformance with these rules.

NEW SECTION

WAC 12-40-130 ALL USE AT OWN RISK. The use of state airports by all persons shall be solely at the risk of the user. State airports are maintained principally for emergency use and the state does not warrant the conditions at any state airport to be suitable for any other use.

NEW SECTION

WAC 12-40-140 TEMPORARY RULES. The department of transportation may, from time to time, issue temporary and/or emergency rules affecting one or more state airports. These rules will be available from the aeronautics division and may be distributed, as necessary, by other means, including NOTAM.

NEW SECTION

WAC 12-40-150 ACCIDENT NOTIFICATION. Any person involved in or witnessing an accident or hazardous incident at a state airport shall report such accident or incident to the aeronautics division as soon as possible. The report is required in addition to reports required under National Transportation Safety Board Rules, Part 830.

NEW SECTION

WAC 12-40-160 HAZARD NOTIFICATION. Any person having knowledge of hazards at or near a state airport is encouraged to notify the aeronautics division of the nature of the hazard.

NEW SECTION

WAC 12-40-170 LITTERING. Because of their remote location, many state airports have no provision for trash removal. Users are expected to pack out all trash. Persons littering state airports will be prosecuted under the litter control act, chapter 70.93 RCW.