

WSR 07-14-082
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 29, 2007, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-084.

Title of Rule and Other Identifying Information: Chapter 388-76 WAC, Adult family homes minimum licensing requirements.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on September 4, 2007, at 10:00 a.m.; and at the Division of Developmental Disabilities, Region 1 Headquarters, 1611 West Indiana Avenue, Spokane, WA 99205-4221, on September 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not before September 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 6, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules are to:

- (1) Comply with the governor's executive order 05-03 plain talk;
- (2) Simplify language, eliminate the question and answer format, reorganize and renumber the chapter so that the requirements are clearer for adult family home providers to understand;
- (3) Clarify issues that have been brought to the attention of the department; and
- (4) Update rules to comply with statute changes.

Reasons Supporting Proposal: These changes make the rule:

- (1) Easier to read and understand and enforce;
- (2) Easier to find information by changing the format;
- (3) Easier to comply with by clarifying issues that have been brought to the attention of the department; and
- (4) Up-to-date with statute changes.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapters 70.128 and 74.34 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Roger Woodside, P.O. Box 45600, Mailstop 45600, Olym-

pia, WA 98504-5600, (360) 725-3204; Implementation and Enforcement: Pat Bossert, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCS analyzed the proposed rule amendments and concludes that costs to small businesses will be minor, if there are any costs at all. The primary purpose of the proposed amendments are to clarify pre-existing requirements and to update existing rules to conform to changes in procedures, Washington state statutes, or rules of other Washington state agencies. As a result, the preparation of a small business economic impact statement is not required. A copy of the statement may be obtained by contacting Roger Woodside, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail WoodsR@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Roger Woodside, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail WoodsR@dshs.wa.gov.

June 22, 2007

Stephanie E. Schiller
Rules Coordinator

Chapter 388-76 WAC

ADULT FAMILY HOME MINIMUM LICENSING REQUIREMENTS

DEFINITIONS

NEW SECTION

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

"Adult family home" means:

(1) A residential home in which a person or entity are licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services; and

(2) For the purposes of this chapter, any person or entity who has been granted a license to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means:

(1) The maximum number of persons in need of personal or special care permitted in an adult family home at a given time; and

(2) Includes related children or adults in the home who receive personal or special care and services.

"Caregiver" for purposes other than training, means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, or a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condi-

tion, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age twenty-two;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(a) On the premises; and

(b) Quickly and easily available to the caregiver.

"Entity provider" means any corporation, partnership, association, or limited liability company that is licensed under this chapter to operate an adult family home.

"Entity representative" means the individual designated by an entity provider who is responsible for the daily operation of the adult family home.

"Home" means adult family home.

"Indirect supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means an on-site visit by department personnel to determine the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Multiple facility provider" means an individual or entity provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) a pattern of conduct or inaction by a person or entity with a duty to care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.41.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Personal care services" means:

(1) Both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs; and

(2) Does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means any person or entity that is licensed under this chapter to operate an adult family home.

"Qualified staff" means a person who:

(1) Is employed, directly or by contract, by an adult family home; and

(2) Meets all of the requirements of a provider, entity representative, resident manager or caregiver.

"Resident" means:

(1) Any adult unrelated to the provider who lives in the adult family home and who is in need of care; and

(2) For decision-making purposes, the term "resident" includes the resident's surrogate decision maker following state law or at the resident's request.

"Resident manager" means a person employed or designated by the provider or entity representative to manage the adult family home.

"Significant change" means:

(1) A lasting change, decline or improvement, in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed, directly or by contract, by an adult family home; and

(2) Provides care and services to any resident.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules, and

(6) If the bedroom door opens into the resident bedroom the space required for the door to swing.

"Willful" means the deliberate or nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from a provider.

LICENSE

NEW SECTION

WAC 388-76-10005 License—Required. (1) Any person or entity must have a license by the department to operate an adult family home.

(2) No person or entity may not provide personal care, special care, and room and board for more than one resident without a license.

NEW SECTION

WAC 388-76-10010 License—Valid and not transferable. (1) The adult family home is not required to renew the license each year.

(2) The license remains valid unless:

(a) The department takes enforcement action to suspend or revoke the license per law;

(b) The home voluntarily surrenders the license and closes the home;

(c) The home relinquishes the license; or

(d) The home fails to pay the annual licensing fee.

(3) The home license is:

(a) Not transferable; and

(b) Valid only for the provider and address listed on the license.

NEW SECTION

WAC 388-76-10015 License—Adult family home—Compliance required. (1) The licensed adult family home must comply with all the requirements established in chapters 70.128, 70.129, 74.34 RCW and this chapter or other applicable laws and regulations; and

(2) The provider or entity representative is ultimately responsible for the operation of the adult family home.

NEW SECTION

WAC 388-76-10020 License—Ability to provide care and services. The adult family home must have the understanding, ability, emotional stability and physical health suited to meet the emotional and physical care needs of vulnerable adults.

NEW SECTION

WAC 388-76-10025 License annual fee. (1) The license fee is fifty dollars per adult family home per year.

(2) The home must send the annual license fee to the department upon receipt of notice of fee due.

(3) If the department does not renew the license, the annual license fee is refundable.

NEW SECTION

WAC 388-76-10030 License capacity. (1) The department will only issue an adult family home license for more than one but not more than six residents.

(2) In determining the home's capacity, the department must consider the:

(a) Structural design of the house;

(b) Number and qualifications of staff;

(c) Total number of people living in the home who require personal or special care, including:

(i) Children; and

(ii) Other household members;

(d) The number of people for whom the home provides adult day care; and

(e) The ability for the home to safely evacuate all people living in the home.

NEW SECTION

WAC 388-76-10035 License requirements—Multiple family home providers. To be licensed to operate more than one adult family home, the applicant must have:

(1) Evidence that the provider or entity representative has:

(a) Successfully completed the forty-eight hour residential care administrator's training to meet the related requirements of chapter 388-112 WAC.

(2) Operated an adult family home in Washington for at least one year without a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(3) The ability to operate more than one home.

(4) The following plans for each home the applicant intends to operate:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for how the provider entity representative, or resident manager will manage the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking.

(5) A credit history considered if the history relates to the ability to provide care and services.

(6) An applicant, entity representative or a qualified resident manager at each home who is responsible for the care of each resident at all times.

NEW SECTION

WAC 388-76-10040 License requirements—Provider or entity representative residence. (1) The adult family home provider or entity representative must either:

(a) Live in the home; or

(b) Employ or contract with a qualified resident manager who lives in the home and is responsible for the care and services of each resident at all times.

(2) The provider, entity representative or resident manager is exempt from the live-in requirement if the home has:

(a) Twenty-four staffing; and

(b) A qualified staff person who can make needed decisions is always present.

NEW SECTION

WAC 388-76-10045 Licensing—Certain state employees and employee household members—Prohibited. The department must not issue an adult family home license to employees or members of the employees' household of:

(1) Aging and disability services administration; or

(2) The department when the employee's duties include:

(a) Placement of persons in an adult family home; or

(b) Authorizing payments for any resident's care and services in an adult family home.

NEW SECTION

WAC 388-76-10050 License—Relinquishment. (1) The adult family home must relinquish the adult family home license to the department:

(a) Within thirty days of the last resident leaving the home; or

(b) When the home moves all residents out of the home for purposes other than remodeling or construction.

(2) The department may revoke the license if the home does not:

(a) Relinquish the adult family home license; or

(b) Does not relinquish the adult family home license with the specified timeframe.

LICENSE APPLICATION

NEW SECTION

WAC 388-76-10055 Application—Generally. (1) The applicant must send an application to the department for:

(a) An initial adult family home license;

(b) A change of ownership of the adult family home; or

(c) A change of the adult family home location or address.

(2) Prior to sending the application to the department, the applicant must ensure:

(a) The people listed on the application meet the minimum qualifications listed in WAC 388-76-10130 through 388-76-10145 as required; and

(b) After January 1, 2007, the provider and entity representative must successfully complete the department approved forty-eight hour adult family home administration and business planning class as required in chapter 388-112 WAC.

NEW SECTION

WAC 388-76-10060 Application—Department orientation class—Required. (1) An applicant or any person who has not held an adult family home license within the last twelve months must attend a department approved orientation class before receiving an application form; and

(2) If an applicant has not obtained an adult family home license within one calendar year of submitting the application to the department the applicant must attend department orientation again.

NEW SECTION

WAC 388-76-10065 Application—Required information. To apply for a license, an applicant must:

(1) Provide all information required on the application form;

(2) Provide any additional information requested by the department; and

(3) Send the complete application form to the department.

NEW SECTION

WAC 388-76-10070 Application—Fee required. The applicant must send a one hundred dollar fee with the application form:

(1) Fifty dollars of this fee is the application processing fee;

(2) Fifty dollars is the annual license fee; and

(3) The fifty dollar annual license fee will be returned to the applicant by the department if the application is withdrawn, voided or the license is denied.

NEW SECTION

WAC 388-76-10075 Application—Becomes void. The department must consider the application void when the applicant:

(1) Does not return information to the department within sixty calendar days of the department's first request for additional information for an incomplete application; or

(2) Has not obtained an adult family home license within one calendar year of first submitting the application to the department.

NEW SECTION

WAC 388-76-10080 Application—Co-provider. Couples considered legally married under Washington state law:

(1) May not apply for separate licenses for each spouse; and

(2) May apply jointly as co-providers.

NEW SECTION

WAC 388-76-10085 Application—Individual or co-provider. The applicant must include in the application a list of all facilities or homes in which the applicant or persons affiliated with the applicant, provided care and services to children or vulnerable adults within the last ten years.

NEW SECTION

WAC 388-76-10090 Application—Entity application. An entity submitting an application must:

(1) Include a list of all facilities or homes in which the applicant or persons affiliated with the applicant, managerial employee, or owner of five percent or more of the entity provided care and services to children or vulnerable adults within the last ten years;

(2) Designate an entity representative who:

(a) Is responsible for the daily operations of the adult family home;

(b) Will be considered the department's primary contact person; and

(c) May act as both the entity representative and the resident manager in only one home.

(3) Designate a qualified resident manager for the home if the entity representative is not the designated resident manager in subsection (2)(c) of this section.

NEW SECTION

WAC 388-76-10095 Application—Identification of landlord—Required. Applicants must name the landlord of the building if the:

- (1) Building to be used as an adult family home is leased, under contract, or rented; and
- (2) The landlord takes an active interest in the operation of the home.
- (3) An active interest includes but is not limited to:
 - (a) The charging of rent as a percentage of the business;
 - (b) Assistance with start-up and/or operational costs;
 - (c) Collection of resident fees;
 - (d) Recruitment of residents;
 - (e) Management oversight;
 - (f) Assessment and/or negotiated care plan development of residents; or
 - (g) The provision of personal or special care of residents.

NEW SECTION

WAC 388-76-10100 Application—Subject to review.

- (1) Adult family home license applications are subject to review under this chapter.
- (2) The department will not process an incomplete application and will return the application requesting the missing information.

NEW SECTION

WAC 388-76-10105 Application—Change of ownership. (1) A change of ownership of an adult family home requires both a new license application and a new license.

- (2) A change of owner occurs when there is a change in:
 - (a) The provider or entity representative ultimately responsible for the daily operational decisions of the home; or
 - (b) Control of an entity provider.
- (3) Events which constitute a change of ownership include, but are not limited to:
 - (a) The form of legal organization of the provider is changed, such as when a provider forms:
 - (i) A partnership;
 - (ii) Corporation;
 - (iii) Association; or
 - (iv) A dissolution or merger of a licensed entity with another legal organization.
 - (b) The provider or entity representative transfers business operations and management responsibility to another party, whether there is a partial or whole transfer of adult family home real property and/or personal property assets.
 - (c) Two people are both licensed as a married couple to operate an adult family home and an event, such as a divorce or death results in only one person operating the home.
 - (d) An event dissolves the partnership, if the provider or entity representative is a business partnership.
 - (e) If the provider or entity representative is a corporation and the corporation:
 - (i) Is dissolved;
 - (ii) Merges with another corporation which is the survivor; or

(iii) Consolidates with one or more corporations to form a new corporation;

(iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, fifty percent or more of the stock is transferred to one or more:

- (A) New or former stockholders; or
- (B) Present stockholders each having less than five percent of the stock before the initial transaction; or
- (f) Any other event or combination of events which results in a substitution or of control of the provider or entity representative.
- (4) The new owner:
 - (a) Must correct all deficiencies that exist at the time of the ownership change;
 - (b) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations;
 - (c) Must obtain a new license from the department before the transfer of ownership; and
 - (d) Must not begin operation of the adult family home as the new owner, provider or entity representative until the department has granted the license.
 - (5) The home must notify each resident, in writing at least thirty days before the effective date of the ownership change.

(6) If a currently licensed provider or entity representative seeking to change ownership wants the department to give priority to processing an application to minimize or prevent disruption of residents that live in the existing home, the applicant must:

- (a) Make the request to the department in writing, including the reason for changing the location of the home; and
- (b) Explain how or why the reason for the change is beyond the control of the home.

NEW SECTION

WAC 388-76-10110 Application—Change of location or address. (1) A change of the adult family home location or address requires both a new license application and a new license.

- (2) The home must not start operations of the home at a new location until the department has granted the license for the new location.
- (3) The home must notify each resident or resident representative, in writing at least thirty days before the effective date of the change of the home location or address.
- (4) If a currently licensed provider or entity representative, seeking to change the home location or address wants the department to give priority to processing an application to minimize or prevent the disruption of residents that live in the existing home, the applicant must:
 - (a) Make the request in writing, including the reason for changing the location of the home to the department; and
 - (b) Explain how or why the reason for change is beyond the control of the home.

GRANTING OR DENYING A LICENSE

NEW SECTION

WAC 388-76-10115 Granting or denying a license—Generally. In making a determination of whether to grant an adult family home license, the department must consider:

(1) Separately and jointly as applicants each person and entity named in an application, including each person or entity affiliated with the applicant;

(2) Information in the application;

(3) Other documents and information the department deems relevant which may include, but not be limited to:

(a) Inspection and complaint investigation findings in each facility or home in which the applicant, person affiliated with the applicant, or owner of five percent or more of the entity provided care or services to children or vulnerable adults; and

(b) Credit information.

(4) The history of each individual listed on the application for negative findings identified in WAC 388-76-10120 and 388-76-10125, including, but not limited to the following:

(a) Applicant;

(b) Person affiliated with the applicant;

(c) Entity representative;

(d) Caregiver;

(e) An owner who:

(i) Exercised daily control over the operations; or

(ii) Owns fifty-one percent or more of the entity.

(f) Any person who has unsupervised access to residents in the home; and

(g) Any person who lives in the home and is not a resident.

(5) Applicants who are licensed to care for children in the same home to determine if:

(a) Necessary to allow a resident's child(ren) to live in the same home as the resident or allow a resident child(ren) who turn eighteen to stay in the home;

(b) The applicant provides satisfactory evidence to the department of the home's ability to meet the needs of children and adults residing in the home; and

(c) The total number of persons receiving care and services in the home do not exceed the licensed capacity of the adult family home.

NEW SECTION

WAC 388-76-10120 License—Must be denied. The department must deny a license if the department finds any person or entity unqualified as follows:

(1) Has a history of prior violations of chapter 70.128 RCW or any law regulating to residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department;

(2) When providing care or services to children or vulnerable adults:

(a) Has been found to be in significant noncompliance with federal or state regulations; or

(b) Had a license for the care of children or vulnerable adults suspended or revoked.

(3) For a period of twenty years after a provider surrendered or relinquished an adult family home license after notification of the department's intention to deny, suspend, not renew or revoke, in lieu of appealing the department's action;

(4) Been enjoined from operating a facility for the care and services of children or adults;

(5) A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW;

(6) Had a revocation or suspension of a license for the care of children or adults;

(7) Had a revocation, cancellation, suspension or nonrenewal of:

(a) A medicaid or medicare provider agreement by the contracting agency; or

(b) Any agreement with a public agency for the care and treatment of children or vulnerable adults, when the action was taken by the public agency.

(8) Been convicted of any crime listed in RCW 43.43.830 or 43.43.842;

(9) Been found by a court:

(a) In a protection proceeding under chapter 74.34 RCW to have abandoned, neglected, abused, or financially exploited a vulnerable adult; or

(b) In a domestic relations proceeding under Title 26 RCW to have sexually or physically abused, neglected or exploited any minor.

(10) Been found in any final decision issued by a disciplinary board to have:

(a) Sexually or physically abused, neglected or exploited any minor or a person with a developmental disability; or

(b) Abandoned, abused, neglected or financially exploited any vulnerable adult.

(11) Been found in any final decision by any federal or state agency or department to have abandoned, neglected, abused or financially exploited a vulnerable adult;

(12) Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually or physically abused, neglected or exploited any minor;

(13) The home currently licensed:

(a) As a boarding home; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

(14) After January 1, 2007, if the provider or entity representative has not successfully completed a department-

approved forty-eight hour adult family home administration and business planning class.

NEW SECTION

WAC 388-76-10125 License—May be denied. The department may deny a license if the department finds any person or entity unqualified as follows:

- (1) Been convicted of a crime:
 - (a) As defined under RCW 43.43.830 or 43.43.842;
 - (b) Relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;
 - (c) A felony against a person if the conviction reasonably relates to the competency of the person to own or operate an adult family home;
 - (d) Involving a firearm used in the commission of a felony or in any act of violence against a person; or
 - (e) Engaged in illegally selling or distributing drugs illegal use of drugs or excessive use of alcohol within the past five years without the evidence of rehabilitation.
- (2) Found by a court in a protection proceeding under chapter 74.34.RCW to have abandoned, abused, neglected, or financially exploited a vulnerable adult;
- (3) Found in a final decision issued by a disciplinary board to have sexually or physically abused, neglected or exploited any minor person or a person with a developmental disability or to have abused or financially exploited any vulnerable adult;
- (4) Found in any dependency action under RCW 13.34.-030(5) to have sexually abused, neglected or exploited any minor or to have physically abused any minor;
- (5) Found in a court in a domestic relations proceeding under Title 26 RCW to have:
 - (a) Sexually abused, neglected or exploited any minor or to have physically abused any minor; or
 - (b) Committed an act of domestic violence toward a family or household member.
- (6) Had sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;
- (7) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;
- (8) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application or in any matter under investigation by the department;
- (9) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;
- (10) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation or monitoring visit made by the department;
- (11) Failed or refused to comply with:
 - (a) A condition imposed on a license or a stop placement order; or
 - (b) The applicable requirements of chapters 70.128, 70.129, 74.34 RCW or this chapter.
- (12) Misappropriated property of a resident;

(13) Denied a license or license renewal to operate a facility that was licensed to care for children or vulnerable adults;

(14) Exceeded licensed capacity in the operation of an adult family home;

(15) Operated a facility for the care of children or adults without a license or revoked license;

(16) Relinquished or returned a license in connection with the operation of any facility for the care of children or adults, or did not seek license renewal following written notification of the licensing agency's intention of denial, suspension, cancellation or revocation of a license;

(17) Had resident trust funds or assets of an entity providing care to children or vulnerable adults seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(18) Failed to meet financial obligations as the obligations fell due in the normal course of business, thereby impeding the ability to provide care and services to residents;

(19) Refused to permit authorized department representatives to interview residents or to have access to resident records or home;

(20) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties; or

(21) Found to be in non-compliance with the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

QUALIFICATIONS OF INDIVIDUALS PROVIDING CARE AND SERVICES

NEW SECTION

WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager. The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

- (1) Be twenty-one years of age or older;
- (2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:
 - (a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;
 - (b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an Associate's degree;
 - (c) Admission to, or completion of coursework at a foreign or United States college or university for which credit was awarded;
 - (d) Graduation from a foreign or United States college or university, including award of a Bachelor's degree;
 - (e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded, including award of a Master's degree; or
 - (f) Successful passage of the United States board examination for registered nursing, or any professional medical

occupation for which college or university education was required.

(3) Meet the department's training requirements of chapter 388-112 WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate in the English language, or meet alternative requirements:

(a) By assuring that a person on staff and available at the home who is able to communicate or make provisions for communicating with the resident in his or her primary language; and

(b) Capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.

(6) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(7) Have completed at least three hundred and twenty hours of successful direct care experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home;

(8) Have no criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

(9) Obtain and keep valid cardio-pulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

(10) Tuberculosis screening to establish tuberculosis status per this chapter.

NEW SECTION

WAC 388-76-10135 Qualifications—Caregiver. The adult family home must ensure each caregiver has the following minimum qualifications:

(1) Be eighteen years of age or older;

(2) Have a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;

(3) Have basic communication skills to:

(a) Be able to communicate or make provisions to communicate with the resident in his or her primary language;

(b) Understand and speak English well enough to:

(i) Respond appropriately to emergency situations; and

(ii) Read, understand and implement resident negotiated care plans.

(4) Meet the department's training requirements of chapter 388-112 WAC;

(5) Have no criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

(6) Have a current valid first-aid and cardio-pulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and

(7) Tuberculosis screening to establish tuberculosis status per this chapter.

NEW SECTION

WAC 388-76-10140 Qualifications—Students—Volunteers. The adult family home must ensure that students and volunteers meet the following minimum qualifications:

(1) Be eighteen years old or older;

(2) Meet the department's training requirements of chapter 388-112 WAC;

(3) Have no criminal convictions listed in RCW 43.43.830 and 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation; and

(4) Tuberculosis screening to establish tuberculosis status per this chapter.

NEW SECTION

WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative or resident manager. The adult family home must ensure that a licensed nurse who is a provider, entity representative or resident manager has:

(1) No criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation; and

(2) A current valid first-aid and cardio-pulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC.

NEW SECTION

WAC 388-76-10150 Qualifications—Assessor. (1) The adult family home must ensure that an assessor, except for an authorized department case manager, performing an assessment for any resident meets the following qualifications:

(a) A master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have functional or cognitive disabilities; or

(b) A bachelor's degree in social services, human services, behavioral sciences or an allied field and three years social service experience working with adults who have functional or cognitive disabilities; or

(c) Have a valid Washington state license to practice as a nurse under chapter 18.79 RCW and three years of clinical nursing experience; or

(d) Is currently a licensed physician, including an osteopathic physician, in Washington State.

(2) The home must ensure than an assessor who meets the requirements of subsections (1)(a), (b), or (c) of this section does not have unsupervised access to any resident unless the assessor has:

(a) A current criminal history background check; and

(b) Has not been convicted of any crime listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation.

CRIMINAL HISTORY BACKGROUND CHECKNEW SECTION

WAC 388-76-10155 Unsupervised access to vulnerable adults—Prohibited. The adult family home must not allow the following persons to have unsupervised access to residents until the home receives successful results from the criminal history background check:

- (1) Staff;
- (2) Volunteers or students acting as a caregiver; and
- (3) Household members over the age of eleven.

NEW SECTION

WAC 388-76-10160 Criminal history background check—Required. To assist in determining the character, suitability, and competence of a potential employee and before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

- (1) Require the person to complete the residential care services background inquiry form which includes:
 - (a) A disclosure statement; and
 - (b) A statement authorizing the home, the department, and the Washington state patrol to conduct a background inquiry.
- (2) Verbally inform the person:
 - (a) That he or she may ask for a copy of the background inquiry result; and
 - (b) Of the inquiry result within ten days of receiving the result.
- (3) Send the information to the department and any additional documentation and information as requested by the department to satisfy the requirements of this section; and
- (4) Notify the appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

NEW SECTION

WAC 388-76-10165 Criminal history background check—Valid for two years. (1) A background inquiry result is valid for two years from the date conducted;

- (2) The adult family home must have a valid criminal history background check for all persons in the home who may have unsupervised access to any resident; and
- (3) The home must submit, receive and keep the results of the check every two years.

NEW SECTION

WAC 388-76-10170 Criminal history background check—Information—Confidentiality—Use restricted. The adult family home must:

- (1) Establish and implement procedures that ensure:
 - (a) All disclosure statements background inquiry applications, responses, related information, and all copies are kept in a confidential and secure manner;

(b) All background inquiry results and disclosure statements are used for employment purposes only;

(c) Background inquiry results and disclosure statements are not disclosed to any person except:

- (i) The person about whom the home made the disclosure or background inquiry;
 - (ii) Authorized state and federal employees; and
 - (iii) The Washington state patrol auditor.
- (2) Keep a record of inquiry results for eighteen months after the date an employee either quits or is terminated.

NEW SECTION

WAC 388-76-10175 Employment—Conditional—Pending results. An adult family home may conditionally employ a person pending the result of a background inquiry, provided the home:

- (1) Asks the individual if they have been convicted of a crime listed under RCW 43.43.830 or 43.43.842 and the individual denies they have a conviction;
- (2) Requests the background inquiry within seventy-two hours of the conditional employment;
- (3) Does not allow, the conditionally hired person, to have unsupervised access to any resident without direct supervision; and
- (4) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements in chapter 388-112 WAC.

NEW SECTION

WAC 388-76-10180 Employment—Certain criminal history—Prohibited. The adult family home must not employ any person, directly or by contract, or accept as a volunteer or student any person who may have unsupervised access to residents, or allow a household member over the age of eleven unsupervised access to any resident if the person or background inquiry discloses that the person has a history of:

- (1) A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW; or
- (2) Convicted of a crime against persons as defined under RCW 43.43.830 or 43.43.842.

NEW SECTION

WAC 388-76-10185 Employment—Certain criminal history—Permitted. (1) Nothing in this section may be interpreted to require the employment of any person against the judgement of the provider or entity representative.

- (2) The adult family home may choose to employ a person if the person has one or more convictions for a past offense and the offense was:

(a) Simple assault, assault in the fourth degree and three or more years has passed between the most recent conviction and the date of the application for employment;

(b) Prostitution and three or more years has passed between the most recent conviction and the date of the application for employment;

(c) Theft in the third degree and three or more years has passed between the most recent conviction and the date of the application for employment;

(d) Theft in the second degree and five or more years has passed between the most recent conviction and the date of the application for employment; or

(e) Forgery and five or more years has passed between the most recent conviction and the date of the application for employment.

ADMINISTRATION GENERAL

NEW SECTION

WAC 388-76-10190 Adult family home—Compliance with regulations—Required. The adult family home must comply with:

- (1) This chapter;
- (2) Chapters 70.128, 70.129 and 74.34 RCW; and
- (3) Other applicable state and federal laws.

NEW SECTION

WAC 388-76-10195 Adult family home—Staff—Generally. The adult family home must ensure:

(1) Enough staff is available in the home to meet the needs of each resident if residents are in the home or not, except as per WAC 388-76-10200;

(2) Staff are readily available to meet resident needs if the home takes the resident out to another location and the resident negotiated care plan does not indicate it is safe for the resident to be left unattended for a specific time period; and

(3) All staff are skilled and able to do the tasks assigned to meet the needs of each resident.

NEW SECTION

WAC 388-76-10200 Adult family home—Staff—Availability—Contact information. In addition to other licensing requirements for staff availability, the adult family home must:

(1) Designate an experienced, capable staff member of responding on behalf of the provider or entity representative:

- (a) By phone or pager;
- (b) At all times including:
 - (i) When no residents are present in the home; and
 - (ii) When the provider entity representative and residents are on vacation or away from the home.

(2) Give residents the telephone or pager number for the contact required in subsection (1) of this section;

(3) Ensure the provider, entity representative or resident manager is readily available to:

- (a) Each resident;
- (b) Residents' representatives;

(c) Caregivers; and

(d) Authorized state staff.

NEW SECTION

WAC 388-76-10205 Medicaid or state funded residents. When the adult family home accepts medicaid or state funded residents, the home must follow the terms and conditions of the department contract and chapter 388-105 WAC.

NEW SECTION

WAC 388-76-10210 Resident relocation due to closure. When an adult family home chooses to voluntarily close, the home must:

(1) Notify the following in writing of the closure at least thirty days before the home closes:

- (a) The department;
- (b) Each resident; and
- (c) Each resident's representative.

(2) Develop, organize, and carry out a discharge plan that meets the needs of each resident.

NEW SECTION

WAC 388-76-10215 Resident funds—Protection, liquidation or transfer. (1) The adult family home must meet the requirements of RCW 70.129.040 to protect any funds the resident may have deposited with the adult family home.

(2) If a deceased resident had some of his or her adult family home care paid for by the department, then the home must:

- (a) Send the final accounting and funds payable to:

Secretary, Department of Social and Health Services
Office of Financial Recovery
Estate Recovery Unit

(b) Include with the final accounting required in subsection (2)(a) of this section:

- (i) The deceased resident's name; and
- (ii) The deceased resident's social security number.

(3) When a resident is missing from the home, in addition to other licensing requirements, the home must make a reasonable effort to find the missing resident before transferring resident funds to the department of revenue as per subsection (4) of this section.

(4) The adult family home must notify the department of revenue of abandoned property when:

(a) A resident is missing from the home for more than ninety days; and

- (b) The missing resident:

(i) Gave money to the home to manage or for safekeeping;

- (ii) Does not have a legal guardian;

(iii) Did not appoint a power of attorney to handle his or her financial affairs;

(iv) Did not name a family member to act on the resident's behalf; and

(v) Did not have his or her care paid for by the department.

(5) The home must send any money received from the missing resident, to the department of revenue:

- (a) According to chapter 63.29 RCW;
- (b) Within twenty days of notifying the department of revenue per subsection (2) of this section.

(6) Before the adult family home changes its owner, the home must:

- (a) Give each resident a written statement that accounts for any personal funds held by the home;
- (b) Give the prospective adult family home owner a written statement that accounts for all of the residents' funds that home will transfer to the new adult family home owner; and
- (c) Get a written receipt of the transferred residents' funds from the new adult family home owner.

NEW SECTION

WAC 388-76-10220 Incident log. The adult family home must keep a log of:

- (1) Alleged or suspected instances of abandonment, neglect, abuse or financial exploitation;
- (2) Accidents or incidents affecting a resident's welfare; and
- (3) Any injury to a resident.

NEW SECTION

WAC 388-76-10225 Reporting requirement. (1) The adult family home must ensure all staff:

- (a) Report suspected abuse, neglect, exploitation or abandonment of a resident:
 - (i) According to chapter 74.34 RCW;
 - (ii) To the department by calling the complaint toll-free hotline number; and
 - (iii) To the local law enforcement agency when required by RCW 74.34.035.

(b) Report the following to the department by calling the complaint toll-free hotline number:

- (i) Any actual or potential event requiring any resident to be evacuated;
- (ii) Conditions that threaten the provider's or entity representative's ability to continue to provide care or services to each resident; and
- (iii) A missing resident.
- (2) When there is a significant change in a resident's condition, or a serious injury, trauma, or death of a resident, the adult family home must immediately notify:
 - (a) The resident's family;
 - (b) The resident's representative, if one exists;
 - (c) The resident's physician;
 - (d) Other appropriate professionals working with the resident;
 - (e) Persons identified in the negotiated care plan; and
 - (f) The resident's case manager if the resident is a department client.

(3) Whenever an outbreak of suspected food poisoning or communicable disease occurs, the adult family home must notify:

- (a) The local public health officer; and
- (b) The department's complaint toll-free hotline number.

NEW SECTION

WAC 388-76-10230 Pets. The adult family home must ensure any animal visiting or living on the premises:

- (1) Does not compromise any resident rights, preferences or medical needs;
- (2) Has a suitable temperament, is clean and healthy, and otherwise poses no significant health or safety risks to any resident, staff, or visitors; and
- (3) Have proof of regular immunizations.

HEALTH CARE DECISION MAKING

NEW SECTION

WAC 388-76-10235 Guardianship. The adult family home may be a resident's guardian if:

- (1) A court has appointed the home to be the guardian under chapter 11.88 RCW; and
- (2) The home has petitioned the court in writing according to RCW 11.92.040(6) to:
 - (a) Inform the court:
 - (i) The home provides care for the resident in the home;
 - (ii) The fees the home is paid to care for the resident, the home's duties, and the types of care provided to the resident for those fees; and
 - (iii) Why the guardianship fees would not be duplicative of the fees paid.
 - (b) Request the court to direct payment to the home from the resident's funds for the resident's care, maintenance and education.

NEW SECTION

WAC 388-76-10240 Durable power of attorney for health care decisions. The adult family home must not allow a provider, entity representative, owner, administrator, or employees of the home to act as a resident's power of attorney for health care decisions, according to chapter 11.94 RCW, unless the provider, entity representative, owner, administrator, or employee is the resident's:

- (1) Spouse;
- (2) Adult child; or
- (3) Brother or sister.

NEW SECTION

WAC 388-76-10245 Resident self-determination—Health care decision making. The adult family home must provide care and services consistent with the federal patient self-determination act and other statutes related to a resident legal representative and health care decision making, including but not limited to:

- (1) Chapter 7.70 RCW;
- (2) Chapter 70.122 RCW;
- (3) Chapter 11.88 RCW;
- (4) Chapter 11.92 RCW; and
- (5) Chapter 11.94 RCW.

NEW SECTION

WAC 388-76-10250 Medical emergencies—Contacting emergency medical services—Required. (1) The adult family home must develop and implement policies and procedures which require immediate contact of the local emergency medical services when a resident has a medical emergency. This requirement applies:

(a) Unless the caregiver, present at the time of the emergency, is a licensed physician or registered nurse acting within his or her scope of practice;

(b) Whether or not:

(i) Any order exists directing medical care for the resident;

(ii) The resident has provided an advance directive for medical care; or

(iii) The resident has expressed any wishes involving medical care; and

(c) If available, the home must immediately give arriving emergency medical services personnel a copy of:

(i) Any order that exists directing medical care for the resident; and

(ii) The resident's advance directive for medical care.

(2) The home must inform the resident of the requirements in this section.

(3) The home is not required to contact emergency medical services when a resident is receiving hospice care by a licensed hospice agency and the:

(a) Emergency relates to the expected hospice death; and

(b) Situation is watched by the hospice agency.

INFECTION CONTROL AND COMMUNICABLE DISEASE

NEW SECTION

WAC 388-76-10255 Infection control. The adult family home must develop and implement an infection control system that:

(1) Uses nationally recognized infection control standards;

(2) Emphasizes frequent hand washing and other means of limiting the spread of infection;

(3) Follows the requirements of chapter 40.17 RCW, Washington Industrial Safety and Health Act to protect the health and safety of each resident and employees; and

(4) Directs all staff to:

(a) Dispose of razor blades, syringes, and other sharp items in a manner that will not risk the health and safety of residents, staff, other persons residing in the home or the public; and

(b) Use all disposable and single-service supplies and equipment only one time as specified by the manufacturer.

NEW SECTION

WAC 388-76-10260 Communicable disease—Preventing spread. If the adult family home suspects anyone working or living in the home has or may have a communicable disease, the home must implement nationally recognized infection control measures.

TUBERCULOSIS SCREENINGNEW SECTION

WAC 388-76-10265 Tuberculosis—Testing—Required. (1) The adult family home must develop and implement a system to ensure the following persons have tuberculosis testing within three days of employment:

(a) Provider;

(b) Entity representative;

(c) Resident manager;

(d) Caregiver;

(e) Staff; and

(f) Any student or volunteer providing any resident care and services.

(2) For the purposes of the tuberculosis sections "person" means the people listed in this section as required to have tuberculosis testing.

NEW SECTION

WAC 388-76-10270 Tuberculosis—Testing method—Required. The adult family home must ensure that all tuberculosis testing:

(1) Is done through a nationally recognized testing method such as by intradermal (Mantoux) administration or a TB Gold Test; and

(2) The test result is read:

(a) Within forty-eight to seventy-two hours of the test; and

(b) By a trained professional.

NEW SECTION

WAC 388-76-10275 Tuberculosis—No skin testing. The adult family home is not required to have a person tested for tuberculosis if the person has:

(1) A documented history of a previous positive test, ten or more millimeters in duration; or

(2) Documented evidence of:

(a) Adequate therapy for active disease; or

(b) Preventive therapy of infection.

NEW SECTION

WAC 388-76-10280 Tuberculosis—One step testing. The adult family home is only required to have a person take a one-step skin test if the person has any of the following:

(1) A positive result from the person's first skin test -a person who has a positive result from an initial first step test should not have a second test;

(2) A documented history of a negative result from previous two step testing; or

(3) A documented negative result from one step testing in the previous twelve months.

NEW SECTION

WAC 388-76-10285 Tuberculosis—Two step testing. Unless the person meets the requirement for having no skin testing or only a one step skin test, the adult family home

must ensure that each person has the following two-step testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test; except
- (3) A two-step test is not required for the TB Gold Test which is only a one-step test.

NEW SECTION

WAC 388-76-10290 Tuberculosis—Positive skin reaction. The adult family home must ensure that a person with a positive reaction to tuberculosis skin testing has a chest x-ray within seven days and follows the recommendation of health care officials.

NEW SECTION

WAC 388-76-10295 Tuberculosis—Negative skin reaction. The adult family home may be required by the public health official or licensing authority to ensure that persons with negative test results have follow-up skin testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis;
- (2) When tuberculosis symptoms are present; or
- (3) For periodic testing as determined by health official.

NEW SECTION

WAC 388-76-10300 Tuberculosis—Declining a test. The adult family home may accept a signed statement from a person who has reason to decline skin testing; if:

- (1) The signed statement includes the reason for declining; and
- (2) Additional evidence is provided to support the reason.

NEW SECTION

WAC 388-76-10305 Tuberculosis—Reporting positive skin reactions—Required. The adult family home must:

- (1) Report any person with tuberculosis symptoms or a positive chest x-ray to the appropriate public health authority; and
- (2) Follow the infection control and safety measures ordered by the public health authority, the person's personal physician, or other licensed health care professional.

NEW SECTION

WAC 388-76-10310 Tuberculosis—Skin test records. The adult family home must:

- (1) Keep the records of tuberculosis test results, reports of x-ray findings, and physician or public health orders and waivers;
- (2) Make them readily available to the appropriate health authority and licensing agency; and
- (3) Keep them for eighteen months after the date an employee either quits or is terminated.

RESIDENT RECORDS

NEW SECTION

WAC 388-76-10315 Resident record—Required. The adult family home must:

- (1) Create, maintain, and keep records for residents in the home where the resident lives and ensure that the records:
 - (a) Contain enough information so home can provide the needed care and services to each resident;
 - (b) Be in a format useful to the home;
 - (c) Be kept confidential so that only authorized persons see their contents;
 - (d) Are only released to the following persons:
 - (i) A health care institution;
 - (ii) When requested by the law;
 - (iii) To department representatives; and
 - (iv) To the resident;
 - (e) Be protected to prevent loss, alteration or destruction and unauthorized use;
 - (f) Be kept for three years after the resident leaves the home or death of the resident;
 - (g) Be available so that department staff may review them when requested; and
 - (h) Provide access to the resident to review their record and obtain copies of their record at a reasonable cost.
- (2) Ensure staff has access to the parts of residents' records needed by staff to provide care and services; and
- (3) Allow representatives of the long-term care ombudsman access to a resident record if approved by the resident.

NEW SECTION

WAC 388-76-10320 Resident record—Content. The adult family home must ensure that each resident record contains, at a minimum, the following information:

- (1) Identifying information about the resident;
- (2) The name, address and telephone number of the resident's:
 - (a) Representative;
 - (b) Health care providers;
 - (c) Significant family members identified by the resident; and
 - (d) Other individuals the resident wants involved or notified.
- (3) Current medical history;
- (4) The resident assessment information;
- (5) The preliminary service plan;
- (6) The negotiated care plan;
- (7) List of resident medications;
- (8) The resident's social security number;
- (9) When the resident was:
 - (a) Admitted to the home;
 - (b) Absent from the home; and
 - (c) Discharged from the home.
- (10) A current inventory of the resident's personal belongings dated and signed by:
 - (a) The resident; and
 - (b) The adult family home.
- (11) Financial records.

NEW SECTION

WAC 388-76-10325 Resident record—Legal documents—If available. When available, the adult family home must obtain copies of the following legal documents for the resident's records:

- (1) Any powers of attorney granted by the resident, including for health care decision making and financial; and
- (2) Court order of guardianship for the resident.

RESIDENT ASSESSMENTNEW SECTION

WAC 388-76-10330 Resident assessment. The adult family home must:

- (1) Obtain a new written assessment before admitting a resident to the home;
- (2) Not admit a resident without an assessment except in cases of a genuine emergency;
- (3) Ensure the assessment contains all of the information required in WAC 388-76-10340 unless the assessor can not:
 - (a) Obtain an element of the required assessment information; and
 - (b) The assessor documents the attempt to obtain the information in the assessment.
- (4) Be knowledgeable about the needs and preferences of each resident documented in the assessment.

NEW SECTION

WAC 388-76-10335 Resident assessment topics. (1) For the purposes of this section, "body care" means:

- (a) How the resident performs with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet; and
- (b) Dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC; and
- (c) Body care includes:
 - (i) Foot care if the resident is diabetic or has poor circulation; or
 - (ii) Changing bandages or dressings when sterile procedures are required.
- (2) The adult family home must ensure that each resident's assessment includes the following minimum information:
 - (a) Recent medical history;
 - (b) Current prescribed medications, and contraindicated medications, including but not limited to, medications known to cause adverse reactions or allergies;
 - (c) Medical diagnosis reported by the resident, the resident representative, family member, or by a licensed medical professional;
 - (d) Medication management:
 - (i) The ability of the resident to be independent in managing medications;
 - (ii) The amount of medication assistance needed;
 - (iii) If medication administration is required; or

(iv) If a combination of the elements in (i) through (iii) above is required.

- (e) Food allergies or sensitivities;
- (f) Significant known behaviors or symptoms that may cause concern or require special care, including:
 - (i) The need for and use of medical devices;
 - (ii) The refusal of care or treatment; and
 - (iii) Any mood or behavior symptoms that the resident has had within the last five years.
- (g) Cognitive status, including an evaluation of disorientation, memory impairment, and impaired judgment;
- (h) History of depression and anxiety;
- (i) History of mental illness, if applicable;
- (j) Social, physical, and emotional strengths and needs;
- (k) Functional abilities in relationship to activities of daily living including:
 - (i) Eating;
 - (ii) Toileting;
 - (iii) Walking;
 - (iv) Transferring;
 - (v) Positioning;
 - (vi) Specialized body care;
 - (vii) Personal hygiene;
 - (viii) Dressing; and
 - (ix) Bathing.
- (l) Preferences and choices about daily life that are important to the resident, including but not limited to:
 - (i) The food that the resident enjoys;
 - (ii) Meal times; and
 - (iii) Sleeping and nap times.
- (m) Preferences for activities; and
- (n) A preliminary service plan.

NEW SECTION

WAC 388-76-10340 Preliminary service plan. The adult family home must ensure that each resident has a preliminary service plan that includes:

- (1) The resident's specific problems and needs identified in the assessment;
- (2) The needs for which the resident chooses not to accept or refuses care or services;
- (3) What the home will do to ensure the resident's health and safety related to the refusal of any care or service;
- (4) Resident defined goals and preferences; and
- (5) How the home will meet the resident's needs.

NEW SECTION

WAC 388-76-10345 Assessment—Qualified assessor—Required. The adult family home must ensure the person performing resident assessments is:

- (1) A qualified assessor; or
- (2) For a resident who receives care and services paid for by the department, an authorized department case manager.

NEW SECTION

WAC 388-76-10350 Assessment—Updates required. The adult family home must ensure each resident's assess-

ment is reviewed and updated to document the resident's ongoing needs and preferences when:

- (1) There is a significant change in the resident's physical or mental condition;
- (2) The resident's negotiated care plan no longer reflects the resident's current status, needs and preferences;
- (3) At the resident's request or at the request of the resident's representative; or
- (4) At least every twelve months.

NEGOTIATED CARE PLAN

NEW SECTION

WAC 388-76-10355 Negotiated care plan. The adult family home must use the resident assessment and preliminary service plan to develop a written negotiated care plan. The home must ensure each resident's negotiated care plan includes:

- (1) A list of the care and services to be provided;
- (2) Identification of who will provide the care and services;
- (3) When and how the care and services will be provided;
- (4) How medications will be managed, including how the resident will get their medications when the resident is not in the home;
- (5) The resident's activities preferences and how the preferences will be met;
- (6) Other preferences and choices about issues important to the resident, including, but not limited to:
 - (a) Food;
 - (b) Daily routine;
 - (c) Grooming; and
 - (d) How the home will accommodate the preferences and choices.
- (7) If needed, a plan to:
 - (a) Follow in case of a foreseeable crisis due to a resident's assessed needs;
 - (b) Reduce tension, agitation and problem behaviors;
 - (c) Respond to resident's special needs, including, but not limited to medical devices and related safety plans;
 - (d) Respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal;
- (8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;
- (9) A statement of the ability for resident to be left unattended for a specific length of time; and
- (10) A hospice care plan if the resident is receiving services for hospice care delivered by a licensed hospice agency.

NEW SECTION

WAC 388-76-10360 Negotiated care plan—Timing of development—Required. The adult family home must ensure the negotiated care plan is developed and completed within thirty days of the resident's admission.

NEW SECTION

WAC 388-76-10365 Negotiated care plan—Implementation—Required. The adult family home must implement each resident's negotiated care plan.

NEW SECTION

WAC 388-76-10370 Negotiated care plan—Persons involved in development. The adult family home must involve the following people in developing the negotiated care plan:

- (1) The resident, to the greatest extent he or she can participate;
- (2) The resident's family, if approved by the resident;
- (3) The resident's representative, if the resident has a representative;
- (4) Professionals involved in the care of the resident;
- (5) Other individuals the resident wants included; and
- (6) The department case manager, if the resident is receiving care and services paid for by the department.

NEW SECTION

WAC 388-76-10375 Negotiated care plan—Signatures—Required. The adult family home must ensure that the negotiated care plan is agreed to and signed and dated by the:

- (1) Resident; and
- (2) Adult family home.

NEW SECTION

WAC 388-76-10380 Negotiated care plan—Timing of reviews and revisions. The adult family home must ensure that each resident's negotiated care plan is reviewed and revised as follows:

- (1) After an assessment for a significant change in the resident's physical or mental condition;
- (2) When the plan, or parts of the plan, no longer address the resident's needs and preferences;
- (3) At the request of the resident or the resident representative; or
- (4) At least every twelve months.

NEW SECTION

WAC 388-76-10385 Negotiated care plan—Copy to department case manager—Required. When the resident's services are paid for by the department, the adult family home must give the department case manager a copy of the negotiated care plan each time the plan is completed or updated, and after it has been signed and dated.

CARE AND SERVICES

NEW SECTION

WAC 388-76-10390 Admission and continuation of services. The adult family home must only admit or continue to provide services to a person when:

(1) The home can safely and appropriately meet the assessed needs and preferences of the person:

- (a) With available staff; and
- (b) Through reasonable accommodation.

(2) Admitting the resident does not negatively affect the ability of the home to:

- (a) Meet the needs and does not endanger the safety of other residents; or
- (b) Safely evacuate all people in the home during an emergency.

NEW SECTION

WAC 388-76-10395 Emergency admissions. (1) The adult family home may only admit a resident to the home without an assessment or a preliminary service plan if a true emergency exists.

(2) To establish that a true emergency exists, the home must verify that the resident's life, health or safety is at serious risk due to circumstances in the resident's current place of residence or harm to the resident has occurred.

(3) After establishing that a true emergency exists, the home must:

(a) Ensure the assessment and preliminary service plan are completed within five working days after admitting the resident, if the resident pays for services with private funds; or

(b) Obtain approval from an authorized department case manager before admission if the resident's care and services are paid by the department; and

(c) If approval is obtained verbally, document the time, date, and name of the case manager who gave approval.

NEW SECTION

WAC 388-76-10400 Care and services. The adult family home must ensure each resident receives:

(1) The care and services identified in the negotiated care plan.

(2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.

(3) The care and services in a manner and in an environment that:

(a) Actively supports, maintains or improves each resident's quality of life;

(b) Actively supports the safety of each resident; and

(c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of another resident.

(4) Services by the appropriate professionals based upon the resident's assessment and negotiated care plan, including nurse delegation if needed.

NEW SECTION

WAC 388-76-10405 Nursing care. If the adult family home identifies that a resident has a need for nursing care and the home is not able to provide the care per chapter 18.79 RCW, the home must:

(1) Contract with a nurse currently licensed in the state of Washington to provide the nursing care and service; or

(2) Hire or contract with a nurse to provide nurse delegation.

NEW SECTION

WAC 388-76-10410 Laundry services. The adult family home must:

(1) Provide laundry services as needed; and

(2) Launder sheets and pillowcases weekly or more often if soiled.

FOOD SERVICES

NEW SECTION

WAC 388-76-10415 Food services. The adult family home must:

(1) Ensure the provider, entity representative and all staff meet the safe food handling training requirements of chapter 388-112 WAC; and

(2) Serve meals:

(a) In the home where each resident lives; and

(b) That accommodate each resident's:

(i) Preferences;

(ii) Food allergies and sensitivities;

(iii) Caloric needs;

(iv) Cultural and ethnic background; and

(v) Physical condition that may make food intake difficult such as being hard for the resident to chew or swallow.

NEW SECTION

WAC 388-76-10420 Meals and snacks. The adult family home must:

(1) Serve at least three meals:

(a) In each twenty-four hour period;

(b) At regular times comparable to normal meal times in the community; and

(c) That meet the nutritional needs of each resident.

(2) Provide nutritious snacks to residents:

(a) Between meals; and

(b) In the evening.

(3) Get input from residents' in meal planning and scheduling;

(4) Serve nutrient concentrates, supplements, and modified diets only with written approval of the resident's physician;

(5) Only serve pasteurized milk; and

(6) Process any home-canned foods served in the home, according to the latest guidelines of the county cooperative extension service.

NEW SECTION

WAC 388-76-10425 Off-site food preparation. The adult family home must ensure:

(1) Persons preparing food, at a location separate from the home, have a current food handler's permit issued by the department of health;

- (2) Prepared food transported to the home is in airtight containers; and
- (3) Food stays at the appropriate and safe temperature:
 - (a) During transportation; and
 - (b) When served.

RESIDENT MEDICATIONS

NEW SECTION

WAC 388-76-10430 Medication system. (1) If the adult family home admits residents who need medication assistance or medication administration services, the home must have systems in place to ensure:

- (a) The services provided meet the medication needs of each resident; and
- (b) Meet all related laws and rules relating to medications.
 - (2) When providing medication assistance or medication administration for any resident, the home must ensure each resident:
 - (a) Assessment indicates the amount of medication assistance needed by the resident;
 - (b) Negotiated care plan identifies the medication service that will be provided to the resident;
 - (c) Medication log is kept current as required in WAC 388-76-10480;
 - (d) Receives medications as required.
 - (3) Records are kept which include a current list of prescribed and over-the-counter medications including name, dosage, frequency and the name and phone number of the practitioner as needed.

NEW SECTION

WAC 388-76-10435 Medication refusal. (1) Each resident has the right to refuse to take medications.

- (2) If the adult family home is assisting with or administering a resident's medications and the resident refuses to take or does not receive a prescribed medication:
 - (a) The home must notify the resident's practitioner; unless
 - (b) The provider, entity representative, resident manager or caregiver is a nurse or other health professional, acting within their scope of practice, is able to make a judgment about the impact of the resident's refusal.
 - (3) If the home becomes aware that a resident who self-administers, or takes their own medications, refuses to take a prescribed medication:
 - (a) The home must notify the practitioner; unless
 - (b) The provider, entity representative, resident manager or caregiver is a nurse or other health professional, acting within their scope of practice, is able to make a judgment about the impact of the resident's refusal.

NEW SECTION

WAC 388-76-10440 Medication—Assessment—Identification of amount of assistance needed when taking medications. (1) The adult family home must:

- (a) Ensure each resident assessment identifies the amount of assistance the resident needs when taking medications; and
- (b) Let the practitioner know when the following may affect the resident's ability to take their medications:
 - (i) Resident's physical or mental limitations; and
 - (ii) The setting or environment where the resident lives.
- (2) The amount of assistance needed by a resident when taking their medications is as follows:
 - (a) *Independent with self-administration* is when the resident does not need help taking medications and is able to directly take medications by eating or drinking, inhaling, by shot, through the skin or other means;
 - (b) *Self-administration with assistance*, as described in chapter 246-888 WAC, is when a resident is assisted in taking their medication by a non-practitioner; and
 - (c) *Medication administration* is when medications are administered to the resident by a person legally authorized to do so, such as but not limited to a physician, nurse or pharmacist or through nurse delegation.
- (3) The home must contact the resident's practitioner who will decide if a reassessment is necessary when:
 - (a) The resident has a change in the health status, medications, physical or mental limitations, or environment that might change the resident's need for medication assistance; or
 - (b) There is a need for a resident to have more than one type of medication assistance.

NEW SECTION

WAC 388-76-10445 Medication—Independent—Self-administration. The adult family home must ensure residents who have medication assistance assessed as independent with self-administration:

- (1) Administer their own medications; and
- (2) Are allowed to keep their prescribed and over-the-counter medications securely locked in either their room or another agreed upon area if documented in the resident negotiated care plan.

NEW SECTION

WAC 388-76-10450 Medication—Self-administration with assistance. (1) For the purposes of this section "enabler" means a physical device used to facilitate a resident's self-administration of a prescribed or over-the-counter medication. Physical devices include, but are not limited to a medicine cup, glass, cup, spoons, bowl, pre-filled syringes, syringes used to measure oral liquids, specially adapted table surfaces, drinking straw, piece of cloth, and the resident's hand.

- (2) The adult family home must ensure that the resident can:
 - (a) Put the medication into their own mouth; or
 - (b) Apply, inject, or instill the medications.
- (3) The home must:
 - (a) Provide set-up assistance just before the resident takes or applies the medication; or
 - (b) Only give oral medications through a gastrostomy or "g-tube" when ordered by the practitioner; and

(c) Ensure the resident is aware they are taking a medication, however the resident does not have to name the medication, effects or side effects.

(4) Self-administration with assistance:

(a) Does not include shots or intravenous medications as defined in WAC 264-888-020, except for a pre-filled insulin syringe;

(b) May include steadying or guiding a resident's hand while applying or instilling medications such as ointments, eye, ear and nasal preparations, but does not include the practice of "hand-over-hand" (total physical assistance) administration;

(c) May include transferring the medications from one container to another to make a single dose such as pouring a liquid from the medication container to a calibrated spoon or measuring cup;

(d) May include reminding or coaching the resident to take their medication;

(e) Does not include direct assistance with intravenous and injectable medications except the home may carry a pre-filled insulin syringe which the resident can administer;

(f) May include using an enabler; and

(g) Could include delivering a pre-filled insulin syringe to the resident if the resident independently self-administers the injection per WAC 246-888-020.

NEW SECTION

WAC 388-76-10455 Medication—Administration.

For residents assessed with as requiring the administration of medications, the adult family home must ensure medication administration is:

(1) Performed by a person as defined in chapter 69.41 RCW; or

(2) By nurse delegation per WAC 246-840-910 through 970; unless

(3) Done by a family member or legally appointed resident representative.

NEW SECTION

WAC 388-76-10460 Medication—Negotiated care plan.

(1) The adult family home must ensure that each resident's negotiated care plan addresses the amount of medication assistance needed by each resident, including but not limited to:

(a) The reasons why a resident needs that amount of medication assistance; and

(b) When there is a need for the resident to have more than one type of medication assistance.

(2) How the resident will get their medications when the resident is away from the home or when a family member or resident representative is assisting with medications is not available.

NEW SECTION

WAC 388-76-10465 Medication—Altering—

Requirements. (1) For the purposes of this section "altering a medications" means the alteration of a prescribed or over the counter medications and includes, but is not limited to

crushing tablets, cutting tablets in half; opening capsules and mixing powdered medications with food or liquids.

(2) The adult family home must consult with the practitioner or pharmacist:

(a) Before altering a medication, and

(b) If the practitioner or pharmacist agrees with altering a medication, record the:

(i) Time;

(ii) Date; and

(iii) Name of the person who provided the consultation.

(2) The home must ensure the resident is aware that a medication is:

(a) Altered; and/or

(b) Put in the resident's food or drink.

NEW SECTION

WAC 388-76-10470 Medication—Timing—Special

directions. (1) The adult family home must ensure medications are given:

(a) At the specific time(s) ordered by the practitioner; and

(b) As follows, when the practitioner does not order a medication to be given at a specific time:

(i) One time per day, every twenty four hours;

(ii) Two times a day, approximately twelve hours apart;

(iii) Three times a day, approximately six hours apart;

and

(iv) Four times a day, approximately four hours apart.

(2) The home must ensure all directions given by the practitioner are followed when assisting or giving each resident medication. This includes but is not limited to:

(a) Before meals;

(b) After meals;

(c) With or without food; and

(d) At bed time.

NEW SECTION

WAC 388-76-10475 Medication—Log. The adult family home must:

(1) Keep an up-to-date daily medication log for each resident except for residents assessed as medication independent with self-administration.

(2) Include in each medication log the:

(a) Name of the resident;

(b) Name of all prescribed and over-the-counter medications;

(c) Dosage of the medication;

(d) Frequency which the medications are taken; and

(e) Approximate time the resident must take each medication.

(3) Ensure the medication log includes:

(a) Initials of the staff who assisted or gave each resident medication(s);

(b) If the medication was refused and the reason for the refusal; and

(c) Documentation of any changes or new prescribed medications including:

(i) The change;

(ii) The date of the change;

(iii) A logged call requesting written verification of the change; and

(iv) A copy of written verification of the change from the practitioner received by the home by mail, facsimile, or other electronic means, or on new original labeled container from the pharmacy.

(4) The home must ensure that the changed or new medication is received from the pharmacy.

NEW SECTION

WAC 388-76-10480 Medication organizers. The adult family home must ensure:

(1) A licensed nurse, pharmacist, the resident or the resident's family members fills a resident's medication organizer;

(2) Prescribed and over-the-counter medications placed in a medication organizer come from the original container labeled for the resident by the pharmacist or pharmacy service;

(3) Each resident and anyone giving care to a resident can readily identify medications in the medication organizer;

(4) Medication organizer labels clearly show the following:

(a) The name of the resident;

(b) A list of all prescribed and over-the-counter medications;

(c) The dosage of each medication;

(d) The frequency which the medications are given.

(5) The person filling the medication organizer updates the labels on the medication organizer when the practitioner changes a medication.

NEW SECTION

WAC 388-76-10485 Medication storage. The adult family home must ensure all prescribed and over-the-counter medications are stored:

(1) In locked storage;

(2) In the original container with legible and original labels; and

(3) Appropriately for each medication, such as if refrigeration is required for a medication and the medication is kept in refrigerator in locked storage.

NEW SECTION

WAC 388-76-10490 Medication disposal—Written policy—Required. The adult family home must have and implement a written policy addressing the disposition of resident prescribed medications that are unused, leftover, or remaining after the resident leaves the home.

SPECIALTY CARE

NEW SECTION

WAC 388-76-10495 Specialty care—Designations. The department may designate an adult family home to provide specialty care in one or more of the following areas:

(1) Developmental disability;

(2) Mental illness; and

(3) Dementia.

NEW SECTION

WAC 388-76-10500 Granting specialty care designation—Requirements. The department will grant a specialty designation when:

(1) The provider, entity representative and resident manager has successfully completed training in one or more of the specialty care designated areas;

(2) The home provides the department with written documentation;

(a) Of successful completion of the required specialty care training or challenge test for each person in subsection (1) of this section; and

(b) For the specialty care training for all caregivers in the adult family home provided by a person knowledgeable in specialty care.

(3) The home ensures the specialty care need of each resident is met.

NEW SECTION

WAC 388-76-10505 Specialty care—Admitting and retaining residents. The provider or entity representative must not admit or keep a resident with specialty care needs, such as developmental disability, mental illness or dementia as defined in WAC 388-76-10000, if the provider, entity representative, resident manager and staff have not completed the specialty care training required by chapter 388-112 WAC.

RESIDENT RIGHTS

NEW SECTION

WAC 388-76-10510 Resident rights—Basic rights. The adult family home must ensure that each resident:

(1) Receives appropriate services;

(2) Is treated with courtesy;

(3) Continues to enjoy basic civil and legal rights;

(4) Has the chance to exercise reasonable control over life decisions such as choice, participation, and privacy;

(5) Is provided the opportunity to engage in religious, political, civic, recreational, and other social activities of their choice;

(6) Is cared for in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life including a safe, clean, comfortable, and home-like environment; and

(7) Is allowed to use his or her personal belongings to the extent possible.

NEW SECTION

WAC 388-76-10515 Resident rights—Exercise of rights. The adult family home must:

(1) Protect each resident's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the home;

(2) Protect and promote the rights of each resident and assist the resident to exercise his or her rights as a resident of the home, as a citizen or resident of the United States and the state of Washington.

(3) Be free of interference, coercion, discrimination, and reprisal from the home in exercising his or her rights; and

(4) Ensure the resident's right to choose a representative who may exercise the resident's rights to the extent provided by law.

NEW SECTION

WAC 388-76-10520 Resident rights—General notice. The adult family home must:

(1) Inform each resident both orally and in writing in a language the resident understands of resident rights and all rules and regulations governing resident conduct and responsibilities during the stay in the home;

(2) Ask the resident to sign and date they received the information; and

(3) Provide a statement indicating whether the provider or entity representative will accept medicaid or other public funds as a source of payment for services.

NEW SECTION

WAC 388-76-10525 Resident rights—Description. The adult family home must give each resident a written description of resident's rights that include a:

(1) Description of how the home will protect personal funds;

(2) Posting of names, addresses, and telephone numbers of the:

(a) State survey and certification agency;

(b) State licensing office;

(c) State ombudsmen program; and

(d) Protection and advocacy systems.

(3) A statement informing the resident that he or she may file a complaint with the appropriate state licensing agency concerning alleged abandonment, abuse, neglect, or financial exploitation.

NEW SECTION

WAC 388-76-10530 Resident rights—Notice of services. The adult family home must provide each resident notice in writing and in a language the resident understands before admission, and at least once every twenty-four months after admission of the:

(1) Services, items, and activities customarily available in the home or arranged for by the home as permitted by the license;

(2) Charges for those services, items, and activities including charges for services, items, and activities not covered by the home's per diem rate or applicable public benefit programs; and

(3) Rules of the home's operations.

NEW SECTION

WAC 388-76-10535 Resident rights—Notice of change to services. (1) The adult family home must inform each resident:

(a) In writing; and

(b) In advance of changes in the availability or the charges for services, items, or activities, or of changes in the home's rules.

(2) The home must provide notice:

(a) Thirty days before the change, except in emergencies; or

(b) Fourteen days before the change, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities.

(3) The home is not required to give notice:

(a) If the home gives each resident written notice of the availability and charges of services, items and activities before admission, when there are changes and every twenty-four months; and

(b) If the resident is provided different or additional services, items or activities from the home.

NEW SECTION

WAC 388-76-10540 Resident rights—Disclosure of fees and notice requirements—Deposits. (1) Before admission, if the adult family home requires payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission, the home must give the resident full disclosure in writing in a language the resident understands.

(2) The disclosure must include:

(a) A statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the deposits, admission fees, prepaid charges, or minimum stay fees that will be refunded to the resident or his if the resident leaves the home.

(3) The home must ensure that the receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home.

(4) If the home does not provide these disclosures, the home must not keep the deposits, admission fees, prepaid charges, or minimum stay fees.

(5) If a resident dies, is hospitalized or is transferred and does not return to the home, the adult family home:

(a) Must refund any deposit or charges already paid less the home's per diem rate for the days the resident actually resided, reserved or retained a bed in the home in spite of any minimum stay policy or discharge notice requirements; except that

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges; unless the resident has given advance notice in compliance with the admission agreement.

(6) All adult family homes covered under this section are required to refund any and all refunds due the resident or his

or within thirty days from the resident's date of discharge from the home.

(7) Nothing in this section applies to provisions in contracts negotiated between a home or and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(8) If the home requires the implementation of an admission contract by or on behalf of an individual seeking admission the home must ensure the terms of the contract are consistent with the requirements of this section, chapters 70.128, 70.129 and 74.34 RCW, and other applicable state and federal laws.

NEW SECTION

WAC 388-76-10545 Resident rights—Admitting and keeping residents. The adult family home must:

(1) Only admit or keep individuals whose needs the home can safely serve in the home:

- (a) With appropriate available staff; and
- (b) Through the provision of reasonable accommodations required by state and federal law.

(2) Not admit an individual before obtaining a thorough assessment of the resident's needs and preferences, except in cases of a genuine emergency;

(3) Ensure that the admission of the individual does not negatively affect the ability of the home to meet the needs of or endangers the safety of other residents; and

(4) Comply with all applicable federal and state requirements regarding nondiscrimination.

NEW SECTION

WAC 388-76-10550 Resident rights—Adult family home staffing—Notification required. The adult family home must provide the following information to prospective residents and current residents:

(1) Information about the provider, entity representative and resident manager, if there is a resident manager:

(a) Availability in the home, including a general statement about how often he or she is in the home;

(b) Education and training relevant to resident caregiving;

(c) Caregiving experience;

(d) His or her primary responsibilities, including whether he or she makes daily general care management decisions; and

(e) How to contact the provider, entity representative or resident manager when he or she is not in the home.

(2) Information about a licensed practical nurse or registered nurse, if there is one, who is in any way involved in the care of residents:

(a) Who the licensed practical nurse or registered nurse is employed by;

(b) The specific routine hours that the licensed practical nurse or registered nurse is on-site, if they are on-site routinely;

(c) His or her primary responsibilities, including whether he or she makes daily general care management decisions;

(d) The non-routine times when the licensed practical nurse or registered nurse will be available, such as on-call; and

(e) A description of what the provider or entity representative will do to make available the services of a licensed nurse in for an emergency or change in a resident's condition.

(3) A statement indicating whether the provider, entity provider, caregiver or staff is qualified or willing to become qualified to perform nurse delegation as allowed under state law.

NEW SECTION

WAC 388-76-10555 Resident rights—Financial affairs. Each resident has the right to manage his or her financial affairs, and the adult family home cannot require any resident to deposit their personal funds with the home.

NEW SECTION

WAC 388-76-10560 Resident rights—Adult family home management of resident financial affairs. If the adult family home agrees to manage a resident's personal funds, the home must do all of the following:

(1) Hold, safeguard, manage, and account for the personal funds of the resident deposited with the home;

(2) Have a written authorization from the resident;

(3) Deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts separate from any of the home's operating accounts, and that credits all interest earned on residents' funds to that account;

(4) If funds are pooled accounts, there must be a separate accounting for each resident's share; and

(5) Keep a resident's personal funds that do not exceed one hundred dollars in a non-interest-bearing account, interest-bearing account, or petty cash fund.

NEW SECTION

WAC 388-76-10565 Resident rights—Adult family home system for management of resident financial affairs. The adult family home that manages resident funds must:

(1) Develop and maintain a system that assures a full, complete, and separate accounting of each resident's personal funds given to the home on the resident's behalf;

(2) Ensure the:

(a) System prevents resident funds from being mixed with the home's funds or with the funds of any person other than another resident; and

(b) Individual financial record is available upon request to the resident.

NEW SECTION

WAC 388-76-10570 Resident rights—Financial affairs related to resident death. If a resident's personal funds are deposited with the adult family home, the home must give the resident's funds and a final accounting of the funds within forty-five days after the resident's death to:

(1) The individual or probate jurisdiction administering the resident's estate; except that

(2) For a resident who received long-term care services paid by the state, the home must send funds and accounting to the state of Washington, department of social and health services, office of financial recovery.

NEW SECTION

WAC 388-76-10575 Resident rights—Privacy. (1)

The adult family home must ensure the right of each resident to personal privacy that includes:

- (a) The home;
- (b) Medical treatment;
- (c) Clinical or resident records;
- (d) Personal care; and
- (e) Visits and meetings of family and resident groups;

however

(2) The resident right to personal privacy does not require the home to provide a private room for each resident.

NEW SECTION

WAC 388-76-10580 Resident rights—Grievances.

The adult family home must:

(1) Ensure each resident's right to voice grievances, including those about care and treatment given or not given that has been furnished as well as that which has not been furnished; and

(2) Make prompt efforts to resolve grievances the resident may have, including those about the behavior of other residents.

NEW SECTION

WAC 388-76-10585 Resident rights—Examination of inspection results. The adult family home must:

(1) Ensure each resident is given the ability to examine the most recent inspection report of the home and related plans of correction; and

(2) Publicly post a notice that the inspection report is available for review.

NEW SECTION

WAC 388-76-10590 Resident rights—Contact with client advocates. The adult family home must ensure that each resident:

- (1) Receives information from client advocate agencies; and
- (2) Has opportunities to contact client advocate agencies.

NEW SECTION

WAC 388-76-10595 Resident rights—Advocacy access and visitation rights. The adult family home must not interfere with each resident's right to have access to and from:

- (1) Any representative of the state;
- (2) The resident's own physician;
- (3) The state long-term care ombudsman program as established under chapter 43.190 RCW;

(4) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under Part C of the developmental disabilities assistance and bill of rights act;

(5) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;

(6) Immediate family or other relatives of the resident and others who are visiting with the consent of the resident, subject to reasonable limits to protect the rights of others and to the resident's right to deny or withdraw consent at any time;

(7) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law; and

(8) The resident's representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

NEW SECTION

WAC 388-76-10600 Resident rights—Mail and telephone privacy. The adult family home must ensure each resident's right to privacy in communications, including the right to:

- (1) Send and receive unopened mail without delay;
- (2) Have writing paper, postage, and pens or pencils available that have been paid for by resident; and
- (3) Be able to use a telephone where calls can be made without being overheard.

NEW SECTION

WAC 388-76-10605 Resident rights—Personal property and storage space. The adult family home must ensure each resident's right to keep and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

NEW SECTION

WAC 388-76-10610 Resident rights—Waiver of liability. The adult family home must not ask the resident for, or make the resident sign waivers of:

- (1) Potential liability for losses of personal property or injury; and
- (2) Residents' rights set forth in chapters 70.128, 70.129, 74.34 RCW, this chapter or in the applicable licensing laws.

NEW SECTION

WAC 388-76-10615 Resident rights—Transfer and discharge. (1) The adult family home must allow each resident to stay in the home, and not transfer or discharge the resident unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home;

(b) The safety or health of individuals in the home is or would otherwise be endangered;

(c) The resident has failed to make the required payment for his or her stay; or

(d) The home ceases to operate.

(2) Before a home transfers or discharges a resident, the home must:

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (5) of this section.

(3) Except as specified in (4) of this section, the home must give notice of the transfer or discharge at least thirty days before the resident is transferred or discharged.

(4) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) A resident has not resided in the home for thirty days.

(5) The home must include the following in the written notice specified in subsection (2) of this section:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombudsman;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(6) The home must give residents enough preparation and orientation to ensure a safe and orderly transfer or discharge from the home.

(7) If the home discharges a resident in violation of this section, the home must readmit the resident to the home as soon as a gender-appropriate bed becomes available.

QUALITY OF LIFE

NEW SECTION

WAC 388-76-10620 Resident rights—Quality of life—General. (1) The adult family home must promote care for residents in a manner and in an environment that main-

tains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Within reasonable home rules designed to protect the rights and quality of life of residents, the home must ensure the resident's right to:

(a) Choose activities, schedules, and health care consistent with his or her interests, assessments, and negotiated care plan;

(b) Interact with members of the community both inside and outside the home;

(c) Make choices about aspects of his or her life in the home that are significant to the resident;

(d) Wear his or her own clothing and decide his or her own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated to:

(i) Be informed in advance about recommended care and services and of any recommended changes in the care and services;

(ii) Participate in planning care and treatment or changes in care and treatment;

(iii) Direct his or her own service plan and changes in the service plan, or

(iv) Refuse any particular service so long as such refusal is documented in the record of the resident.

NEW SECTION

WAC 388-76-10625 Resident rights—Quality of life—Meetings. The adult family home must ensure:

(1) A resident's right to:

(a) Organize and take part in resident groups in the home;

(b) Have family meet in the home with the families of other residents; and

(c) Have staff or visitors attend meetings at the group's invitation.

(2) The home must provide a resident or family group, if one exists, with meeting space.

NEW SECTION

WAC 388-76-10630 Resident rights—Quality of life—Adult family home response to issues. When a resident or family group exists, the adult family home must listen to views and act upon the grievances and recommendations of residents and families about proposed policy and operational decisions affecting resident care and life in the home.

NEW SECTION

WAC 388-76-10635 Resident rights—Quality of life—Work. The adult family home must respect the resident's right to refuse to perform services for the home except as voluntarily agreed to by the resident and the home and documented in the resident's negotiated care plan.

NEW SECTION

WAC 388-76-10640 Resident rights—Quality of life—Resident participation. The adult family home must ensure each resident's right to join in social, religious, and community activities that do not interfere with the rights of other residents in the home.

NEW SECTION

WAC 388-76-10645 Resident rights—Quality of life—Reasonable accommodation. The adult family home must ensure each resident:

- (1) Receives reasonable accommodation to meet the needs and preferences of the resident, except when the reasonable accommodation endangers the health or safety of the individual or other residents; and
- (2) Has the ability to share a double room with his or her spouse when both spouses consent to the arrangement.

MEDICAL DEVICES AND RESTRAINTSNEW SECTION

WAC 388-76-10650 Medical devices. Before the adult family home uses medical devices for any resident, the home must:

- (1) Review the resident assessment to determine the resident's need for and use of a medical device;
- (2) Ensure the resident negotiated care plan includes the resident use of a medical device or devices; and
- (3) Provide the resident and family with enough information about the significance and level of the safety risk of use of the device to enable them to make an informed decision about whether or not the use the device.

NEW SECTION

WAC 388-76-10655 Physical restraints. The adult family home must ensure:

- (1) Each resident's right to be free from physical restraints used for discipline or convenience;
- (2) Less restrictive alternatives have been tried;
- (3) That physical restraints used have been assessed as necessary to treat the resident's medical symptoms; and
- (4) That if physical restraints are used to treat a resident's medical symptoms that the restraints are applied and immediately supervised on-site by a:
 - (a) Licensed registered nurse;
 - (b) Licensed practical nurse; or
 - (c) Licensed physician; and
 - (d) For the purposes of this subsection, immediate supervised means that the licensed person is in the home and quickly and easily available.

NEW SECTION

WAC 388-76-10660 Chemical restraints. (1) For the purposes of this section "chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

nience and not required to treat the resident's medical symptoms.

(2) The adult family home must ensure that:

(a) Each resident is free from chemical restraints used for discipline or convenience;

(b) The resident assessment indicates that a chemical restraint is necessary to treat the resident's medical symptoms;

(c) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:

(i) Drug is prescribed by a physician or health care professional with prescriptive authority;

(ii) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(iii) Changes in medication only occur when the prescriber decides it is medically necessary; and

(iv) Resident has given informed consent for its use.

NEW SECTION

WAC 388-76-10665 Involuntary seclusion. The adult family home must ensure a resident's right to be free from involuntary seclusion or isolation of the resident against his or her will.

ABUSENEW SECTION

WAC 388-76-10670 Prevention of abuse. The adult family home must:

(1) Meet the requirements of chapter 74.34 RCW;

(2) Ensure each resident's right to be free from abandonment, verbal, sexual, physical and mental abuse, exploitation, financial exploitation, neglect, and involuntary seclusion;

(3) Protect each resident who is an alleged victim of abandonment, verbal, sexual, physical and mental abuse, exploitation, financial exploitation, neglect, and involuntary seclusion; and

(4) Prevent future potential abandonment, verbal, sexual, physical and mental abuse, exploitation, financial exploitation, neglect, and involuntary seclusion from occurring.

NEW SECTION

WAC 388-76-10675 Adult family home rules and policies related to abuse—Required. The adult family home must develop and implement written rules and policies that:

(1) Do not allow abandonment, abuse, neglect of any resident, exploitation or financial exploitation of any resident's property;

(2) Require staff to report possible abuse, and other related incidents, as required in chapter 74.34 RCW; and

(3) Do not interfere with the requirement that employees and other mandated reporters file reports directly with the department, and with law enforcement, if they suspect sexual or physical assault to have occurred.

NEW SECTION**WAC 388-76-10680 Staff behavior related to abuse.**

The adult family home must ensure that staff do not abandon, abuse, neglect involuntarily seclude, exploit, or financially exploit any resident.

PHYSICAL PLANT BASIC REQUIREMENTSNEW SECTION

WAC 388-76-10685 Bedrooms. The adult family home must:

- (1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;
- (2) Ensure window and door screens:
 - (a) Do not hinder emergency escape; and
 - (b) Prevent entrance of flies and other insects.
- (3) Ensure each resident's bedroom has direct access to hallways and corridors and unrestricted or free access to common use areas;
- (4) Make separate bedrooms available for each sex;
- (5) Make reasonable efforts to accommodate residents wanting to share the room;
- (6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.
- (7) Ensure no more than two residents to a bedroom;
- (8) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:
 - (a) A clean, comfortable mattress;
 - (b) A waterproof cover for use when needed or requested by the resident;
 - (c) Clean sheets and pillow cases;
 - (d) Adequate clean blankets to meet the needs of each resident; and
 - (e) Clean pillows.
- (9) Not use the upper bunk of double-deck beds for a resident's bed;
- (10) May be required by the department to provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom;
- (11) Ensure that members of the household, other than residents, do not share bedrooms with residents; and
- (12) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

NEW SECTION

WAC 388-76-10690 Bedroom usable floor space—In adult family homes after the effective date of this chapter.

- (1) For the purposes of this section "vestibule" means a small room or hall between an outer door and the main part of the resident bedroom.
- (2) The adult family home must ensure each resident bedroom has a minimum usable floor space as follows, excluding the floor space for toilet rooms, closets, lockers, wardrobes and vestibules:

(a) Single occupancy bedrooms with at least eighty square feet; and

(b) Double occupancy bedrooms with at least one-hundred twenty square feet.

NEW SECTION

WAC 388-76-10695 Building codes—Structural requirements. (1) For single family dwellings used as an adult family home after July 1, 2007, the home must ensure the building meets the requirements of WAC 51-51-0325 Section R325 if the building is:

- (a) New; or
 - (b) An existing building converted for use as an adult family home.
- (2) For buildings licensed as a home before July 1, 2007, the requirement of subsection (1) of this section does not apply if:
- (a) The building sells or transfers to a new owner; and
 - (b) The new owner takes possession of the building before the issuance of the license.
- (3) The home must ensure that every area used by residents:
- (a) Has direct access to at least one exit which does not pass through other areas such as a room or garage subject to being locked or blocked from the opposite side; and
 - (b) Is not accessible only by or with the use of a:
 - (i) Ladder;
 - (ii) Folding stairs; or
 - (iii) Trap door.

NEW SECTION

WAC 388-76-10700 Building official—Inspection and approval. The adult family home must have the building inspected and approved for use as an adult family home by the local building official:

- (1) Before licensing; and
- (2) After any construction changes that:
 - (a) Affect resident's ability to exit the home; or
 - (b) Change, add or modify a resident's bedroom.

NEW SECTION

WAC 388-76-10705 Common use areas. (1) For the purposes of this section, common use areas:

- (a) Are areas and rooms of the adult family home that residents use each day for tasks such as eating, visiting, and leisure activities; and
 - (b) Include but are not limited to dining and eating rooms, living and family rooms, and any entertainment and recreation areas.
- (2) The adult family home must ensure common use areas are:
- (a) Homelike, with furnishings that each resident can use;
 - (b) Large enough for all residents to use at the same time; and
 - (c) Not used as bedrooms or sleeping areas.

NEW SECTION

WAC 388-76-10710 Construction and remodeling—Relocation of residents. Before moving all residents out of the adult family home for construction or remodeling, the home must:

- (1) Notify the residents of the move date and the resident's options consistent with chapter 70.129 RCW;
- (2) Notify the department at least thirty days before the anticipated move, including:
 - (a) The location to which the residents will be moved;
 - (b) The home's plans for providing and ensuring care and services during the relocation;
 - (c) The home's plans for returning residents to the building; and
 - (d) The projected timeframe for completing the construction or remodeling.
- (3) Obtain the department's approval of the relocation plans before moving the residents.

NEW SECTION

WAC 388-76-10715 Doors—Ability to open. The adult family home must ensure:

- (1) Every bedroom and bathroom door opens from the inside and outside;
- (2) Every closet door opens from the inside and outside; and
- (3) All exit doors leading to the outside will open from the inside without a key or any special knowledge or effort by residents.

NEW SECTION

WAC 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) The adult family home must not use audio monitoring equipment:

- (a) In the home;
 - (b) In combination with video monitoring equipment; or
 - (c) Except as provided in section WAC 388-76-10730.
- (2) The home may video monitor and video record activities in the home, without an audio component, only in the following areas:
- (a) Entrances and exits if the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather.
 - (b) Outdoor areas not commonly used by residents; and
 - (c) Designated smoking areas, subject to the following conditions when:
 - (i) Residents are assessed as needing supervision for smoking;
 - (ii) A staff person watches the video monitor at any time the area is used by such residents;
 - (iii) The video camera is clearly visible;
 - (iv) The video monitor is not viewable by general public; and
 - (v) The home notifies all residents in writing of the video monitoring equipment.

NEW SECTION

WAC 388-76-10725 Electronic monitoring equipment—Resident requested use. (1) The adult family home must limit resident-requested audio or video monitoring equipment to the sleeping room of the resident who requested the monitoring.

- (2) If the resident requests audio or video monitoring, before any electronic monitoring occurs the home must ensure:
 - (a) Appropriate actions are taken to ensure electronic monitoring is consistent with and does not violate chapter 9.73 RCW;
 - (b) The resident has identified a threat to the resident's health, safety or personal property and has requested electronic monitoring;
 - (c) The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and
 - (d) The resident and the home have agreed upon a specific duration for the electronic monitoring documented in writing.
- (3) The home must reevaluate the need for the electronic monitoring with the resident at least quarterly and:
 - (a) Must document the reevaluation in writing; and
 - (b) Have each reevaluation signed and dated by the resident.
- (4) The home must immediately stop electronic monitoring if the:
 - (a) Resident no longer wants electronic monitoring;
 - (b) Roommate objects or withdraws the consent to the electronic monitoring; or
 - (c) Resident becomes unable to give consent.

NEW SECTION

WAC 388-76-10730 Grab bars and hand rails. (1) The adult family home must install grab bars or hand rails to meet the needs of each resident.

- (2) At a minimum, grab bars must be installed and securely fastened in:
 - (a) Bathing facilities such as tubs and showers; and
 - (b) Next to toilets, if needed by any resident.
- (3) If needed by any resident, hand rails must be installed and conveniently located on:
 - (a) A step or steps; and
 - (b) Ramps.

NEW SECTION

WAC 388-76-10735 Kitchen facilities. (1) The adult family home must ensure the kitchen facilities include adequate space for:

- (a) Food handling;
 - (b) Preparation; and
 - (c) Food storage.
- (2) The home must keep the kitchen and equipment in a clean and sanitary manner.

NEW SECTION

WAC 388-76-10740 Lighting. The adult family home must provide:

- (1) Adequate light fixtures for each task a resident or staff does; and
- (2) Emergency lighting, such as working flashlights:
 - (a) For staff and residents; that
 - (b) Are readily accessible.

NEW SECTION

WAC 388-76-10745 Local codes and ordinances. The adult family home must:

- (1) Meet all applicable local licensing, zoning, building and housing codes as they pertain to a single family dwelling;
- (2) Meet state and local fire safety regulations as they pertain to a single family dwelling; and
- (3) Check with local authorities to ensure the home meets all local codes and ordinances.

NEW SECTION

WAC 388-76-10750 Safety and maintenance. The adult family home must:

- (1) Keep the home both internally and externally in good repair and condition with a safe, comfortable, sanitary, home-like environment that is free of hazards;
- (2) Provide clean, functioning, safe, adequate household items and furnishings to meet the needs of each resident;
- (3) Provide safe and functioning systems for:
 - (a) Heating;
 - (b) Cooling, which may include air circulating fans;
 - (c) Hot and cold water;
 - (d) Electricity;
 - (e) Plumbing;
 - (f) Garbage disposal;
 - (g) Sewage;
 - (h) Cooking;
 - (i) Laundry;
 - (j) Artificial and natural light;
 - (k) Ventilation; and
 - (l) Any other feature of the home.
- (4) Ensure water temperature does not exceed one hundred twenty degrees Fahrenheit at all fixtures used by or accessible to residents, such as:
 - (a) Tubs;
 - (b) Showers; and
 - (c) Sinks.
- (5) Provide storage for toxic substances, poisons, and other hazardous materials that is only accessible to residents under direct supervision, unless the resident is assessed for and the negotiated care plan indicates it is safe for the resident to use the materials unsupervised;
- (6) Provide rapid access for all staff to any bedroom, toilet room, shower room, bedroom, closet, other room occupied by each resident;
- (7) Keep all firearms locked and accessible only to authorized persons; and
- (8) Keep the home free from:
 - (a) Rodents;

- (b) Flies;
- (c) Cockroaches, and
- (d) Other vermin.

NEW SECTION

WAC 388-76-10755 Sewage and liquid wastes. The adult family home must ensure sewage and liquid wastes are discharged into:

- (1) A public sewer system; or
- (2) An independent sewage system approved by the local health authority.

NEW SECTION

WAC 388-76-10760 Site. The adult family home must ensure the home:

- (1) Is on a well drained site free from:
 - (a) Hazardous conditions;
 - (b) Excessive noise;
 - (c) Dust; and
 - (d) Smoke or odors.
- (2) Has a road accessible at all times to emergency vehicles.

NEW SECTION

WAC 388-76-10765 Storage. The adult family home must:

- (1) Supply each resident with adequate and reasonable storage space for:
 - (a) Clothing;
 - (b) Personal possessions; and
 - (c) Upon request, lockable container or storage space for small items, unless the:
 - (i) Resident has a private room; and
 - (ii) The resident room can be locked by the resident.
- (2) Provide locked storage for all prescribed and over-the-counter medications as per WAC 388-76-10485.

NEW SECTION

WAC 388-76-10770 Telephones. The adult family home must provide:

- (1) At least one working non-pay telephone in the home;
- (2) Residents reasonable access to the telephone; and
- (3) Privacy for the resident when making or receiving calls.

NEW SECTION

WAC 388-76-10775 Temperature and ventilation. The adult family home must:

- (1) Keep room temperature at:
 - (a) Sixty-eight degrees Fahrenheit or more during waking hours;
 - (b) Sixty degrees Fahrenheit or more during sleeping hours; and
 - (c) Not more than seventy-eight degrees Fahrenheit day or night.

(2) Provide ventilation in the home to ensure the health and comfort of each resident is met.

NEW SECTION

WAC 388-76-10780 Toilets and bathing facilities. (1) The adult family home must ensure the home has toilets and bathing facilities that provide each resident with privacy and include:

- (a) One indoor flush toilet for each five persons including residents and household members in the home;
 - (b) Sinks with hot and cold running water.
- (2) Homes licensed after July 1, 2007, must ensure each resident has access to a toilet, shower and tub without going through another resident's room.

NEW SECTION

WAC 388-76-10785 Water hazards—Enclosures and safety devices. (1) For the purposes of this section "water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but is not limited to:

- (a) In-ground, above-ground, and on-ground pools;
 - (b) Hot tubs, spas; or
 - (c) Fixed-in-place wading pools.
- (2) The adult family home must:
- (a) Protect each resident from risks of bodies of water of any depth and water hazards;
 - (b) Ensure that water hazard protection complies with this section and the requirements of the:
 - (i) International Residential Code (IRC); and
 - (ii) Washington state amendments to the Internal Residential Code (IRC).
 - (b) Provide each area which allows direct access to a water hazard with:
 - (i) A minimum of forty-eight inch high fences and gates to enclose or protect each resident from the water hazard;
 - (ii) Alarms that produce an audible warning when opened on all doors and screens, if present and gates.
 - (c) After July 1, 2007, existing adult family homes are required to meet the requirements of this section when installing or making construction changes to the following:
 - (i) In-ground, above-ground and on-ground pools;
 - (ii) Hot tubs, spas;
 - (iii) Decorative water features; or
 - (iv) Fixed-in-place wading pools.

NEW SECTION

WAC 388-76-10790 Water supply. The adult family home must:

- (1) Obtain local health authority approval to use a private water supply;
- (2) Provide a clean and healthy drinking water supply for the home; and
- (3) Label any non-potable water to avoid use as a drinking water source.

NEW SECTION

WAC 388-76-10795 Windows. (1) The adult family home must ensure the sill height of the bedroom window is not more than forty-four inches above the floor.

(2) For homes licensed after July 1, 2007, the department will not approve alternatives to the sill height requirement such as step(s), raised platform(s) or other devices placed by or under the window openings.

(3) The bedroom window must have the following:

- (a) A minimum opening area of 5.7 square feet except a grade level floor window openings may have a minimum clear opening of 5.0 square feet;
- (b) A minimum opening height of twenty-four inches;
- (c) A minimum opening width of twenty inches; and
- (d) The home must ensure the bedroom window can be opened from inside the room without keys or tools.

(4) When resident bedroom windows are fitted with storm windows, the home must equip the storm windows will release mechanisms that are:

- (a) Easily opened from the inside; and
- (b) Do not require a key or special knowledge or effort to open.

(5) The home must ensure that each basement and each resident bedroom window, that meets the requirements of subsection (1), (2) and (3) of this section, are kept free from obstructions that might block or interfere with access for emergency escape or rescue.

FIRE PROTECTION

NEW SECTION

WAC 388-76-10800 Adult family home located outside of public fire protection. If the adult family home is located in an area without public fire protection, the home must have written verification of adequate fire protection from the fire authority.

NEW SECTION

WAC 388-76-10805 Automatic smoke detectors. The adult family home must ensure approved automatic smoke detectors are:

- (1) Installed, at a minimum, in the following locations:
 - (a) Every bedroom used by a resident;
 - (b) In proximity to the area where the resident or adult family home staff sleeps; and
 - (c) On every level of a multilevel home.
- (2) Installed in a manner so that the fire warning is heard in all parts of the home upon activation of a single detector; and
- (3) Kept in working condition at all times.

NEW SECTION

WAC 388-76-10810 Fire extinguishers. (1) The adult family home must have an approved five pound 2A:10B-C rated fire extinguisher on each floor of the home.

(2) The home must ensure the fire extinguishers are:

- (a) Installed according to manufacturer recommendations;
 - (b) Inspected and serviced annually;
 - (c) In proper working order; and
 - (d) Readily available for use at all times.
- (2) If required by the local fire authority, the home must provide different fire extinguishers as required in subsection (1) of this section.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-76-10815 Notice required—Compliance with building code and fire protection. Before a resident is admitted, the adult family home must disclose in writing in a language understood by the prospective resident the following:

- (1) Whether or not resident bedrooms comply with the current building code including evacuation standards; and
- (2) If the home is located outside a public fire district, the source and plan for on-site fire protection.

NEW SECTION

WAC 388-76-10820 Resident evacuation capabilities and location of resident bedrooms. (1) The adult family home must ensure each resident who has an evacuation capability of Level 2 or Level 3, as defined in WAC 388-76-10870, has a bedroom located on grade level and exiting the building does not require the use of:

- (a) Stairs;
 - (b) Elevator; or
 - (c) Lift.
- (2) The home must install alternative emergency evacuation protection equipment when serving hearing or visually impaired residents.

NEW SECTION

WAC 388-76-10825 Space heaters and stoves. The adult family home must ensure:

- (1) The following space heaters are not used in a home except during a power outage and the portable heater is only safe source of heat:
 - (a) Oil;
 - (b) Gas;
 - (c) Kerosene; and
 - (d) Electric.
- (2) Stoves and heaters do not block residents, staff or household members from escaping.

DISASTER AND EMERGENCY PREPAREDNESS

NEW SECTION

WAC 388-76-10830 Emergency and disaster plan—Required. The adult family home must have written emergency and disaster plan and procedures to meet the needs of each resident during emergencies and disasters.

NEW SECTION

WAC 388-76-10835 Elements of an emergency and disaster plan. The adult family home must ensure the emergency and disaster plan includes:

- (1) Plans for responding to natural and man-made emergencies and disasters that may reasonably occur at the home;
- (2) Actions to be taken by staff and residents when an emergency or disaster strikes; and
- (3) The fire drill plan for evacuation of the home.

NEW SECTION

WAC 388-76-10840 Emergency food supply. The adult family home must have an on-site emergency food supply that can be stored with other food in the home and that:

- (1) Will last for a minimum of seventy-two hours; and
- (2) Meets the dietary needs of each resident, including any specific dietary restrictions any resident may have.

NEW SECTION

WAC 388-76-10845 Emergency drinking water supply. The adult family home must have an on-site emergency supply of drinking water that:

- (1) Will last for a minimum of seventy-two hours for each resident;
- (2) Is at least three gallons for each resident; and
- (3) Is stored in containers rated for the storage of drinking water.

NEW SECTION

WAC 388-76-10850 Emergency medical supplies. The adult family home must have emergency medical supplies that include:

- (1) First aid supplies; and
- (2) A first-aid manual.

NEW SECTION

WAC 388-76-10855 Emergency and disaster plan training—Required. The adult family home must ensure all staff are trained on the emergency and disaster plan and procedures when they begin work in the home and all staff and residents review the emergency and disaster plan and procedures at least annually.

FIRE DRILL PLAN FOR EMERGENCY EVACUATION

NEW SECTION

WAC 388-76-10860 Fire drill plan and procedures for emergency evacuation—Required. The adult family home must:

- (1) Have a fire drill plan and procedures for the emergency evacuation of all residents from the adult family home; and
- (2) Not admit and keep residents the provider or entity representative cannot safely evacuate from the adult family home.

NEW SECTION

WAC 388-76-10865 Emergency evacuation from adult family home. The adult family home must be able to evacuate all people living in the home:

- (1) From the home to a safe location outside the home; and
- (2) In five minutes or less.

NEW SECTION

WAC 388-76-10870 Resident evacuation capability levels—Identification required. The adult family home must ensure that each resident preliminary service plan and negotiated care plan contains the resident's ability to evacuate the home according to the following levels:

- (1) **Level 1** - resident is capable of walking or traversing a normal pathway to safety without the physical assistance of another individual;
- (2) **Level 2** - resident is physically and mentally capable of traversing a normal pathway to safety with mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual; and
- (3) **Level 3** - resident is unable to walk or transverse a normal pathway to safety without the physical assistance of another individual.

NEW SECTION

WAC 388-76-10875 Resident with evacuation capability of Level 2 or Level 3—Bedroom location.

NEW SECTION

WAC 388-76-10880 Emergency evacuation adult family home floor plan. The adult family home must ensure each resident with an evacuation capability of Level 2 or Level 3 has a bedroom on a ground-level floor which:

- (1) Has at least two means of exiting the bedroom; and
- (2) Exiting from the bedroom does not require the use of:
 - (a) Stairs;
 - (b) Elevators; or
 - (c) A platform lift.

NEW SECTION

WAC 388-76-10885 Elements of emergency evacuation floor plan. The adult family home must ensure the emergency evacuation floor plan has:

- (1) An accurate floor plan of the home, including rooms, hallways, exits (such as doorways and windows) to the outside of the home;
- (2) Emergency evacuation routes showing the paths to take to exit the home; and
- (3) The location for the residents to meet outside the home.

NEW SECTION

WAC 388-76-10890 Posting the emergency evacuation floor plan—Required. The adult family home must dis-

play an emergency evacuation floor plan on each floor of the home in:

- (1) A visible location in the home; and
- (2) Common areas normally used by residents, staff and visitors.

NEW SECTION

WAC 388-76-10895 Emergency evacuation drills—Frequency and participation. The adult family home must ensure:

- (1) Emergency evacuation drills occur at least every two months;
- (2) All residents take part in at least one emergency evacuation drill each calendar year involving full evacuation from the home to a safe location.

NEW SECTION

WAC 388-76-10900 Documentation of emergency evacuation drills—Required. The adult family home must document in writing the emergency evacuation drills which must include:

- (1) Names of each resident and staff involved in the drill;
- (2) Name of the person conducting the drill;
- (3) Date and time of the drill; and
- (4) The length of time it took to evacuate all residents.

NEW SECTION

WAC 388-76-10905 Emergency evacuation—Notification of department required. The adult family home must immediately call the department's complaint toll free complaint telephone number of:

- (1) Any fire; or
- (2) Emergency evacuation from the home.

INSPECTIONS—COMPLAINT INVESTIGATIONS—MONITORING VISITS

NEW SECTION

WAC 388-76-10910 Inspections—Complaint investigations—Monitoring visits—General. The department must conduct unannounced inspections, complaint investigations and monitoring visits to determine if the adult family home is in compliance with chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations.

NEW SECTION

WAC 388-76-10915 Department staff access—Willful interference prohibited. The adult family home must ensure:

- (1) Department staff have access to:
 - (a) The home, residents, including former residents;
 - (b) Resident records, includes former residents records;
 and
- (c) Facility staff and relevant staff records.

(2) The home and staff do not willfully interfere or fail to cooperate with department staff in the performance of official duties.

NEW SECTION

WAC 388-76-10920 Inspection and investigation reports—Provided by department. The department will mail or hand deliver the department's inspection report to the provider or entity representative:

- (1) Within ten working days of the inspection of the home; or
- (2) Within ten calendar days of completion of complaint investigation.

NEW SECTION

WAC 388-76-10925 Disclosure of inspection and complaint investigation reports. Upon request, the department must provide the public with copies, subject to applicable public disclosure and confidentiality requirements, of:

- (1) Inspection and complaint investigation reports as soon as they are completed;
- (2) The home's plan of correction, if a copy is available at the time of the request; and
- (3) Any final written decision by the department to take an enforcement action.

NEW SECTION

WAC 388-76-10930 Plan of correction (POC)—Required. The plan of correction included on the inspection report must:

- (1) Be completed by the adult family home and returned to the department within ten days of receiving the inspection report;
- (2) Include an attestation statement stating:
 - (a) What the home did or will do to correct each deficiency;
 - (b) That all deficiencies are or will be corrected;
 - (c) The home will stay in compliance with the licensing requirements;
 - (d) Dates, acceptable to the department, by which each cited deficiency has been or will be corrected; and
 - (e) A signature by the home, certifying that the home has or will correct each deficiency.

RESIDENT ADVOCATE ACCESS

NEW SECTION

WAC 388-76-10935 Washington protection and advocacy—Long-term care Ombudsman—Official duties—Penalty for interference. The adult family home must not willfully interfere with a representative of the following in the performance of official duties:

- (1) Washington protection and advocacy system as defined under RCW 71A.10.080; or
- (2) Long-term care ombudsman as defined under chapter 43.190 RCW, the state regulations for the long-term care ombudsman and under federal law.

(3) The department must impose a civil penalty as per WAC 388-76-10985 for any such willful interference with a representative of the long-term care ombudsman program.

REMEDIES

NEW SECTION

WAC 388-76-10940 Remedies—Generally. The department may take one or more of the following actions in any case which the department finds that an adult family home failed or refused to comply with the applicable requirements of chapters 70.128, 70.129, or 74.34 RCW or this chapter:

- (1) Denial of an application for a license;
- (2) Impose reasonable conditions on a license;
- (3) Impose civil penalties;
- (4) Order stop placement; and/or
- (5) Suspension or revocation of a license.

NEW SECTION

WAC 388-76-10945 Remedies—Serious risk—Recurring violations—Uncorrected violations. The department must impose a remedy or remedies listed in WAC 388-76-10940 when violations of chapter 70.128, 70.129 and 74.34 RCW and this chapter pose a serious risk to any resident, are recurring or are uncorrected.

NEW SECTION

WAC 388-76-10950 Remedies—History and actions by individuals. The department will consider the history and actions of the following individual or combination of individuals when imposing remedies:

- (1) Applicant;
- (2) Provider;
- (3) Entity representative;
- (4) Person affiliated with the applicant;
- (5) Resident manager;
- (6) A partner, officer, director or managerial employee of the entity;
- (7) Spouse of the provider or entity representative;
- (8) An owner:
 - (a) Of fifty-one percent or more of the entity;
 - (b) Who exercises control over the daily operations of the home.
- (9) A caregiver; or
- (10) Any person who:
 - (a) Has unsupervised access to residents in the home; and
 - (b) Lives in the home but who is not a resident.

NEW SECTION

WAC 388-76-10955 Remedies—Department must impose remedies. The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

- (1) A history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities within the

past five years that resulted in revocation, suspension, or non-renewal of a license or contract with the department;

(2) When providing care or services to children or vulnerable adults:

(a) Been found to be in significant noncompliance with federal or state regulations; or

(b) Had a license for the care of children or vulnerable adults suspended or revoked.

(3) Been enjoined from operating a facility for the care and services of children or adults;

(4) A stipulated finding of fact, conclusion of law, an agreed order, finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW;

(5) Had a revocation or suspension of a license for the care of children or adults;

(6) Had a revocation, cancellation, suspension or nonrenewal of:

(a) A Medicaid or Medicare provider agreement by the contracting agency; or

(b) Any agreement with a public agency for the care and treatment of children or vulnerable adults, when the action was taken by the public agency.

(7) Been convicted of any crime listed in RCW 43.43.-830 or 43.43.842;

(8) Been found by a court:

(a) In a protection proceeding under chapter 74.34 RCW to have abandoned, neglected, abused, or financially exploited a vulnerable adult; or

(b) In a domestic relations proceeding under Title 26 RCW to have sexually or physically abused, neglected or exploited any minor.

(9) Been found in any final decision issued by a disciplinary board to have:

(a) Sexually or physically abused, neglected or exploited any minor or a person with a developmental disability; or

(b) Abandoned, abused, neglected or financially exploited any vulnerable adult.

(10) Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually or physically abused, neglected or exploited any minor; or

(11) Failed to pay the annual licensing fee.

NEW SECTION

WAC 388-76-10960 Remedies—Department may impose remedies. The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

(1) Been convicted of a crime:

(a) As defined under RCW 43.43.830 or 43.43.842;

(b) Relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;

(c) Or a felony against a person if the conviction reasonably relates to the competency of the person to own or operate an adult family home;

(d) Involving a firearm used in the commission of a felony or in any act of violence against a person;

(e) Or engaged in illegally selling or distributing drugs illegal use of drugs or excessive use of alcohol within the past five years without the evidence of rehabilitation.

(2) Found by a court in a protection proceeding under chapter 74.34.RCW to have abandoned, abused, neglected, or financially exploited a vulnerable adult;

(3) Found in a final decision issued by a disciplinary board to have sexually or physically abused, neglected or exploited any minor person or a person with a developmental disability or to have abused or financially exploited any vulnerable adult;

(4) Found in any dependency action under RCW 13.34.030(5) to have sexually abused, neglected or exploited any minor or to have physically abused any minor;

(5) Found in a court in a domestic relations proceeding under Title 26 RCW to have:

(a) Sexually abused, neglected or exploited any minor or to have physically abused any minor;

(b) Committed an act of domestic violence toward a family or household member.

(6) Had a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(7) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(8) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application or in any matter under investigation by the department;

(9) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(10) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation or monitoring visit made by the department;

(11) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order;

(b) The applicable requirements of chapters 70.128, 70.129, 74.34 RCW or this chapter.

(12) Misappropriated property of a resident;

(13) Denied a license or license renewal to operate a facility that was licensed to care for children or vulnerable adults;

(14) Exceeded licensed capacity in the operation of an adult family home;

(15) Operated a facility for the care of children or adults without a license or revoked license;

(16) Relinquished or returned a license in connection with the operation of any facility for the care of children or adults, or did not seek license renewal following written notification of the licensing agency's intention of denial, suspension, cancellation or revocation of a license;

(17) Had resident trust funds or assets of an entity providing care to children or vulnerable adults seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(18) Failed to meet financial obligations as the obligations fell due in the normal course of business, thereby impeding the ability to provide care and services to residents;

(19) Refused to permit authorized department representatives to interview residents or to have access to resident records or home;

(20) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties; or

(21) Found to be in non-compliance with the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

NEW SECTION

WAC 388-76-10965 Remedies—Specific—Denial of application for license. The department decision to deny an application for a license is specified in:

- (1) WAC 388-76-10115;
- (2) WAC 388-76-10120;
- (3) WAC 388-76-10125; and
- (4) WAC 388-76-10940.

NEW SECTION

WAC 388-76-10970 Remedies—Specific—Condition(s) on license. (1) The department may impose reasonable conditions on the license.

(2) Conditions the department may impose on a license include, but are not limited to the following:

- (a) Correction within a specified time;
- (b) Training related to the deficiencies;
- (c) Limits on the type of residents the provider or entity representative may admit or serve;
- (d) Discharge of any resident when the department finds discharge is needed to meet that resident's needs or for the protection of other residents;
- (e) Change in license capacity;
- (f) Removal of the adult family home's designation as a specialized home;
- (g) Prohibition of access to residents by a specified person; and
- (h) Demonstration of ability to meet financial obligations necessary to continue operation.

NEW SECTION

WAC 388-76-10975 Remedies—Specific—Civil penalties. (1) The department may impose civil penalties of not more than one hundred dollars per day per violation except that:

(a) Fines up to one thousand dollars can be issued for willful interference with a representative of the long-term care ombudsman per RCW 70.129.150; and

(b) Fines up to three thousand dollars can be issued for retaliation against a resident, employee, or any other person making a complaint, providing information to, or cooperating with, the ombudsman, the department, the attorney's general office, or a law enforcement agency per RCW 74.34.060(7).

(2) When the provider or entity provider fails to pay a fine when due under this chapter, the department may, in addition to other remedies, withhold an amount equal to the

fine plus interest, if any, from any contract payment due to the provider or entity provider from the department.

(3) Civil monetary penalties are due twenty-eight days after the provider, entity representative or the owner or operator of an unlicensed adult family home is served with notice of the penalty unless the provider or entity representative requests a hearing in compliance with chapter 34.05 RCW and RCW 43.20A.215. If the hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Interest accrues beginning thirty days after the department serves the provider or entity provider with notice of the penalty at a rate of one percent per month as per RCW 43.20B.695.

NEW SECTION

WAC 388-76-10980 Remedies—Specific—Stop placement—Admissions prohibited. (1) The department may order stop placement and prohibit the admission of residents if the home does not meet the requirements of chapters 70.128, 70.129, 74.32 RCW or this chapter.

(2) Once imposed, the adult family home must not admit any person until the stop placement order is terminated.

(3) If the home requests, the department may approve readmission of a resident to the home from a hospital or nursing home during the stop placement.

(4) The department must end the stop placement when the department finds the:

- (a) Deficiencies necessitating the stop placement have been corrected; and
- (b) Home can show it has the capacity to maintain adequate care and service.

NEW SECTION

WAC 388-76-10985 Remedies—May extend to multiple homes. (1) When the department finds that a licensed provider or entity representative also operates an unlicensed adult family home, the department may impose a remedy or remedies listed in WAC 388-76-10940 on the provider or entity representative and the provider's or entity representative's licensed adult family home or homes.

(2) When the department finds that violations existing in an adult family home are of such nature as to present a serious risk or harm to residents of other homes operated by the same provider or entity representative, and after the department investigates other homes licensed by the same provider or entity representative the department may impose remedies on those other homes.

INFORMAL DISPUTE RESOLUTION, NOTICE AND APPEALS

NEW SECTION

WAC 388-76-10990 Informal dispute resolution (IDR). (1) When a provider or entity representative disagrees with the department's finding of a violation under this chapter, the provider or entity representative shall have the right to have the violation reviewed by the department under the department's dispute resolution process.

(2) The purpose of the review is to give the provider or entity representative an opportunity to present information which might warrant modification or deletion of a finding of a violation.

(3) The provider or entity representative may submit a written statement for review.

(4) In addition to a written statement, the provider or entity representative may ask to present the information in person to a department designee.

(5) Requests for review must be made in writing to the department at the address provided in the department's certified letter within ten working days of receipt of the written finding of a violation.

(6) When requested by the provider or entity representative, the department must expedite the dispute resolution process to review violations upon which a department order imposing license suspension, revocation, stop placement, or condition on a license is based.

(7) Orders of the department imposing license suspension, stop placement, or conditions on a license are effective immediately upon notice and shall continue pending dispute resolution.

NEW SECTION

WAC 388-76-10995 Notice, hearing rights, and effective dates relating to imposition of remedies. (1) Chapter 34.05 RCW applies to department actions under this chapter and chapter 70.128 RCW, except that orders of the department imposing license suspension, stop placement, or conditions on license are effective immediately upon notice and must continue pending a final administrative decision.

(2) A provider contesting any decision by the department to impose a remedy must within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the board of appeals at the mailing address contained in WAC 388-02-0030; and

(b) Include in or with the application:

(i) The reasons for contesting the department decision; and

(ii) A copy of the contested department decision.

(4) Administrative proceedings are governed by chapter 34.05 RCW, RCW 43.20A.215, where applicable, this section, and chapter 388-02 WAC. If any provision in this section conflicts with chapter 388-02 WAC, the provision in this section governs.

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.

RESIDENT PROTECTION PROGRAM

NEW SECTION

WAC 388-76-11000 Resident protection program—Abuse and neglect reporting—Required. (1) In accordance with chapter 74.34 RCW, all adult family home providers, entity representatives, resident managers, owners, caregivers, staff, and students if the students provide care and services to

residents; are mandated reporters and must report to the department when there is:

(a) A reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, exploited or financially exploited, or

(b) Suspected abandonment, abuse, neglect, exploitation or financial exploitation of a vulnerable adult.

(2) Reports must be made to:

(a) The centralized toll free telephone number for reporting abandonment, abuse, neglect, exploitation or financial exploitation of vulnerable adults, provided by the department; and

(b) Law enforcement agencies, as required under chapter 74.34 RCW.

(3) The home must have policies and procedures complying with state law that specify reporting requirements for abandonment, abuse, neglect, exploitation, and financial exploitation of vulnerable adults.

NEW SECTION

WAC 388-76-11005 Resident protection program—Investigation of mandated reports. (1) The department will decide whether a report of abandonment, abuse, neglect, exploitation, or financial exploitation needs to be investigated, as per established procedures.

(2) The department investigation will include an investigation of allegations about one or more of the following:

(a) A provider;

(b) Entity representative;

(c) Anyone affiliated with a provider;

(d) Caregiver;

(e) Student or volunteer;

(f) Person living in the home who is not a resident; and

(g) A resident receiving care and services under this chapter.

(3) If, after completing an investigation, the department concludes that more likely than not the alleged perpetrator abandoned, abused, neglected, exploited, or financially exploited a resident, the department will make an initial finding against the perpetrator.

NEW SECTION

WAC 388-76-11010 Resident protection program—Notice of initial finding. (1) The department will notify the alleged perpetrator in writing within ten working days of making an initial finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice must not include the identities of the alleged victim, reporter and witnesses.

(2) The department must make a reasonable, good faith effort to find the last known address of the alleged perpetrator.

(3) The time frame for notification can be extended beyond ten working days to include the time needed to translate the notification letter or make provisions for the safety of the alleged victim.

(4) Notice of the initial finding will be served as provided in chapter 388-02 WAC.

NEW SECTION

WAC 388-76-11015 Resident protection program—Reporting initial finding. (1) In a manner consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of an initial finding to:

- (a) Other divisions within the department;
- (b) The agency or program identified under RCW 74.34.068 with which the alleged perpetrator is associated as an employee, volunteer, student or contractor;
- (c) Law enforcement; and
- (d) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as an initial finding.

NEW SECTION

WAC 388-76-11020 Resident protection program—Disputing an initial finding. (1) An alleged perpetrator of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident may ask for an administrative hearing to challenge an initial finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the alleged perpetrator's written request for a hearing within thirty calendar days of the date the individual was served with notice of the initial finding.

(4) The written request for a hearing must include:

- (a) The full legal name, current address and phone number of the alleged perpetrator;
- (b) A brief explanation of why the alleged perpetrator disagrees with the initial finding;
- (c) A description of any assistance needed in the administrative appeal process by the alleged perpetrator, including a foreign or sign language interpreter or any accommodation for a disability; and
- (d) The alleged perpetrator's signature.

NEW SECTION

WAC 388-76-11025 Resident protection program—Disclosure of investigative and finding information. (1) The alleged perpetrator may only use confidential information provided by the department as needed to challenge initial findings through the appeal process.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from documents by the department unless otherwise ordered by the administrative law judge consistent with chapter 74.34 RCW and other applicable state and federal laws.

NEW SECTION

WAC 388-76-11030 Resident protection program—Hearing procedures to dispute initial finding. (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provi-

sions of this chapter govern any appeal regarding an initial finding.

(2) If a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

(3) The administrative law judge must decide whether a preponderance of the evidence supports the initial finding that the alleged perpetrator abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult, and must issue an initial order.

NEW SECTION

WAC 388-76-11035 Resident protection program—Appeal of administrative law judge's initial order or finding. (1) If the alleged perpetrator or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

NEW SECTION

WAC 388-76-11040 Resident protection program—Finalizing an initial finding. (1) An initial finding becomes a final finding when:

- (a) The department gives the alleged perpetrator notice of the initial finding pursuant to WAC 388-101-1110 and the alleged perpetrator does not ask for an administrative hearing;
- (b) The administrative law judge:
 - (i) Dismisses the hearing following withdrawal of the appeal or default; or
 - (ii) Issues an initial order upholding the finding and the alleged perpetrator fails to appeal the initial order to the department's board of appeals; or
- (c) The board of appeals issues a final order upholding the finding.

(2) The final finding is permanent and will not be removed from the department's records unless:

- (a) Rescinded following judicial review; or
- (b) The department decides to remove a single finding of neglect from its records based upon a written petition by the alleged perpetrator provided that at least one calendar year has passed since the finding was finalized and recorded.

NEW SECTION

WAC 388-76-11045 Resident protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation, and financial exploitation within ten working days to the following:

- (1) The perpetrator;
- (2) The provider or entity representative that was associated with the perpetrator during the time of the incident;

- (3) The adult family home that is currently associated with the perpetrator, if known;
- (4) The appropriate licensing authority; and
- (5) The department's list of findings of abandonment, abuse, neglect, exploitation and financial exploitation.
- (6) The findings may be disclosed to the public upon request.

WAC 388-76-59080

When will providers be required to become specialty adult family homes in order to serve persons with mental illness or dementia?

WAC 388-76-59090

When will providers be required to become specialty adult family homes in order to serve persons with developmental disabilities?

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-595

Inspections and ombudsman visits.

WAC 388-76-535 Authority.

WAC 388-76-600

General resident rights.

WAC 388-76-540 Definitions.

WAC 388-76-60000

What are resident rights?

WAC 388-76-545 License required.

WAC 388-76-60010

Why do providers need to know resident rights?

WAC 388-76-550 License application.

WAC 388-76-60020

Is the provider required to supply information to potential residents and current residents, or the resident's representative?

WAC 388-76-555 License fees.

WAC 388-76-560 License eligibility.

WAC 388-76-565 Resident manager and live-in requirements.

WAC 388-76-570 Additional license requirements—Multiple facility providers.

WAC 388-76-60030

When must this information be supplied?

WAC 388-76-575 Licensing of state employees.

WAC 388-76-60040

Must the information be updated and supplied again in advance of changes?

WAC 388-76-580 License capacity.

WAC 388-76-60050

What information is the provider required to supply to potential residents and current residents?

WAC 388-76-585 Change of provider or provider address.

WAC 388-76-590 Specialty adult family homes.

WAC 388-76-60060

Do residents have rights that are not listed here?

WAC 388-76-59000 What authority does the department have to adopt rules related to specialty homes?

WAC 388-76-60070

What are some of the other resident rights that must be considered?

WAC 388-76-59010 What types of specialty adult family home designations are there?

WAC 388-76-605

Restraints.

WAC 388-76-59050 What is required in order to obtain the specialty designation?

WAC 388-76-610

Resident assessment.

WAC 388-76-59060 Are adult family home providers required to obtain more than one specialty designation if an individual resident has more than one specialty need?

WAC 388-76-61000

Is an assessment needed before a person can be admitted to an adult family home?

WAC 388-76-59070 Are adult family home providers required to obtain more than one specialty designation if they serve two or more residents with different specialty needs?

WAC 388-76-61010

Under what circumstances can a provider admit or continue services for a person?

WAC 388-76-61020

What must be included in the resident assessment?

WAC 388-76-61030

How does the preliminary service plan fit within the resident assessment?

WAC 388-76-61040

Is the use of an approved form required for the assessment?

WAC 388-76-61050	Who can do the assessment?		independent with self-administration?
WAC 388-76-61060	In emergency situations, can a provider admit a resident without an assessment?	WAC 388-76-64025	How do a resident and provider initiate self-administration with assistance?
WAC 388-76-61070	Does the assessment have to be updated?	WAC 388-76-64030	What must the provider monitor when implementing self-administration with assistance?
WAC 388-76-61080	Who is qualified to update the assessment?		
WAC 388-76-615	Negotiated care plan.	WAC 388-76-64035	What other situations must the provider monitor when self-administration with assistance occurs for a resident?
WAC 388-76-61500	What is a negotiated care plan?		
WAC 388-76-61510	When must the negotiated care plan be developed?	WAC 388-76-64040	What must the provider do when there is a need to alter medications during self-administration with assistance?
WAC 388-76-61520	How does the negotiated care plan fit in with the assessment and preliminary service plan?		
WAC 388-76-61530	Who must be involved in the development of the negotiated care plan?	WAC 388-76-64045	What other types of assistance can a nonpractitioner provide?
WAC 388-76-61540	Who must sign the negotiated care plan?	WAC 388-76-64050	Who can fill medication organizers and what is required?
WAC 388-76-61550	How often must the negotiated care plan be reviewed and revised?	WAC 388-76-64055	What documentation is the provider required to include in the resident's daily medication log?
WAC 388-76-61560	When does the department's case manager get a copy of the negotiated care plan?	WAC 388-76-645	Resident activities.
WAC 388-76-61570	How are payment rate changes authorized for residents receiving services paid for fully or partially by the department?	WAC 388-76-650	Food services.
		WAC 388-76-655	General management and administration.
WAC 388-76-620	Provision of services and care.	WAC 388-76-660	Training.
WAC 388-76-625	Nurse delegation—Training and registration.	WAC 388-76-665	Resident records.
WAC 388-76-630	Performance of delegated nursing care tasks.	WAC 388-76-670	Disaster and emergency preparedness.
WAC 388-76-635	Nurse delegation—Penalties.	WAC 388-76-675	Reporting requirements.
WAC 388-76-64010	What are the rules the provider must follow in all situations involving resident medications?	WAC 388-76-680	Infection control and communicable disease.
WAC 388-76-64015	What defines the type of help a resident may need when taking their medication?	WAC 388-76-685	Criminal history disclosure and background inquiries.
WAC 388-76-64020	What must the provider include in the negotiated care plan for residents who are	WAC 388-76-690	Advance directives, guardianship, and decision making.
		WAC 388-76-695	Protection of resident funds—Liquidation or transfer.
		WAC 388-76-700	Resident relocation due to closure.

WAC 388-76-705	Remedies.
WAC 388-76-710	Notice, hearing rights, and effective dates relating to imposition of remedies.
WAC 388-76-715	Dispute resolution.
WAC 388-76-720	Common use areas.
WAC 388-76-725	Bedrooms.
WAC 388-76-730	Toilets and bathing facilities.
WAC 388-76-735	Kitchen facilities.
WAC 388-76-740	Telephones.
WAC 388-76-745	Storage.
WAC 388-76-750	Laundry.
WAC 388-76-755	Local ordinances.
WAC 388-76-760	Site.
WAC 388-76-76505	What physical structure requirements must the provider ensure that the home meets?
WAC 388-76-76510	What are the resident emergency evacuation requirements that providers must address?
WAC 388-76-76515	What fire safety and emergency requirements must the provider have in the home?
WAC 388-76-76520	What is required of the provider for emergency evacuation drills?
WAC 388-76-770	Safety and maintenance.
WAC 388-76-775	Pets.
WAC 388-76-780	Lighting.
WAC 388-76-785	Temperature and ventilation.
WAC 388-76-790	Water supply.
WAC 388-76-795	Sewage and liquid wastes.

Hearing Location(s): Hood River County Administration Building, 601 State Street, Hood River, OR, on September 11, 2007, at 9:00 a.m. (Note this is the beginning of the commission's regular meeting. The actual hearing time may be later).

Date of Intended Adoption: September 11, 2007.

Submit Written Comments to: Jill Arens, Executive Director, Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672, e-mail crgc@gorge.net, fax (509) 493-2229, by September 10, 2007.

Assistance for Persons with Disabilities: Contact Nancy Andring by September 4, 2007, (509) 493-3323.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to put into effect recent amendments to the management plan for the Columbia River Gorge Commission. This rule making will incorporate the recent amendments into the commission's land use ordinance for scenic area land within Klickitat County. The commission is not proposing any substantive changes the provisions already adopted into the management plan.

Reasons Supporting Proposal: The land use ordinance must be amended to make the plan amendments effective.

Statutory Authority for Adoption: 16 U.S.C. 544e(c), 544f(1); RCW 434.97.015; ORS 196.150.

Statute Being Implemented: 16 U.S.C. 544e(c), 544f(1); RCW 434.97.015; ORS 196.150.

Rule is necessary because of federal law, see above federal law citations.

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jill Arens, Executive Director, Columbia River Gorge Commission, White Salmon, Washington, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is exempt pursuant to RCW 19.85.025(3) and 34.05.310 (4)(c) and (e).

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt pursuant to RCW 34.05.328 (5)(b)(iii) and (v).

June 27, 2007

Nancy Andring

Rules Coordinator

AMENDATORY SECTION

350-81-020

Definitions

As used in Commission Rule 350-81, unless otherwise noted, the following words and their derivations shall have the following meanings:

(1) Accepted agricultural practice: A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) Accessory structure/building: A structure or detached building whose use is incidental and subordinate to

WSR 07-14-101

PROPOSED RULES

COLUMBIA RIVER GORGE COMMISSION

[Filed July 2, 2007, 9:30 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Commission Rule 350-81, Land Use Ordinance.

that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.

(3) Active wildlife site: A wildlife site that has been used within the past 5 years by a sensitive wildlife species.

(4) Addition: An extension or increase in the area or height of an existing building.

(5) Agency official: The federal, state, or local agency head or designee who has authority over a proposed project.

(6) Agricultural specialist (SMA): A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.

(7) Agricultural structure/building: A structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.

(8) Agricultural use: The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

(a) The operation or use of farmland subject to any agriculture-related government program.

(b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.

(c) Land planted in orchards or other perennials prior to maturity.

(d) Land under buildings supporting accepted agricultural practices.

Agricultural use does not include livestock feedlots.

(9) Anadromous fish: Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).

(10) Anaerobic: A condition in which molecular oxygen is absent (or effectively so) from the environment.

(11) Aquaculture: The cultivation, maintenance, and harvesting of aquatic species.

(12) Aquatic area: The water area of a stream, pond, or lake measured at the ordinary high water mark.

(13) Archaeological resources: See cultural resource.

(14) Archival research: Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.

(15) Bed and breakfast inn: An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occu-

pied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.

(16) Best management practices: Conservation techniques and management measures that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; (2) minimize adverse affects to groundwater and surface-water flow and circulation patterns; and (3) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

(17) Biodiversity (SMA): A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.

(18) Boat landing: Cleared area or developed structure used to facilitate launching or retrieving watercraft.

(19) Buffer zone: An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.

(20) Building: Any structure used or intended for supporting or sheltering any use or occupancy. Buildings have a roof supported by columns or walls. They include, but are not limited to, dwellings, garages, barns, sheds and shop buildings.

(21) Camping or recreational vehicle: A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.

(22) Campsite: Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.

(23) Capability: The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.

(24) Canopy closure (SMA): For forest practices, the percentage measuring the degree to which one layer of a tree canopy blocks sunlight or obscures the sky as measured from below.

(25) Cascadian architecture (SMA): Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(26) Catastrophic situations (SMA): Forces such as fire, insect and disease infestations, and earth movements.

(27) Childcare center: A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(28) Columbia River Gorge National Scenic Area Graphic Signing System: Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

(29) Commercial development/use: Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(30) Commercial forest products: These include timber for lumber, pulp, and firewood for commercial purposes.

(31) Commercial recreation: Any private (non-governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(32) Community facility: Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.

(33) Consulting parties (cultural resources): Organizations or individuals who submit substantive written comments to a local government in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(34) Contiguous land: Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

(35) Counties: The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(36) Created opening (SMA): A created forest opening with less than 40 percent average canopy closure of overstory trees and less than 60 percent average canopy closure of understory trees averaging less than 5 inches diameter at breast height for coniferous forests and less than 25 percent total canopy cover for oak woodlands. This definition does not include agricultural fields.

(37) Creation (wetlands): A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(38) Cultivation: Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(39) Cultural resource: Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

(a) Archaeological resources. Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old.

Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and

cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material byproducts from tool and utensil-making activities; and graves, human remains, and associated artifacts.

(b) Historic buildings and structures. Standing or above-ground buildings and structures that are at least 50 years old.

Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

(c) Traditional cultural properties. Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community.

Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

(40) Cumulative effects: The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(41) Cut: An area where soil or earth is excavated or removed in conjunction with development activities.

(42) Dedicated site: An area actively devoted to the current use and as delineated on the site plan.

(43) Deer and elk winter range: Areas normally used, or capable of being used, by deer and elk from December through April.

(44) Destruction of wetlands: Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(45) Developed recreation: Recreational opportunities characterized by high-density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(46) Developed road prism (SMA): The area of the ground associated with a particular road and containing the road surface, ditch, shoulder, retaining walls, or other developed features. Does not include the natural appearing portions of cut and fill slopes.

(47) Development: Any land division or structure, including but not limited to new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(48) Diameter at breast height (dbh): The diameter of a tree as measured at breast height.

(49) Duplex: A building containing two dwelling units and designed for occupancy by two families.

(50) Dwelling, single-family: A detached building containing one dwelling unit and designed for occupancy by one family only.

(51) Dwelling unit: A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(52) Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

(53) Effect on treaty rights: To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(54) Emergency/disaster: A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

(55) Emergency/disaster response: Actions involving any development (such as new structures, grading, or excavation) or vegetation removal that must be taken immediately in response to an emergency/disaster event (as defined above). Emergency/disaster response actions not involving any structural development or ground-disturbance (such as use of emergency transport vehicles, communications activities or traffic control measures) are not included in this definition and are not affected by these provisions.

(56) Endemic: Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(57) Enhancement (natural resources): A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(58) Ephemeral streams (SMA): streams that contain flowing water only during, and for a short duration after, precipitation events.

(59) Ethnography: The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(60) Existing use or structure: Any use or structure that was legally established. "Legally established" means: (1) the landowner or developer obtained applicable land use and building permits and complied with land use regulations and other laws that were in effect at the time the use or structure was established, or that were in effect at the time the landowner or developer corrected an improperly established use or structure; (2) the use or structure was initially operated or constructed according to those applicable permits, land use regulations and other laws, or has been operated or constructed according to permits obtained to correct an improp-

erly established use or structure; and (3) any changes to the original use or structure must comply with all applicable permit requirements, land use regulations and other laws that were in effect at the time the change was established.

(61) Exploration, development (extraction and excavation), and production of mineral resources: Includes all or any part of the process of surface, underground, or sub-merged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(62) Fill: The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(63) Finished grade: The final elevation of the ground level of a property after construction is completed.

(64) Fire break: A break in ground cover fuels, adjacent to and surrounding buildings.

(65) Footprint: The area that falls directly beneath and shares the same perimeter as a structure.

(66) Forbs: Broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

(67) Foreground (SMA): One-half mile on either side of a traveled road or trail.

(68) Forest health (SMA): A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience.

(69) Forest practice (SMA): Any activity conducted on or directly pertaining to forested land and relating to forest ecosystem management including but not limited to growing, thinning, or removing live or dead forest tree or shrub species, road and trail construction, reforestation, fertilizing, brush control, prevention of wildfire, and suppression of diseases and insects. The removal of hazardous trees is excluded. Uses that include establishment, management or harvest of Christmas trees, nursery stock, or fiber producing tree species requiring intensive cultivation (irrigation, fertilization, etc.) and a harvest rotation of 12 years or less are considered agricultural uses.

(70) Forest practice (GMA): Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(71) Forest products: Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(72) Forest stand structure (SMA): The number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.

(73) Forest use: The growing, propagation, and harvesting of forest tree species and other forest products.

(74) Fully screened: A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(75) Grade (ground level): The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(76) Grading: Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(77) Hazard tree (SMA): A tree with a structural defect that will predictably result in whole or partial failure within 1.5 tree lengths of a road or maintained development. A defective tree is hazardous only when its failure could result in danger to people or damage to structures, vehicles, or other property.

(78) Height of building: The greatest vertical distance between the point of lowest finished grade adjoining any exterior wall of a building and the highest point of the roof, such as the highest coping or parapet of a flat roof, the highest deck line of a mansard roof, or the highest ridge of a hip, gable, gambrel, shed or other pitched roof.

(79) Herbaceous: A plant with no persistent woody stem above the ground, with characteristics of an herb.

(80) Herbs: Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and non-woody vines. (Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(81) Historic buildings and structures: See cultural resource.

(82) Historic survey: Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(83) Horses, boarding of (GMA): The stabling, feeding, and grooming ~~for a fee~~, or the use renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks. These facilities are either operated for a fee or by a nonprofit organization.

(84) Hydric soil: A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(85) In-lieu sites: Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100-581, Section 401. Additional in-lieu sites will be provided for.

(86) Indian tribal government: The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakama Indian Nation (Tribal Council).

(87) Indian tribes: The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(88) Industrial uses: Any use of land or water primarily involved in:

(a) Assembly or manufacture of goods or products,

(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit,

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service, or

(d) Production of electric power for commercial purposes.

(89) Interpretive displays: Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(90) Key components: The attributes that are essential to maintain the long-term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(91) Key viewing areas: Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include:

Historic Columbia River Highway

Crown Point

Highway I-84, including rest stops

Multnomah Falls

Washington State Route 14

Beacon Rock

Panorama Point Park

Cape Horn

Dog Mountain Trail

Cook-Underwood Road

Rowena Plateau and Nature Conservancy Viewpoint

Portland Women's Forum State Park

Bridal Veil State Park

Larch Mountain

Rooster Rock State Park

Bonneville Dam Visitor Centers

Columbia River

Washington State Route 141

Washington State Route 142

Oregon Highway 35

Sandy River

Pacific Crest Trail

SMA only:

Old Washington State Route 14 (County Road 1230)

Wyeth Bench Road

Larch Mountain Road

Sherrard Point on Larch Mountain

(92) Land division: The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division

includes, but is not limited to, short subdivisions, partitions, and subdivisions.

(93) Landscape setting: The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(94) Livestock feedlot: Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.

(95) Lot line adjustment: Relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels.

(96) Maintenance: Ordinary upkeep or preservation of a serviceable structure affected by wear or natural elements. Maintenance does not change the original size, scope, configuration or design of a structure.

Maintenance includes, but is not limited to, painting and refinishing, regrouting masonry, patching roofs, grading gravel roads and road shoulders, cleaning and armoring ditches and culverts, filling potholes, controlling vegetation within rights-of-way, removing trees and other roadside hazards within rights-of-way, and testing and treating utility poles.

(97) Mitigation: The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(98) Mosaic (SMA): The dispersal of overstory and understory trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped forest opening.

(99) Multifamily dwelling: A dwelling constructed or modified into two or more single-family units.

(100) Native species: Species that naturally inhabit an area.

(101) Natural grade: The undisturbed elevation of the ground level of a property before any excavation or construction operations.

(102) Natural resources: Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(103) Natural resource specialist: A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(104) Natural resource-based recreation (SMA): Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities

are considered resource-based; golf courses, tennis courts, and rental cabins are not.

(105) Nonprofit organization: An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

(106) Not visually evident (SMA): A visual quality standard that provides for development or uses that are not visually noticeable to the casual visitor. Developments or uses shall only repeat form, line, color, and texture that are frequently found in the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be noticeable.

(107) Old growth (SMA): A forest stand usually at least 180-220 years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large overstory trees; high incidence of large trees, some with broken tops and other indications of old and decaying wood (decadence); numerous large snags, and heavy accumulations of wood, including large logs on the ground.

(108) Operational (SMA): For new agricultural use, an agricultural use shall be deemed operational when the improvements and investments described in the Stewardship Plan are in place on the parcel.

(109) Ordinary high water mark: The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(110) Other related major structure (SMA): A structure related to a dwelling on a parcel in the SMA that is less than 40 acres in size, which is not incidental and subordinate to the main use of the property. A building or structure that satisfies the definition of "accessory building" is not an "other related major structure" or a "major development action."

(111) Overstory (SMA): For forest practices, the tall or mature trees that rise above the shorter or immature understory trees.

(112) Parcel:

(a) Any unit of land legally created by a short division, partition, or subdivision that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:

(A) Is a unit of land solely created to establish a separate tax account;

(B) Lies in different counties;

(C) Lies in different sections or government lots;

(D) Lies in different land use or zoning designations; or

(E) Is dissected by a public or private road.

(113) Practicable: Able to be done, considering technology and cost.

(114) Preexisting: Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(115) Previously disturbed: An area of land where the natural surface has been graded, excavated, paved and/or graveled.

(116) Project area: The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

(117) Public use facility: Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(118) Rare plant species: Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(119) Recreation facility: A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(120) Reconnaissance survey: Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, sub-surface testing, and ethnographic research.

(121) Recreation opportunity spectrum (ROS): A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

(a) Primitive: Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.

(b) Semiprimitive: Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.

(c) Roded Natural: Roded areas with moderately frequent human encounters and with resource modifications evident.

(d) Rural: Roded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.

(e) Suburban: Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent

human encounters, and dominant resource modifications encroaching into the rural landscape.

(f) Urban: Highly accessible, roded areas dominated by human encounters and human-related structures.

(122) Recreation resources: Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semiprimitive areas with few facilities and developed sites.

(123) Regularly maintained: An area of land that has been previously disturbed and where periodic actions have been taken to (1) keep the area clear of vegetation (e.g., shoulders, utility yards), (2) limit the height and type of vegetation (e.g., utility rights-of-way), and/or (3) establish and retain non-native vegetation (e.g., landscaped medians, rest area grounds).

(124) Rehabilitation (natural resources): A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(125) Remnant old forest (SMA): Large trees in the overstory that are well into the mature growth state (older than 180 years).

(126) Repair: Replacement or reconstruction of a part of a serviceable structure after damage, decay or wear. A repair returns a structure to its original and previously authorized and undamaged condition. It does not change the original size, scope, configuration or design of a structure, nor does it excavate beyond the depth of the original structure.

Repair includes, but is not limited to, reroofing a building, replacing damaged guardrails, reconstructing a rotten deck or porch, replacing a broken window or door, replacing a utility pole and associated anchors, replacing a section of broken water or sewer line, replacing a damaged or defective utility line, reconstructing a portion of a building damaged by fire or a natural event, and replacing railroad ties or rails.

(127) Resource-based recreation: Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(128) Restoration (wetlands): A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(129) Review uses: Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(130) Riparian area: The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(131) Road: The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel

between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways, or alleys.

(b) Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures.

(c) Structures that provide for continuity of the right-of-way, such as bridges.

(132) Scenic Area: The Columbia River Gorge National Scenic Area.

(133) Scenic travel corridor: Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(134) Secretary: The Secretary of Agriculture.

(135) Sensitive plant species: Plant species that are (1) endemic to the Columbia River Gorge and vicinity, (2) listed as endangered or threatened pursuant to federal or state endangered species acts, or (3) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program.

In the SMA, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(136) Sensitive wildlife species: Animal species that are (1) listed as endangered or threatened pursuant to federal or state endangered species acts, (2) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission, (3) listed as sensitive by the Oregon Fish and Wildlife Commission, or (4) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon.

In the SMA, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(137) Service station: A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(138) Serviceable: Presently useable.

(139) Shall: Action is mandatory.

(140) Should: Action is encouraged.

(141) Shrub: A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(142) Sign: Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal,

ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(143) Significant cultural resource (SMA): A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)

(144) Skyline: The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(145) Soil capability class: A classification system developed by the U.S. Department of Agriculture, Natural Resources Conservation Service to group soils as to their capability for agricultural use.

(146) Special habitat area: Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(147) Special streams: Streams that are primary water supplies for fish hatcheries and rearing ponds.

(148) Stand: A group of trees possessing uniformity in regard to type, age, vigor, or size.

(149) Story: A single floor level of a structure, as defined by the Uniform Building Code.

(150) Streams: Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs and defined-channel swales. The channel or bed does not have to contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses.

For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year-round during years of normal precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

(151) Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(152) Submit: To deliver a document (e.g., land use application, written comment) to a reviewing agency's office by personal delivery, commercial delivery, mail, fax, or E-mail. When a document must be submitted within a specified period, it must arrive at the reviewing agency's office by the close of business on the last day of the specified period.

(153) Subsurface testing: Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(154) Suitability: The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(155) Thinning (SMA): A forest practice intended to create favorable conditions for the continued growth of trees within an existing stand of trees. A thinning becomes a forest opening in coniferous forests when the average canopy closure of the overstory layer is zero or less than 40 percent and the understory layer is less than 60 percent average canopy closure of trees averaging less than 5 inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than 25 percent.

(156) Total canopy closure (SMA): For forest practices, the percentage measuring the degree to which all layers of the tree canopy combine together to block sunlight or obscure the sky as measured from below.

(157) Travelers accommodations: Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(158) Treatment (SMA): For forest practices, a site-specific operation that carries out the forest management objectives for an area.

(159) Treaty rights or other rights: Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(160) Tributary fish habitat: Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(161) Understory (SMA): For forest practices, the shorter or immature trees below the tall or mature overstory trees.

(162) Undertaking: Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements [36 CFR 800.16(y)2(Ⓣ)].

(163) Unimproved lands: Lands that generally do not have developments such as buildings or structures.

(164) Upland: Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(165) Uses allowed outright: New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(166) Utility facility: Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

(167) Vested right: The right to develop or continue to develop a use, development or structure that was reviewed and approved pursuant to this Management Plan.

(168) Viewshed: A landscape unit seen from a key viewing area.

(169) Visual quality objective (VQO): A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention (not visually evident) and partial retention (visually subordinate), and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(170) Visually subordinate: A description of the relative visibility of a structure or use where that structure or use does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings. Visually subordinate forest practices in the SMA shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

(171) Water-dependent: Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water-dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water-dependent.

(172) Water-related: Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water-related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(173) Wetlands: Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(174) Wetlands functions: The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and non-game birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries;

educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(175) Winery: An agricultural facility used for processing grapes into wine, including laboratories, processing areas, offices, and storage areas. A winery is distinct from a wine sales/tasting room; each of these uses must be explicitly reviewed and approved.

(176) Wine sales/tasting room: A facility that is accessory to a winery and used for tasting and retail sales of wine, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda). A wine sales/tasting room shall not be used for preparing or serving meals or hosting weddings, receptions or other commercial events, unless allowed, reviewed and approved under the "Commercial Events" provisions in 350-81-108. A wine sales/tasting room is distinct from a winery; each of these uses must be explicitly reviewed and approved.

(177) Woody plant: A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

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.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-032

Application for Review and Approval

(1) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-032.

(2) The Executive Director shall accept and review the application pursuant to 350-81-030 through 350-81-046 for consistency with the appropriate guidelines of this rule.

(3) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(4) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices and the Forest Service.

(5) Applications for the review and approval of a proposed use or development shall provide the following information:

- (a) The applicant's name, address and telephone number;
- (b) The land owner's name, address and telephone number (if different from applicant's);
- (c) The county in which the proposed use or development would be located;
- (d) The section, quarter section, township and range in which the proposed development would be located;
- (e) The street address of the proposed use or development;
- (f) The tax lot number(s) and size in acres of the parcel(s) involved;
- (g) A description of the current land use for the parcel(s) involved and adjoining lands;
- (h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures.

(i) A list of Key Viewing Areas from which the proposed use would be visible.

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Executive Director to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel. Rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:

- (A) North arrow.
- (B) Map scale.
- (C) Boundaries, dimensions, and size of the subject parcel.
- (D) Significant terrain features or landforms.
- (E) Groupings and species of trees or other vegetation on the parcel.
- (F) Location and species of vegetation that would be removed or planted.
- (G) Bodies of water and watercourses.
- (H) Location and width of existing and proposed roads, driveways, and trails.
- (I) Location and size of existing and proposed structures.
- (J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting.
- (K) Location and depth of all proposed grading and ditching.
- (k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale.
- (l) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-81-630.
- (m) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans.
- (n) The signature of the applicant and property owner or a statement from the property owner indicating that he is aware of the application being made on his property.
- (o) The signature of the property owner on a statement that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application.
- (6) Applications for the following uses or developments shall include additional information as required by the appropriate guidelines in Commission Rule 350-81 or by the Executive Director:
 - (a) In the General Management Area, for all buildings visible from key viewing areas, pursuant to 350-81-520 (2)(n).
 - (b) In the General Management Area, production and/or development of mineral resources and expansion of existing quarries pursuant to 350-81-520 (1)(f), (2)(o), and (2)(bb).

(c) A grading plan that complies with the requirements of 350-81-520 (2)(aa)(A) and (B) is required for the following:

(A) In the General Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes over 10 percent shall include a grading plan;

(B) In the General Management Area, all proposed structural development on sites visible from key viewing areas and involving more than 200 cubic yards of grading, regardless of slope; and

(C) In the Special Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes greater than 10 percent (except trails) shall include a grading plan.

(d) In the General Management Area, vegetation management projects in public rights of way along Scenic Travel Corridors, pursuant to 350-81-520 (4)(d).

(e) Large-scale uses as defined by guideline 350-81-540 (1)(c)(C) shall include reconnaissance survey reports, pursuant to 350-81-540 (1)(c)(F), and (G).

(f) Proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings that are 50 years old or older, pursuant to 350-81-540 (1)(c)(H)(iii).

(g) In the General Management Area, new uses located in, or providing recreational access to the Columbia River or its fishbearing tributaries, pursuant to 350-81-084 (1)(a)(A).

(h) In the General Management Area, any review use in a wetland or within a wetland buffer zone, pursuant to 350-81-560 (1)(b).

(i) In the General Management Area, any review use in a stream, pond, lake, or within their buffer zones, pursuant to 350-81-570 (1)(b).

(j) In the General Management Area, any review use within 1000 feet of a sensitive wildlife area or site, pursuant to 350-81-580 (1)(b). Large-scale uses as defined by 350-81-580(2) shall also include field survey information, pursuant to 350-81-580 (2)(e).

(k) In the General Management Area, any review use within 1000 feet of a sensitive plant, pursuant to 350-81-590 (1)(b). Large-scale uses as defined by 350-81-590(2) shall also include field survey information, pursuant to Commission Rule 350-81-590 (2)(e).

(l) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, pursuant to 350-81-190 (1)(h), and if applicable, 350-81-190 (1)(i).

(m) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling not in conjunction with agricultural use, pursuant to Commission Rule 350-81-190 (1)(q).

(n) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative, pursuant to Commission Rule 350-81-190 (1)(k).

(o) In the General Management Area, on lands designated Large-Woodland, a single-family dwelling, pursuant to 350-81-270 (1)(a).

(p) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, a single-family dwelling, pursuant to 350-81-270 (2)(j).

(q) In the Special Management Area, on lands designated Agriculture, Forest, Residential, or Public Recreation, clearing trees for new agricultural use, pursuant to 350-81-270 (2)(x).

(r) In the Special Management Area, on lands designated Agriculture, Forest, Residential, or Public Recreation, forest practices, pursuant to 350-81-270 (2)(y).

(s) In the Special Management Area, on lands designated Open Space, any new use or development, pursuant to 350-81-340(4).

(t) In the General Management Area, on lands designated Agriculture-Special, a single-family dwelling pursuant to 350-81-232 (1)(g).

(u) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, a single-family dwelling necessary and accessory to agricultural use, pursuant to 350-81-190 (2)(c).

(v) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, farm labor housing, pursuant to 350-81-190 (2)(d).

(w) In the General Management Area, on lands designated Small Woodland, a single-family dwelling pursuant to 350-81-270 (1)(b).

(x) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, a single-family dwelling in conjunction with agricultural use pursuant to 350-81-270 (1)(c).

(y) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, agricultural labor housing, pursuant to 350-81-270 (1)(c) ~~and on lands designated Large-Scale Agriculture or Small-Scale Agriculture, pursuant to 350-81-190 (1)(p).~~

(z) In the General Management Area, on lands designated Agriculture-Special, new livestock grazing, new fences, livestock watering facilities, and corrals; or soil, water, and vegetation conservation activities, pursuant to 350-81-240.

(aa) In the General Management Area and Special Management Area, agricultural buildings, pursuant to 350-81-090(2).

(bb) Other uses as deemed necessary by the Executive Director.

(7) Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission.

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

AMENDATORY SECTION

350-81-042

Decision of the Executive Director

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-81-040; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81 within 72 days after acceptance of the application except in one or more of the following situations:

(a) The applicant consents to an extension of time.

(b) The Executive Director determines that additional information is required pursuant to Commission Rule 350-81-040.

(c) The Executive Director determines that additional information is necessary to evaluate land use issues and the impacts of the proposed use to scenic, cultural, natural, and recreation resources.

(d) Unforeseen circumstances including, but not limited to, weather, illness, etc.

(4) The Executive Director shall ~~mail~~ send a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-81-040. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

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

AMENDATORY SECTION

350-81-050

Development Eligible for Expedited Review

(1) The following developments may be reviewed using the expedited development review process, provided they comply with the resource protection and procedural guidelines contained in this section.

(a) Except in Open Space and Agriculture-Special, accessory structures between 60 and 200 square feet in area and 10 feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include signs, decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.

(b) Additions and covered decks for existing buildings, provided the existing building is at least 500 square feet in area and the addition or covered deck is no larger than 200 square feet in area and no taller than the height of the existing building. Only one addition and one covered deck per parcel may be allowed under this guideline, regardless of whether the parcel already includes an addition or covered deck.

(c) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length.

(d) Wire-strand fences other than those allowed outright, provided the fence complies with 350-81-580(6) if it is inside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency.

(e) In the General Management Area, woven-wire fences for agricultural use that would enclose 80 acres or less.

(f) Decks that are: (1) uncovered; (2) attached and accessory to existing dwellings; and (3) 500 square feet or less in area and 30 inches or less in height above existing grade.

(g) Road closure gates.

(h) Signs, other than those allowed outright.

(i) Outdoor lights.

(j) Air, weather, water and other similar research and monitoring facilities, provided the facilities are attached to existing structures or are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(k) Lot line adjustments in the General Management Area that would not result in the potential to create additional parcels through subsequent land divisions, subject to 350-81-126(1), except all lot line adjustments for parcels designated Open Space, Agriculture-Special, Public Recreation, or Commercial Recreation shall be reviewed through the full development review process.

(l) Lot line adjustments in the Special Management Area, subject to 350-81-126(2).

(m) Removal/~~Demolition~~ of structures that are less than 50 years old, including wells, septic tanks and fuel tanks.

(n) Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.

(o) Trail reconstruction involving up to 1,000 feet of trail re-route.

(p) The following transportation facilities, provided they are not a part of larger construction or reconstruction projects (which shall be reviewed as a whole):

(A) New guardrails and guardrail ends, other than those allowed outright, and new wire-strand and woven-wire access control fences. This category does not include jersey barriers.

(B) New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to 120 square feet

in size and less than or equal to 12 feet in height. This category does not include signs.

(C) Pave existing dirt and gravel roads, provided the activity does not increase the width of the road or disturb the toe of adjacent embankments, slopes or cut banks.

(D) New weather, air, traffic or other monitoring equipment attached to existing structures or that are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(q) ~~Except in Agriculture-Special.~~ The following underground utility facilities:

(A) New underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no ditch for linear facilities would be more than 36 inches wide and (2) no excavation for non-linear facilities would exceed 20 cubic yards.

(r) The following aboveground and overhead utility facilities:

(A) Modify existing aboveground and overhead utility facilities or, ~~except in Agriculture-Special,~~ develop new aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the development would be less than or equal to 120 square feet in area and less than or equal to 12 feet in height.

(B) Replace existing aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the replacement facilities would be in the same location as and no more than 15 percent larger than the physical size of the existing facilities.

(C) New antennas and associated support structures necessary for public service on existing wireless communication poles and towers other than those allowed outright, provided the size is the minimum necessary to provide the service.

(s) Replace an existing mobile home in a mobile home space within a mobile home park, provided: (1) the mobile home to be replaced, the mobile home space and the mobile home park shall be existing, lawful uses according to the definition of *existing use or structure* and 350-81-082 (1) through (4); (2) the replacement mobile home shall be in the same location as the mobile home to be replaced; (3) the height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced, and (4) the mass and footprint of the replacement mobile home shall be no more than 100 percent greater than a single-wide mobile home to be replaced or no more than 25 percent greater than a double-wide mobile home to be replaced.

(t) Retaining walls accessory to existing dwellings less than or equal to 2 feet in height and less than or equal to 100 feet in length.

(u) In the Special Management Area, wind machines for frost control in conjunction with agricultural use.

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

AMENDATORY SECTION

350-81-052

Resource and Treaty Rights Protections Guidelines

(1) Proposed developments reviewed using the expedited review process shall comply with the following resource protection guidelines:

(a) Scenic

(A) In the General Management Area, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.

(B) ~~Except signs.~~ The colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. This guideline shall not apply to additions, which may match the color of existing buildings.

(C) ~~Except signs.~~ Structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.

(D) Outdoor lights shall be directed downward and sited, hooded, and shielded such that they are not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(E) Signs shall comply with 350-81-112.

(F) Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and/or designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).

(b) Cultural

(A) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey, pursuant to 350-81-540 (1)(c)(A) or historic survey, pursuant to 350-81-540 (1)(c)(B).

(B) The GMA guidelines that protect cultural resources and human remains discovered during construction [350-81-540 (6) and (7)] shall be applied as conditions of approval for all development approved under the expedited development review process.

(c) Recreation

(A) The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

(d) Natural

(A) Wetlands, Streams, Rivers, Ponds, and Lakes

(i) The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

(B) Sensitive Wildlife and Sensitive Plants

(i) The development meets one of the following:

(I) The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range, and turkey habitat) and known sensitive plants; or

(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or

other areas that have been previously disturbed and regularly maintained; or

(III) For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines (1) the sensitive wildlife area or site is not active or (2) the proposed development would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.

(ii) Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or sensitive plants [350-81-580 (1)(b) and (2); 350-81-590 (1)(b) and (2)].

(2) Proposed developments reviewed using the expedited review process shall comply with the following treaty rights protection guidelines:

(a) Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.

(b) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

(c) Except as provided in 2.b above, the GMA and SMA treaty rights and consultation goals, policies and guidelines in Chapter 3, Section IV of the Management Plan shall not apply to proposed developments reviewed under the expedited review process.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

AMENDATORY SECTION

350-81-060

Emergency/Disaster Response Actions

(1) General Guidelines

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-81-020(54), are allowed in all GMA/SMA land use designations, subject to the notification requirements in "Notification Requirements" (subsection 2, below).

(b) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

(c) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life property, public services or the environment, an extension of no more than two years may be granted by the Executive Director or the Forest Service for federal agency actions.

(d) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

(e) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

(2) Notification Requirements

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-81-020(54), are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

(A) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.

(B) Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.

(C) Notification shall be furnished to the Executive Director or the Forest Service for federal agency actions.

(D) At a minimum, the following information shall be required at the time of notification:

(i) Nature of emergency/disaster event.

(ii) Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).

(iii) Location of emergency/disaster response activities.

(iv) Estimated start and duration of emergency/disaster response activities.

(v) Contact person and phone number for the parties conducting emergency/disaster response actions.

(E) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

(b) Upon notification of an emergency/disaster response action, the Executive Director, or Forest Service shall, as soon as possible:

(A) Review its natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;

(B) Notify the Oregon or Washington Department of Fish and Wildlife of all noticed emergency/disaster response actions, to provide that agency an opportunity to consult with responding agencies during the event, and;

(C) Notify the Forest Service, the Oregon Historic Preservation Office or the Office of Washington Office of Archeology and Historic Preservation, and the tribal governments of all emergency/disaster response activities. The Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

(c) Upon notification of a response action, the Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide on-site advice to minimize impacts to resources from emergency/disaster response actions.

(3) Post-Emergency/Disaster Response Development Review Application Requirements

(a) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Executive Director, or Forest Service for federal agency actions. In the case of an event with multiple responding parties, the party providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and not more than two (2) extensions shall be granted.

(b) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. The terms "development activities" and "development" include the disposal of any spoil materials associated with an emergency/disaster response action. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an application for those actions.

(c) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).

(d) Applications shall include the following information:

(A) Applicant's name and address.

(B) Location of emergency/disaster response.

(C) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.

(D) A map of the project area drawn to scale, at a scale of 1 inch = 200 feet or a scale providing greater detail. The map shall include:

(i) North arrow and scale.

(ii) Boundaries, dimensions and size of subject parcel(s).

(iii) Bodies of water, watercourses, and significant landforms.

(iv) Existing roads and structures.

(v) New structures placed and any vegetation removal, excavation or grading resulting from the response actions.

(E) An exception to the scale requirements in subsection (3)(d)(D) above may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1 inch = 200 feet or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

(e) Emergency/disaster response review uses may be allowed pursuant to a process that provides at minimum the following:

(A) Notice of the application to landowners within 200 feet of the perimeter of the subject parcel, the Forest Service, Gorge Commission, four tribal governments and interested parties.

(B) A written decision with findings of fact and conclusions of law.

(C) An opportunity to request a hearing.

(4) Post-Emergency/Disaster Response Development Review

Actions taken in all land use designations within the GMA/SMA that are in response to an emergency/disaster event, as defined, shall be reviewed for compliance with the following guidelines.

(a) Scenic Resources

(A) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. In the GMA, such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in areas exempted from visual subordination requirements in 350-81-520 (3)(k). In the SMA, such actions shall meet the scenic standard to the greatest extent practicable.

(B) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

(C) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species, or species commonly found within the applicable landscape setting, to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An excep-

tion to the one-year requirement may be granted upon demonstration of just cause, with an extension up to one year.

(D) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.

(E) Additions to existing structures, resulting from an emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable.

(F) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA,

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance, or

(III) (Re)contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

(ii) The Executive Director shall decide whether an applicant removes the spoil materials [350-81-060 (4)(a)(F)(i)(I)], deposits the spoil materials [subsection (4)(a)(F)(i)(II)], or (re)contours the spoils materials [subsection (4)(a)(F)(i)(III)]. The applicant does not make this decision.

(iii) The Executive Director shall select the action in 350-81-060 (4)(a)(F)(i) that, to the greatest extent practicable, best complies with the policies and guidelines in the Management Plan that protect scenic, cultural, recreation, and natural resources.

(iv) Disposal sites created according to 350-81-060 (4)(a)(F)(i)(~~III~~II) shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

(G) In the Special Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA, or

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance within two years of the emergency.

(ii) After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.

(iii) All grading (i.e., recontouring) shall be completed within 30 days after the spoils materials are removed.

(iv) Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(v) All revegetation shall take place within one (1) year of the date an applicant completes the grading.

(vi) This provision shall take effect two years after the date of Management Plan concurrence by the U.S. Secretary of Agriculture, or approval of a disposal site, which ever comes first.

(b) Cultural Resources and Treaty Rights

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect tribal treaty rights.

(B) The USDA Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Executive Director.

(i) Reconnaissance surveys shall be conducted by the USDA Forest Service and comply with the standards in 350-81-540 (1)(c)(D). Reconnaissance survey reports shall comply with the standards in 350-81-540 (1)(c)(G).

(ii) Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.

(C) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the tribal governments shall be notified by the Executive Director when (1) a reconnaissance survey is required or (2) cultural resources exist in the project area. Notices shall include a site plan. Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them.

(D) When written comments are submitted in compliance with 350-81-060 (4)(b)(C) above, the project applicant shall offer to meet within five calendar days with the interested persons. The five day consultation period may be extended upon agreement between the project applicant and the interested persons. A report shall be prepared by the Executive Director following the consultation meeting. Consultation meetings and reports shall comply with the standards in 350-81-540 (2)(a), and 084 (1)(b)(A) and (B).

(E) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources. The survey and evaluation shall be documented in a report that generally follows the standards in 350-81-540 (1)(c)(G) and 350-81-540 (3)(a).

(F) A mitigation plan shall be prepared by the project applicant if the affected cultural resources are significant. The mitigation plan shall be prepared according to the information, consultation, and report guidelines in 350-81-540 (5)(a).

(G) The Executive Director shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the final decision.

(H) The Executive Director shall make a final decision on whether the emergency/disaster response actions are consistent with the applicable cultural resource goals, policies, and guidelines. If the final decision contradicts the comments submitted by the SHPO, or those submitted by a tribal government regarding treaty rights, the Executive Director shall justify how the opposing conclusion was reached.

(I) The cultural resource protection process may conclude when it has been determined that tribal treaty rights have not been not affected and one of the following conditions exists:

(i) The emergency/disaster response action does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.

(ii) The emergency/disaster response action avoided cultural resources that exist in the project area.

(iii) Adequate mitigation measures to affected cultural resources have been developed and will be implemented.

(iv) A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:

(I) The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(II) The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* [U.S. Department of the Interior 1990] and *The Secretary of the Interior's Standards for Historic Preservation Projects* [U.S. Department of the Interior 1983].

(c) Natural Resources

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.

(B) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in 350-81-560 through 600.

(C) Wetlands, Streams, Ponds, Lakes, Riparian Areas

(i) Emergency/disaster response actions occurring within a buffer zone of wetlands, streams, pond, lakes or riparian areas shall be reviewed by the Oregon or Washington

Department of Fish and Wildlife. These areas are also referred to in this section as aquatic areas. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these aquatic areas or their bigger zones. State biologists shall respond within 15 days of the date the application is mailed.

(ii) When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:

(I) All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing contours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes or riparian areas.

(II) Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.

(iii) Impacts to wetlands, streams, ponds, lakes and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service natural resource advisor (as available) in consultation with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final order and the aquatic area protection process may conclude.

(v) Unless addressed through subsection (4)(c)(C)(iv) above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the standards in 350-81-570 (8)(a) and (b). Rehabilitation plans shall also satisfy the following:

(I) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.

(II) Planting plans shall be included that specify native plant species to be used, specimen quantities and plant locations.

(III) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

(D) Wildlife Habitat

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive wildlife area or site, shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. State wildlife biologists will help determine if emergency/disaster response actions have affected or have a potential to affect a sensitive wildlife area or site.

(ii) Site plans for emergency/disaster response sites shall be submitted by the Executive Director to the Oregon or Washington Department of Fish and Wildlife for review as prescribed in 350-81-580 (4)(a) and (b). The wildlife agency shall respond within 15 days of the date the application is mailed.

(iii) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines (1) the sensitive wildlife area or site was not active, or (2) the emergency/disaster response did not compromise the integrity of the wildlife area or site or occurred at a time when wildlife species are not sensitive to disturbance.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had minor effects on the wildlife area or site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a Forest Service natural resource advisor (as available) in consultation with the state wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife protection process may conclude.

(v) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had adverse effect on a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management Plan. Wildlife Management Plans shall comply with standards in 350-81-580(5). Upon completion of the Wildlife Management Plan, the Executive Director shall:

(I) Submit a copy of the Wildlife Management Plan to the state wildlife agency for review. The state wildlife agency will have 15 days from the date that a plan is mailed to submit written comments to the Executive Director;

(II) Record any written comments submitted by the state wildlife agency in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

(III) Require the project applicant to revise the Wildlife Management Plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(E) Deer and Elk Winter Range

(i) Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall comply with the standards in 350-81-580(6).

(F) Rare Plants

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive plant, shall be reviewed by the Oregon or Washington Natural Heritage Program. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.

(ii) Site plans for emergency/disaster response sites shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. State natural heritage staff will, within 15 days from the date the application is mailed, identify the location of the affected plants and delineate a 200 foot buffer zone on the applicant's site plan.

(iii) The rare plant protection process may conclude if the Executive Director, in consultation with the state natural heritage program, determines that emergency/disaster response activities occurred outside of a rare plant buffer zone.

(iv) If the Executive Director, in consultation with the state natural heritage program, determines that the emergency/disaster response activities had minor effects on rare plants or the rare plant buffer zone, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state natural heritage staff, or a Forest Service natural resources advisor (as available) in consultation with the state natural heritage staff, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision order and the rare plant protection process may conclude.

(v) If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse effects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan, that meets the standards in 350-81-590(5).

(vi) The Executive Director shall submit a copy of all protection and rehabilitation plans to the state heritage program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record any written comments submitted by the state natural heritage program in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the state natural heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(vii) The Executive Director shall require the project applicant to revise the protection and rehabilitation plan as necessary to ensure that the proposed use would not adversely affect a rare plant site.

(d) Recreational Resources

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.

(B) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

(5) Post-Emergency Construction

(a) The following review uses are allowed in all land use designations in accordance with 350-81-030 through 046, 350-81-070 through 126 (as applicable), and 350-81-520 through 620.

(A) Placement of structures necessary for continued public safety and the protection of private property and essential public services damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use applications shall be submitted within 12 months following an emergency/disaster event.

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.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

AMENDATORY SECTION

350-81-074

Uses Allowed Outright

(1) All Land Use Designations Except Open Space and Agriculture—Special

(a) The following uses may be allowed without review in all GMA and SMA land use designations, except GMA and SMA Open Space and Agriculture—Special:

(A) In the General Management Area, agricultural uses except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation. For this guideline, cultivation and vegetation removal may be allowed in conjunction with a home garden.

(B) In the Special Management Area, agricultural uses within previously disturbed and regularly worked fields or areas.

(C) Forest practices in the General Management Area that do not violate conditions of approval for other approved uses and developments.

(D) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(E) Accessory structures 60 square feet or less in area and 10 feet or less in height, unless within the buffer zone of a wetland, stream, pond, lake or riparian area. This category does not include signs, fences, outdoor lights, retaining walls, flagpoles, transportation facilities, or utility facilities.

(F) Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses less than or equal to 500 feet in length and less than or equal to 10 feet in height that are accessory to an existing dwelling, provided woven-wire fences (posts and wire) are brown or black if visible from key viewing areas. Height is measured from the ground to the top wire.

(G) Wire-strand fences less than or equal to 48 inches in height that are outside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency. Height is measured from the ground to the top wire. This category does not include fences associated with transportation facilities or utility facilities.

(H) The following transportation facilities:

(i) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)].

(ii) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)].

(iii) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(iv) Permanent public regulatory, guide, and warning signs, except those excluded below, provided (1) the signs comply with the *Manual for Uniform Traffic Control Devices* and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(v) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)].

(vi) New guardrails and guardrail ends, provided the structures are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled

"Scenic Travel Corridors" [350-81-520(4)]. This category does not include jersey barriers.

(vii) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(viii) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(ix) Resurface or overlay existing paved roads, provided the activity does not (1) increase the width of a road, (2) disturb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(x) Apply dust abatement products to non-paved road surfaces.

(xi) Grade and gravel existing road shoulders, provided the activity does not (1) increase the width of a road, (2) disturb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(xii) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(I) The following underground utility facilities:

(i) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(ii) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no excavation would extend more than 12 inches beyond the depth and extent of the original excavation, (2) no ditch for linear facilities would be more than 24 inches wide, (3) no excavation for non-linear facilities would exceed 10 cubic yards, and (4) no recorded archaeological site is located within 500 feet of the development.

To comply with (4), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(J) The following aboveground and overhead utility facilities:

(i) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have (1) the same

location and size as the existing facilities and (2) the same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)].

(ii) Replace existing utility poles, provided the replacement poles are (1) located within 5 feet of the original poles, (2) no more than 5 feet taller and 6 inches wider than the original poles, and (3) constructed of natural wood, weathering steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iii) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(K) Flagpoles that are accessory to the principal building on a parcel, provided the height of the flagpole is less than or equal to the height of the highest ridgeline or parapet of the principal building.

(L) The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet in the General Management Area and 2 square feet in the Special Management Area.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

(M) In the General Management Area, wind machines for frost control in conjunction with agricultural use.

(2) GMA and SMA Open Space

(a) The following uses may be allowed without review in GMA and SMA Open Space:

(A) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(B) The following transportation facilities:

(i) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)].

(ii) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)].

(iii) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(iv) Permanent public regulatory, guide, and warning signs, except those excluded below, provided (1) the signs comply with the *Manual for Uniform Traffic Control Devices* and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(v) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)].

(vi) New guardrails and guardrail ends, provided the structures are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14

prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)]. This category does not include jersey barriers.

(vii) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(viii) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(ix) Resurface or overlay existing paved roads, provided the activity does not (1) increase the width of a road, (2) disturb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(x) Apply dust abatement products to non-paved road surfaces.

(xi) Grade and gravel existing road shoulders, provided the activity does not (1) increase the width of a road, (2) disturb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(xii) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(C) The following underground utility facilities:

(i) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(ii) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no excavation would extend more than 12 inches beyond the depth and extent of the original excavation, (2) no ditch for linear facilities would be more than 24 inches wide, (3) no excavation for non-linear facilities would exceed 10 cubic yards, and (4) no recorded archaeological site is located within 500 feet of the development.

To comply with (4), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(D) The following aboveground and overhead utility facilities:

(i) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service

boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have (1) the same location and size as the existing facilities and (2) the same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors" [350-81-520(4)].

(ii) Replace existing utility poles, provided the replacement poles are (1) located within 5 feet of the original poles, (2) no more than 5 feet taller and 6 inches wider than the original poles, and (3) constructed of natural wood, weathering steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iii) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(E) The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet in the GMA and 2 square feet in the SMA.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-082

Existing Uses and Discontinued Uses

(1) Right to Continue Existing Uses and Structures

(a) Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.

(2) Replacement of Existing Structures Not Damaged or Destroyed by Disaster

(a) Except as provided in 350-81-082(3), an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure.

(B) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.

(C) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

(D) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

(3) Replacement of Existing Structures Damaged or Destroyed by Disaster

(a) An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure. An existing mobile home may be replaced with a framed residence.

(B) The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the following conditions exist:

(i) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.

(ii) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.

(iii) The new building site complies with the cultural resources, natural resources, and treaty rights protection guidelines.

(C) The replacement structure shall be the same size and height as the original structure, provided:

(i) The footprint of the replacement structure may be up to 10 percent larger than the footprint of the original structure.

(ii) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code.

(D) The replacement structure shall only be subject to the following scenic resources standards:

(i) The replacement structure shall comply with the scenic resources guidelines regarding color and reflectivity. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(ii) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(iii) In the General Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, provided:

(I) Except as provided in 350-81-082 (3)(a)(D)(iii)(II), the percent of the replacement structure screened by vegetation as seen from key viewing areas shall not exceed the percent of the original structure that was screened by vegetation as seen from key viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation and deciduous vegetation shall be replaced with deciduous vegetation unless the applicant chooses to use all coniferous vegetation.

(II) In situations where the original structure was approved under Scenic Area regulations (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement structure screened by vegetation shall comply with any conditions of approval that required a landowner to preserve existing vegetation and/or plant and maintain new vegetation to screen the original structure as seen from key viewing areas.

(III) To help determine how much vegetation may be required under 350-81-082 (3)(a)(D)(iii)(I) and (II), land use applications shall include all available documentation (photographic or otherwise) on the amount and type of vegetation that screened the original structure from key viewing areas. At a minimum, development review decisions shall include findings that address the following:

(1) The percent of original structure facing each key viewing area that was screened by coniferous vegetation, for each key viewing area from which the structure was visible.

(2) The percent of original structure facing each key viewing area that was screened by deciduous vegetation, for each key viewing area from which the structure was visible.

(3) Elevation drawings showing the replacement structure and the amount of coniferous and deciduous vegetation that would screen the structure from key viewing areas in 10 years.

(IV) The height of any new trees shall not be required to exceed 5 feet.

(V) The time frame for achieving visual subordination shall be 10 years or less from the commencement of construction.

(iv) In the Special Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(I) The *Scenic Resources Implementation Handbook* shall be utilized to determine approvable species and minimum approvable sizes of new trees planted (based on average growth rates expected for approvable species).

(II) The height of any new trees shall not be required to exceed 5 feet.

(III) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.

(E) The replacement structure shall be subject to 350-81-082 (2)(a)(A), ~~and (B)~~, and (C) above if it would not comply with 350-81-082 (3)(a)(B) and (C).

(F) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the two year time frame.

(4) Changes to Existing Uses and Structures

(a) Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-81.

(A) Expansion of Existing Commercial and Multifamily Residential Uses: In the SMA, existing commercial and multifamily residential uses may expand as necessary for successful operation on the dedicated site, subject to guidelines to minimize adverse effects on scenic, cultural, natural, and recreation resources. Expansion beyond the dedicated site shall be prohibited.

(B) Expansion of Existing Industrial Uses in the GMA: Existing industrial uses in the GMA may expand as necessary for successful operation on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(C) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

(D) Existing Development or Production of Mineral Resources in the GMA: In the GMA, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural, or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to land use ordinances under the Management Plan if any of the following conditions exist:

(i) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain that was merely leveled or cleared of vegetation.

(ii) The site has not maintained a required state permit.

(iii) The site has not operated legally within 5 years before October 15, 1991.

(E) Existing Development or Production of Mineral Resources in the SMA: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMA may continue if both of the following conditions exist:

(i) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMA.

(ii) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.

(5) Discontinuance of Existing Uses and Structures

(a) Except as provided in 350-81-082 (3)(a) and (3)(a)(F), any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(A) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(B) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

(6) Discontinued Uses and Structures:

(a) Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

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

AMENDATORY SECTION

350-81-108

Commercial Events

(1) Commercial events include weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel.

(2) Commercial events may be allowed in the GMA except on lands designated Open Space, ~~or~~ Commercial Forest, or Agriculture-Special, subject to compliance with the following conditions and the scenic, cultural, natural and recreation resources guidelines:

(a) The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast inn, or commercial use. If the use is proposed on a property with a building on or eligible for the National Register of Historic Places, it shall be subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114), and not the guidelines of this section.

(b) The owner of the subject parcel shall live on the parcel and shall operate and manage the use.

(c) A single commercial event shall host no more than 100 guests.

(d) The use shall comply with the following parking requirements:

(A) A single commercial event shall include no more than 50 vehicles for guests.

(B) All parking shall occur on the subject parcel.

(C) At least 200 square feet of parking space shall be required for each vehicle.

(D) Parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other impervious materials shall be prohibited.

(E) All parking areas shall be fully screened from key viewing areas.

(f) The owner of the subject parcel may conduct 18 single events up to one day in length per year.

(f) The owner of the subject parcel shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject parcel of each planned event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Tents, canopies, portable restrooms and other similar temporary structures necessary for a commercial event may be allowed, provided all such structures are erected or placed on the subject parcel no more than two days before the event and removed no more than two days after the event. Alternatively, temporary structures may remain in place for up to 90 days if they are fully screened from key viewing areas.

(h) The use may be allowed upon demonstration that the following conditions exist to protect any nearby agricultural and forest operations:

(A) The use would not force a change in or increase the cost of accepted agricultural practices on surrounding lands. [350-81-190 (1)(q)(A)]

(B) The use would be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in 350-81-076 or designated Commercial Forest Land or Large or Small Woodland, as required in 350-81-310. [350-81-190 (1)(q)(C)]

(C) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland. [350-81-190 (1)(q)(D)]

(D) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision. [350-81-190 (1)(q)(E)]

(i) Counties may impose additional requirements to address potential impacts to surrounding neighbors. For example, they may limit noise, lighting and operating hours.

(j) Land use approvals for commercial events shall not be valid for more than two years. Landowners must reapply for the use after a land use approval expires.

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

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-112

Signs

(1) GMA Sign Provisions

(a) Except for signs allowed without review pursuant to 350-81-074, all new signs must meet the following guidelines unless these guidelines conflict with the *Manual for Uniform Traffic Control Devices* for public safety, traffic control or highway construction signs. In such cases, the standards in the *Manual for Uniform Traffic Control Devices* shall supercede these guidelines.

(A) The support structure shall be unobtrusive and have low visual impact.

(B) Lettering colors with sufficient contrast to provide clear message communication shall be allowed. Signs shall be colored to blend with their setting to the maximum extent practicable.

(C) Backs of all signs shall be unobtrusive, nonreflective, and blend in with the setting.

(D) Spotlighting of signs may be allowed where needed for night visibility. Backlighting is not permitted for signs.

(E) Except for signs along public highways necessary for public safety, traffic control, or road construction and consistent with the *Manual for Uniform Traffic Control Devices*, the following signs are prohibited:

(i) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays, and other signs that are internally illuminated, exclusive of seasonal holiday light displays.

(ii) New billboards.

(iii) Signs with moving elements.

(iv) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

(b) Any sign that does not conform with a provision of these guidelines and has existed before their adoption is subject to the following provisions:

(A) Alteration of existing nonconforming signs shall comply with these guidelines.

(B) Any nonconforming sign used by a business must be brought into conformance concurrent with any expansion or change in use that requires a development permit.

(2) SMA Sign Provisions

(a) New signs shall be allowed as specified in the applicable land use designation.

(b) No sign shall be erected or placed in such a manner that it may interfere with, be confused with, or obstruct the view of any traffic sign, signal, or device.

(c) Preexisting signs are allowed to continue, provided no changes occur in size, structure, color, or message.

(d) Except for signs allowed without review pursuant to 350-81-074, all new signs shall meet the following guidelines and be consistent with the *Manual for Uniform Traffic Control Devices*:

(A) Signs shall be maintained in a neat, clean, and attractive condition.

(B) The character and composition of sign materials shall be harmonious with the landscape and/or related to and compatible with the main structure upon which the sign is attached.

(C) Signs shall be placed flat on the outside walls of buildings, not on roofs or marquees.

(D) Signs shall be unobtrusive and have low contrast with the setting.

(E) The visual impact of the support structure shall be minimized.

(F) Outdoor sign lighting shall be used for purposes of illumination only, and shall not be designed for, or used as, an advertising display, except for road safety signs.

(G) The backs of all signs shall be visually unobtrusive, nonreflective, and blend in with the setting.

(H) Internal illumination or backlighting of signs shall not be permitted except for highway construction, warning, or safety.

(e) Public signs shall meet the following standards in addition to 350-81-112 (2)(a) through (d):

(A) The Columbia River Gorge National Scenic Area Graphic Signing System provides design standards for public signs in and adjacent to public road rights-of-way. All new and replacement public signs, except those transportation regulatory, guide, and warning signs allowed outright shall conform to the guidelines in this system. Types of signs addressed include recreation site entry, interpretive, specific service signs, destination and distance signs, variable message signs, or signs that bridge or are cantilevered over the road surface.

(B) Signs located outside public road rights-of-way are encouraged to be designed in a way that is consistent with similar-purpose signs described in the Graphic Signing System.

(C) Signs posted by governmental jurisdictions giving notice to the public shall be no larger than that required to convey the intended message.

(f) Signs for public and commercial recreation facilities, home occupations, cottage industries, and commercial uses shall meet the following guidelines in addition to 350-81-112 (2)(a) through ~~(e)(d)~~ and 350-81-112 (2)~~(h)~~(g):

(A) Any sign advertising or relating to a business that is discontinued for a period of 30 consecutive days shall be presumed to be abandoned and shall be removed within 30 days thereafter, unless permitted otherwise by the jurisdictional authority.

(B) Any signs relating to or advertising for a business shall be brought into conformance with these sign guidelines before any expansion or change in use that is subject to review by the counties.

(C) Offsite and onsite directional signs on approach roads to recreational facilities may be permitted. Name and interpretive signs may be permitted onsite, but should be kept to the minimum required to achieve the purpose(s) of the facilities.

(D) Commercial recreation businesses approved in conjunction with a recreational facility may have a name sign not exceeding 16 square feet.

(E) Recreation developments may have one on-premise name sign at each principal entrance. Such signs are encour-

aged to be of a low profile, monument type, and shall conform to the Graphic Signing System.

(g) The following signs are prohibited:

(A) Advertising billboards.

(B) Signs that move or give the appearance of moving, except signs used for highway construction, warning, or safety.

(C) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle, except for signs used for highway construction, warning, or safety.

(h) Sign clutter and other negative visual effects from excessive signs along all roads and highways, and at parking lots and recreation facilities, shall be reduced.

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

AMENDATORY SECTION

350-81-126

Lot Line Adjustments

(1) The following guidelines shall apply to lot line adjustments in the GMA.

(a) Lot line adjustments for parcels in all land use designations except Agriculture-Special, Open Space, Commercial, Public Recreation, or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment shall not result in the creation of any new parcel(s).

(B) The lot line adjustment shall not result in the potential to create a new parcel(s) or residential development in excess of the maximum ~~minimum~~ density allowed by the land use designation(s) for the affected parcels.

(C) The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum parcel size before the lot line adjustment to become less than the minimum parcel size after the lot line adjustment, except to allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(D) The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to be reduced in size, except to accomplish one of the following purposes:

(i) Resolve boundary disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided (1) the parcel to be enlarged would not become eligible for a subsequent land division and (2) the amount of land transferred would be the minimum necessary to resolve the issue.

(ii) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(E) The lot line adjustment shall not allow the boundary of a parcel designated Large-Scale Agriculture, Agriculture-Special, Commercial Forest Land, Large Woodland or Open

Space to be extended into another land use designation for the purpose of establishing a dwelling under less stringent guidelines (e.g., extending a parcel designated GMA Large-Scale Agriculture into a parcel designated Rural Center or Residential).

(F) The lot line adjustment shall not allow previously approved parcels or developments to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(G) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

(b) Lot line adjustments for parcels designated Agriculture-Special or Open Space shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources. (Note: There is no specified minimum parcel size for parcels designated Open Space.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(c) Lot line adjustments for parcels designated Commercial shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(d) Lot line adjustments for parcels designated Public Recreation or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate, enhance, or otherwise improve recreation uses on the parcel. (Note: There are no specified minimum parcel sizes for parcels designated Public Recreation or Commercial Recreation.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(2) The following guidelines shall apply to lot line adjustments in the SMA.

(a) The proposed lot line adjustment shall not result in the creation of any new parcel(s).

(b) A lot line adjustment shall not result in a parcel greater than or equal to 40 acres becoming less than 40 acres.

(c) A lot line adjustment shall not result in a parcel less than 40 acres becoming 40 acres or greater.

(d) A parcel that is smaller than 40 acres shall not be reduced in size, except to accomplish one of the following purposes:

(A) Resolve boundary line disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided (1) the parcel to be enlarged would not become 40 acres or greater and (2) the amount of land transferred would be the minimum necessary to resolve the issue.

(B) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or

other similar property restriction that precludes residential development.

(e) The lot line adjustment shall not cause previously approved parcels or development to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(f) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

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

AMENDATORY SECTION

350-81-190

Review Uses—Agricultural Land

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(b) Agricultural structures, except buildings, in conjunction with agricultural use.

(c) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(d) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(e) and (f) below.

(e) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(f) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(g) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(h) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:

(A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy subsection (h)(C)(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its constituent parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula:

$$(A)(B)(C) = I$$

where:

A = Average yield of the commodity per acre or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income capability

(i) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling that is included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria listed in 350-81-540 (1)(e).

(j) On lands designated Small-Scale Agriculture, a single-family dwelling on any legally existing parcel.

(k) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative provided that all of the following conditions exist:

(A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister.

(B) The dwelling would be located on the same parcel as the dwelling of the principal operator.

(C) The operation is a commercial enterprise, as determined by an evaluation of the factors described in 350-81-190 (1)(h)(C).

(l) Construction, reconstruction, or modifications of roads not in conjunction with agriculture.

(m) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(n) Structures associated with hunting and fishing operations.

(o) Towers and fire stations for forest fire protection.

(p) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops or livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(q) On lands designated Large-Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:

(A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location, and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be used in conjunction with other agricultural operations in the area.

(C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required by 350-81-076, or designated Commercial Forest Land or Large or Small Woodland, as required in "Siting of Dwellings on Forest Land" (350-81-310).

(D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, Large or Small Woodland.

(E) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to

be located have been notified and given at least 10 days to comment prior to a decision.

(r) On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

(s) Life estates, subject to the guidelines in "Approval Criteria for Life Estates," (350-81-210).

(t) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(u) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(v) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(w) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(z) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(2) The following uses may be allowed on lands designated SMA Agriculture subject to review for compliance with the scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620). The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.

(a) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-81-270 (2)(x).

(b) Forest uses and practices, as allowed for in 350-81-270 (2)(y).

(c) A single-family dwelling necessary for and accessory to agricultural use upon a demonstration that all of the following conditions exist:

(A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots/parcels.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy C(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following criteria:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula, with periodic adjustments for inflation:

$$(A)(B)(C) = I$$

where:

A = Average yield of the commodity per acre or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income capability

(D) Minimum parcel size of 40 contiguous acres.

(d) Farm labor housing on a parcel with an existing dwelling under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use, and the operation is a commercial agricultural enterprise as determined by 350-81-190 (2)(c) (C).

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary for the current agricultural use. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

(e) Agricultural structures, except buildings, in conjunction with agricultural use.

(f) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(g) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 2(h) or 2(i), below.

(h) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(i) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on

a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(j) Home occupations and cottage industries, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(k) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(l) Fruit stands and produce stands, upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(m) Aquaculture.

(n) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the SMA.

(o) Utility facilities necessary for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Agriculture lands.

(B) The size is the minimum necessary to provide the service.

(p) Temporary asphalt/batch plant operations related to public road projects, not to exceed 6 months.

(q) Community facilities and nonprofit facilities related to agricultural resource management.

(r) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(s) Expansion of existing nonprofit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(t) Public recreation, commercial recreation, interpretive, and educational developments and uses, consistent with the guidelines in 350-81-620.

(u) Road and railroad construction and reconstruction.

(v) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.

(w) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(z) ~~Removal/~~Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(aa) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

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

AMENDATORY SECTION

350-81-200

Review Uses with Additional Approval Criteria—Large-Scale or Small-Scale Agriculture

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620) and the "Approval Criteria for Specified Review Uses," (350-81-220) below.

(a) Utility facilities and railroads necessary for public service upon a showing that (1) there is no practicable alternative location with less adverse effect on agricultural or forest lands, and (2) the size is the minimum necessary to provide the service.

(b) Home occupations or cottage industries in existing residential or accessory structures, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(d) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(e) Wine sales/tasting rooms, in conjunction with an on-site winery.

(f) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(g) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-81-520.

(h) Personal-use airstrips, including associated accessory structures such as a hangar. A personal-use airstrip is an airstrip restricted (except for aircraft emergencies) to use by the owner; invited guests on an infrequent and occasional basis; and commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airstrip other than those owned or controlled by the owner of the airstrip.

(i) Aquaculture.

(j) Recreation development, subject to the recreation intensity class provisions (350-81-610) and Recreation Development Plan (Management Plan, Part III, Chapter 1).

(k) Boarding of horses. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

(l) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(m) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100) and provided that the residence:

(A) Is included in the National Register of Historic Places, or

(B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(n) Nonprofit, environmental learning or research facilities.

(o) Expansion of existing school or place of worship.

(p) On parcels designated Small-Scale Agriculture, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

(q) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

ADDED SECTION

350-81-231

Uses Allowed through the Expedited Development Review Process—Agriculture-Special

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Agriculture-Special.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-232

Review Uses for Lands Designated Agriculture-Special

(1) The following uses may be allowed on lands designated Agriculture-Special, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620) and

"Approval Criteria for Review Uses on Lands Designated Agriculture-Special" (350-81-234).

(a) New livestock grazing. Any operation that would introduce livestock to land that has not been grazed, or has laid idle, for more than 5 years shall be considered new livestock grazing.

(b) New fences, livestock watering facilities, and corrals.

(c) Soil, water, and vegetation conservation uses.

(d) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.

(e) Fish and wildlife management uses, educational activities, and scientific research.

(f) Land divisions that facilitate livestock grazing or protect and enhance natural areas. No resulting parcel may be smaller than 160 acres, unless it would facilitate the protection of scenic, cultural, natural, or recreation resources.

(g) Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that (1) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and (2) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in 350-81-190 (1)(q). The buffer guidelines for non-agricultural dwellings (350-81-076) may be waived if they would prevent the optimum siting of a dwelling.

(h) Recreation uses, subject to the provisions for recreation intensity classes (350-81-610).

(i) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(j) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(k) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(l) Lot line adjustments, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

AMENDATORY SECTION

350-81-270

Review Uses—Forest Land

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) On lands designated Large Woodland, a single-family dwelling upon a demonstration that all of the following conditions exist:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The principal purpose for locating a dwelling on lands designated Large Woodland is to enable the resident to conduct efficient and effective forest management. This requirement

indicates a relationship between ongoing forest management and the location of a dwelling on the subject parcel. A dwelling may not always be required for forest management.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate local government. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor and expenses; and how the dwelling will contribute toward the successful completion of the operations.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forestry and that could be used as the principal forest dwelling.

(E) The dwelling complies with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(b) On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel's enrollment in the appropriate state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300). A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(c) One single-family dwelling if shown to be in conjunction with and substantially contributing to the current agricultural use of a farm. Guideline 350-81-190 (1)(h) shall be used to determine whether a dwelling is a farm dwelling. The siting of the dwelling shall comply with the "Approval Criteria for Fire Protection" in 350-81-300.

(d) Temporary onsite structures that are auxiliary to and used during the term of a particular forest operation. "Auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(e) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous

land in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.

(f) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recon-touring abandoned quarries).

(g) Structures associated with hunting and fishing operations.

(h) Towers and fire stations for forest fire protection.

(i) Agricultural structures, except buildings, in conjunction with agricultural use, subject to the "Approval Criteria for Fire Protection" (350-81-300).

(j) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the "Approval Criteria for Fire Protection" (350-81-300) and the standards in "Agricultural Buildings" (350-81-090).

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(l) or (1)(m) below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092) and the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-31-300).

(o) A second single-family dwelling for a farm operator's relative, subject to 350-81-190 (1)(k) and the "Approval Criteria for Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(p) Private roads serving a residence, subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(q) Recreation development, subject to the guidelines established for the recreation intensity classes (350-81-610) and the Recreation Development Plan (Management Plan, Part III, Chapter 1).

(r) Construction or reconstruction of roads or modifications not in conjunction with forest use or practices.

(s) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(t) On lands designated Commercial Forest Land, a temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or to protect the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the mobile home is subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(u) On parcels in Small Woodland, a land division creating parcels smaller than the designated minimum parcel size, subject to guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40 or 80 acres, this provision will apply to parcels 80 acres or larger or 160 acres or larger, respectively.

(v) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

~~(w) On lands designated Large or Small Woodland, Life estates, subject to the guidelines in "Approval Criteria for Life Estates" (350-81-320).~~

(x) Land divisions in Small Woodland, subject to the minimum lot sizes designated on the Land Use Designation Map. Land divisions in Commercial Forest Land and Large Woodland, subject to the standards and minimum lot sizes in Policies 4 through 9 in the "Land Use Policies" in Part II, Chapter 2: Forest Land of the Management Plan.

(y) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divi-

sions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(z) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(aa) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(bb) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(cc) Commercial events on lands designated Large Woodland or Small Woodland, subject to the guidelines in "Commercial Events" (350-81-108).

(dd) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(2) The following uses may be allowed on lands designated SMA Forest subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-81-520 through 350-81-620). The use or development shall be sited to minimize the loss of land suitable for the production of forest products:

(a) All review uses allowed for in 350-81-190(2).

(b) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of subsection (2)(x), below.

(c) Railroad and road construction or reconstruction.

(d) Exploration, development, and production of sand, gravel, or crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products in the SMA.

(e) Silvicultural nurseries.

(f) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Forest Land.

(B) The size is the minimum necessary to provide the service.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, reconstructing abandoned quarries).

(h) Fish hatcheries and aquaculture facilities.

(i) Public recreation, commercial recreation, interpretive and educational developments, and uses consistent with the provisions of 350-81-620.

(j) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved forest management plan demonstrates that such a dwelling is necessary for and accessory to forest uses. The forest management plan shall demonstrate the following:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of trees. The principal purpose for allowing a dwelling on forest lands is to enable the resident to conduct efficient and effective management. This requirement indicates a relationship between ongoing

forest management and the need for a dwelling on the subject property.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate county. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor, and expenses; and how the dwelling will contribute toward the successful management of the property.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.

(E) The dwelling complies with county dwelling, siting, and state/county fire protection guidelines.

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(l) or (2)(m), below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) Home occupations and cottage industries, subject to the "Home Occupations and Cottage Industries" guidelines in 350-81-098.

(o) Temporary portable facilities for the processing of forest products.

(p) Towers and fire stations for forest fire protection.

(q) Community facilities and nonprofit facilities related to forest resource management.

(r) Expansion of existing nonprofit group camps, retreats, or conference or education centers, necessary for the successful operation of the facility on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(s) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(t) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(u) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(v) ~~Removal/~~Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(w) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

(x) Clearing trees for new agricultural use with the following steps and subject to the following additional guidelines:

(A) A Stewardship Plan shall be submitted and deemed complete by the Executive Director and submitted to the Forest Service for review. (350-81-270 (2)(y)(C)).

(B) Clearing trees for new agricultural use shall be limited to 15 acres.

(C) If the Stewardship Plan proves that the above guideline is detrimental to the proposed agricultural use, the final size of the clearing shall be determined by the application of 350-81-270 (2)(x)(D)(i-iv) below and subject to guideline 350-81-270 (2)(x)(I).

(D) After a 30-day public comment period, the Forest Service shall review the Stewardship Plan using the following criteria:

(i) Scenic Resource guidelines in 350-81-270 (2)(y)(D) (i) and (vii).

(ii) Applicable guidelines of 350-81-550, 350-81-600 and 350-81-620.

(iii) The Natural Resource Conservation Service (NRCS) soil unit description shall indicate that soils are suitable for the proposed agricultural use. The woodland management tables shall be used as part of the analysis of suitability for both agricultural and forest uses.

(iv) The size, shape and pattern on the landscape of the clearing for the new agricultural use shall blend with the surrounding landscape pattern either because the existing pattern includes agricultural openings or because the new agricultural opening is designed to appear natural.

(E) The Forest Service shall send the review statement to the Executive Director. The Forest Service shall state whether or not the new agricultural use should proceed including any conditions that are recommended to be required by the Executive Director.

(F) The Executive Director will accept an application for new agricultural use on forested lands after receipt of a positive review statement from the Forest Service.

(G) The forest practice portion of the new agricultural use shall not be approved by the state forestry department or Executive Director until a decision on the new agricultural use is issued by the Executive Director.

(H) The new agricultural use shall be operational within two years of the time frame described in the approved Stewardship Plan.

(I) New agricultural uses with an approved Stewardship Plan requiring more than 15 acres shall attain the final approved size sequentially. After the first 15 cleared acres is operational, each subsequent clearing shall not occur until the previous clearing is operational.

(y) Forest practices in accordance with an approved forest practices application (see 350-81-032) and subject to the additional guidelines in 350-81-270.

(A) The following information, in addition to general site plan requirements (350-81-032) shall be required:

(i) Delineate the following on a recent aerial photo or detailed map:

(I) The size, shape, and exact location of the proposed treatment area including any clumps of leave trees to remain. If more than one silvicultural prescription is to be used, code each on the photo.

(II) Other important natural features of the subject parcel such as steep areas, streams, wetlands, rock outcrops, etc.

(III) Road and structure construction and/or reconstruction location.

(IV) Location of proposed rock or aggregate sources.

(V) Major skid trails, landings, and yarding corridors.

(VI) Commercial firewood cutting areas.

(VII) Protection measures for scenic, cultural, natural, and recreation resources, such as road closures.

(ii) Describe the existing forest in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(iii) Describe how the forest practice will fit into the existing landscape pattern and how it will meet scenic and natural resource standards in 350-81-270 (2)(y)(D) and 350-81-270 (2)(y)(E).

(iv) Written silvicultural prescriptions with projected post-treatment forest condition specified in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(v) Road and structure construction and/or reconstruction design.

(vi) Existing and proposed rock pit development plans.

(vii) A discussion of slash disposal methods.

(viii) A reforestation plan as reviewed by the appropriate state forest practices agency.

(B) As part of the application, flag, stake or mark buffers, any trees or downed wood to be retained or removed (whichever makes the most sense), and areas for placing fill or removing material in preparation for a field visit by the reviewer.

(C) Stewardship Plan Requirements: The following information, in addition to the applicable portions of the forest practice application requirements above and general site plan requirements (350-81-032) shall be provided:

(i) Outline the long term goals, proposed operations, and future sustainability of the subject parcel.

(ii) Describe the time frame and steps planned to reach the long term goals.

(iii) For Forest Practices, describe how the proposed activities fit into the long term goals and sustainability of the parcel and/or forest health. The following shall be addressed:

(I) Describe the range of natural conditions expected in the forest in terms of tree species, structure, and landscape pattern.

(II) Describe what the resulting tree species, structure, and landscape pattern will be after the proposed activities.

(III) Give a clear explanation how a deviation from the applicable guidelines may better achieve forest health objectives

(IV) Give a clear explanation how and why the proposed activities will lead the forest towards its range of natural variability and result in reaching sustainability, resiliency to disturbances.

(iv) For clearing trees for new agricultural use, the following shall be addressed in addition to 350-81-270 (2)(y)(C) (i) and (ii) above:

(I) Submit NRCS soil unit description and map for each soil unit affected by the proposed clearing or treatment.

(II) Based on the needs of the operation, give a clear explanation as to the exact size of the clearing needed and how it will meet the natural and scenic requirements set forth in 350-81-270 (2)(x)(D)(i-iv).

(III) Describe in sufficient detail for evaluation the proposed agricultural use, the improvements needed on the parcel, time line for its establishment, and its marketability.

(IV) Show evidence that an agricultural specialist, such as the county extension agent, has examined and found the proposed agricultural use reasonable and viable.

(D) For forest practices, the following scenic resource guidelines shall apply:

(i) Forest practices shall meet the design guidelines and scenic standards for the applicable landscape setting and zone (See Required SMA Scenic Standards table in 350-81-530-2)(c).

(ii) In the western portion (to White Salmon River) of the SMA Coniferous Woodland Landscape Setting, no more than 8% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iii) In the western portion (to the White Salmon River) of the SMA Gorge Walls, Canyonlands and Wildlands Landscape Setting, no more than 4% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and

delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iv) For all other landscape settings, created forest openings visible at one time shall be within the desired range for the vegetation type as set forth in Natural Resources guidelines in 350-81-270 (2)(y)(E)(i) through (iii).

(v) Size, shape, and dispersal of created forest openings shall maintain the desired natural patterns in the landscape as set forth in Natural Resources guidelines in 350-81-270 (2)(y)(E)(i) through (iii).

(vi) The maximum size of any created forest opening is set forth by the "Desired" vegetation type in the Forest Structure and Pattern Table.

(I) If the treatment is proposed to go beyond the above guideline based on forest health or ecosystem function requirements, a Stewardship Plan shall be required.

(II) If the Stewardship Plan proves that the above guideline is detrimental to either forest health or ecosystem function, the size of the created forest opening shall be within the natural range for the vegetation type as listed in the Desired Forest Structure and Pattern Table for each vegetation type, shall not mimic catastrophic fires, and shall maintain scenic standards.

(vii) Created forest openings shall not create a break or opening in the vegetation in the skyline as viewed from a key viewing area.

(E) Forest practices shall maintain the following in addition to applicable natural resources guidelines in 350-81-600.

(i) Silvicultural prescriptions shall maintain the desired natural forest stand structures (tree species, spacing, layering, and mixture of sizes) based on forest health and ecosystem function requirements. Forest tree stand structure shall meet the requirements listed in the Desired Forest Structure and Pattern Table for each vegetation type. Forest tree stand structure is defined as the general structure of the forest in each vegetation type within which is found forest openings.

(ii) Created forest openings shall be designed as mosaics not to exceed the limits defined as Desired in the Desired Forest Structure and Pattern Table unless proposed as a deviation as allowed under the scenic resource guideline in 350-81-270 (2)(y)(D)(vi).

(iii) Snag and down wood requirements shall be maintained or created as listed in the Desired Forest Structure and Pattern Table for each vegetation type.

(iv) If the treatment is proposed to deviate from the snag and down wood requirements based on forest health or ecosystem function requirements, a Stewardship Plan shall be required and shall show and prove why a deviation from the snag and down wood requirements is required.

DESIRED FOREST STRUCTURE AND PATTERN								
<u>1</u>	<u>2</u>	<u>3</u>		<u>4</u>		<u>5</u>	<u>6</u>	<u>7</u>
<u>Vegetation Type#</u>	<u>Forest Structure</u>	<u>Typical Forest Openings Size</u> <u>Disturbance caused</u>		<u>Percent Openings at One Time</u>		<u>Leave Trees</u>	<u>Average Down Wood</u>	<u>Average Snags</u>
	(Average % total canopy closure (cc))*	<u>Historic (Natural)</u>	<u>Desired</u>	<u>Historic (Natural)</u>	<u>Desired</u>	Includes all available remnant old forest	Pieces 30 ft long per acre (scattered)	(Conifers) No. per acre Snags are 20-40 ft in height
<u>West Conifer</u>	60 - 80% canopy closure Understory layer variable (0 - 60% of total cc)	Variable sizes with mosaic pattern, irregular shapes Mosaic fire 1-100 acres Catastrophic fire over 100 acres	Retain forested character Allow openings up to 15 acres (up to 5 acres in the foreground of KVAs) All openings 1 acre or less on National Forest land and all Open Space LUD Openings retain 15 - 40% canopy closure	10% (mosaic fire) up to 55% (catastrophic fire) Intense fire return interval is 300 yrs	Not to exceed 8% for West Coniferous Woodland Landscape Setting and not to exceed 4% for Gorge Walls, Canyonlands and Wildlands Landscape Setting Widely dispersed, variable sized mosaic of irregular shapes blending with existing openings.	Leave 15% of existing trees per acre throughout opening and in clumps. Include 3 trees per acre of the largest size trees available	18 - 25 pieces greater than 20" dbh	10 snags at 10" - 20" dbh, and 7 snags greater than 20" dbh
<u>East Conifer</u> (Ponderosa Pine/ Douglas fir)	40 - 80% canopy closure Understory layer less than 25% of total cc	Few Openings due to low intensity fires. 1/4 to 2 acres	Openings less than 1 acre Openings have 0 - 40% canopy closure Openings widely dispersed	1 - 10%	1 - 10% (% by vegetation type)	No leave trees required	3 - 6 pieces greater than 20" dbh	5 snags at 10" - 20" dbh and 3 snags greater than 20" dbh
<u>Ponderosa Pine/ Oregon Oak</u>	25 - 60% canopy closure Understory layer greater than 25% of total cc.	Most natural openings due to poor soil. Disturbance openings few	Openings less than 1 acre Openings have 0 - 25% canopy closure Openings widely dispersed	1 - 10%	1 - 10% (% by vegetation type)	No leave trees required	1 - 3 pieces greater than 20" dbh	5 snags at 10" - 20" dbh and 3 snags greater than 20" dbh Oak snags can be counted if already dead or partially dead

Map available at the Forest Service National Scenic Area Office

* Does not apply to openings.

Dbh: Diameter at Breast Height

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

AMENDATORY SECTION

350-81-280

Review Uses with Additional Approval Criteria—Commercial Forest Land, or Large or Small Woodland Designations

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 and 620) and the "Approval Criteria for Specified Review Uses" (350-81-290).

(a) Utility facilities and railroads necessary for public service upon a showing that (1) there is no practicable alternative location with less adverse effect on agricultural and forest lands and on scenic, cultural, natural and recreation resources and (2) the size is the minimum necessary to provide the service.

(b) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(d) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(e) Wine sales/tasting rooms, in conjunction with an on-site winery.

(f) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(g) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-81-520.

(h) Aquaculture.

(i) Boarding of horses. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

(j) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(k) Expansion of existing nonprofit group camps, retreats, or conference centers.

(l) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100) and provided that the residence:

(A) Is included in the National Register of Historic Places, or

(B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(m) Nonprofit, environmental learning or research facilities.

(n) On parcels designated Small Woodland, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

(o) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

AMENDATORY SECTION

350-81-340

Review Uses—Open Space

(1) The following uses may be allowed on all lands designated GMA-Open Space subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610).

(b) Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.

(c) Repair, maintenance, operation, and improvement of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities.

(d) Removal of timber, rocks or other materials for purposes of public safety and placement of structures for public safety.

(e) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(f) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(g) Lot line adjustments, subject to compliance with the guidelines in "Lot Line Adjustments" (350-81-126).

(2) Review Uses—Specific Lands Designated Open Space

(a) The following uses may be allowed on lands designated GMA-Open Space for Gorge Walls and Canyonlands subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Livestock grazing.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a county conservation district.

(D) Harvesting of wild crops.

(E) Educational or scientific research.

(F) Continued operation of existing quarries, if they are determined to be consistent with guidelines to protect scenic, cultural, natural, and recreation resources.

(G) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(b) The following uses may be allowed on lands designated GMA-Open Space for the Mosley Lakes Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(B) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(C) Commercial trapping.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(c) The following uses may be allowed on lands designated GMA-Open Space for the Chenoweth Table Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610), after consultation with the Oregon Natural Heritage Program.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Oregon Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Oregon Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(d) The following uses may be allowed on lands designated GMA-Open Space for the Squally Point Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610) after consultation with the Oregon Natural Heritage Program.

(B) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Natural Heritage Program.

(C) Except as limited by (d)(A), above, all those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(e) The following uses may be allowed on lands designated GMA-Open Space for the Klickitat River Wildlife and Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610), after consultation with the Washington Natural Heritage Program and Washington Department of Fish and Wildlife.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(f) The following uses may be allowed on lands designated GMA-Open Space for the Balch Lake Wetlands Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Livestock grazing, subject to a range conservation plan, after consultation with the Washington Department of Fish and Wildlife.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Educational and scientific research, after consultation with the Washington Department of Fish and Wildlife.

(D) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610) after consultation with the Washington Department of Fish and Wildlife.

(E) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(g) The following uses may be allowed on lands designated GMA-Open Space for the Mouth of Wind River Wildlife Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research, after consultation with the Washington Department of Fish and Wildlife.

(E) Commercial fishing and trapping.

(F) Low-intensity recreation, subject to the guidelines for recreation intensity classes (Part I, Chapter 4: Recreation Resources), after consultation with the Washington Department of Fish and Wildlife.

(G) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(h) The following uses may be allowed on lands designated GMA-Open Space on those portions of state park ownerships not suitable for major recreation facilities subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research.

(E) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(3) The following new uses may be allowed on lands designated SMA-Open Space subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-81-520 through 350-81-620):

(a) Changes in existing uses, including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.

(b) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include vegetation management and forest practices (subject to the forest practice guidelines of 350-81-270 (2)(y) for the restoration of forest health, new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(c) Low-intensity recreation uses and developments, including educational and interpretive facilities, consistent with 350-81-620.

(d) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Open Space land.

(B) The size is the minimum necessary to provide the service.

(e) ~~Removal/D~~demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(f) Treatment of noxious weeds shall be permitted without completion of an SMA Open Space plan when the following criteria have been met:

(A) Noxious weed infestation is new and eradication is still viable.

(B) Delayed or deferred treatment could have widespread or major adverse impacts to one or more of the following resources:

(i) Displacement of native and traditionally gathered plants;

(ii) Degradation of wildlife habitat and forage;

(iii) Degradation or loss of agricultural uses of land, such as cropland or livestock forage;

(iv) Limitation of recreational uses.

(C) For federal lands, treatment effects have been thoroughly evaluated in an environmental assessment.

(4) An Open Space plan shall be completed by the primary managing agency or landowner prior to any new land uses or development on lands designated SMA-Open Space, and shall be reviewed by the Forest Service. The Open Space plan shall include the following:

(a) Direction for resource protection, enhancement, and management.

(b) Review of existing uses to determine compatibility with Open Space values.

(c) Consultation with members of the public and with agency and resource specialists.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

AMENDATORY SECTION

350-81-370

Review Uses—Residential Land

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) One single-family dwelling per legally created parcel. If the subject parcel is located adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, the use shall comply with the buffer and notification requirements for agricultural land [350-81-076 and 350-81-190 (1)(q)(E)], or forest land [(350-81-290 (1)(a) and 350-81-310 (1)(a)]. If the subject parcel is located within a Residential designation that is adjacent to lands designated Commercial Forest Land or Large or Small Woodland, the placement of a dwelling shall

also comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-81-300).

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, subject to guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(e) Construction or reconstruction of roads.

(f) On parcels 10 acres or larger in the 5-acre Residential designation, or 20 acres or larger in the 10-acre Residential designation, a land division creating new parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124).

(g) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 590).

(h) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(i) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(j) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recon-touring abandoned quarries).

(k) Agricultural structures, except buildings, in conjunction with agricultural use.

(l) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(o) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(q) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(2) The following uses may be allowed on lands designated SMA-Residential subject to review for compliance with scenic, cultural, natural, and recreation resources guidelines (350-81-520 through 350-81-620):

(a) One single-family dwelling per legally created lot or consolidated parcel. The placement of a dwelling shall comply with fire protection standards developed by the county, in accordance with Management Plan SMA Policy 13 in Part II, Chapter 2: Forest Land.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) New utility facilities.

(e) Fire stations.

(f) Home occupations and cottage industries subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(g) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100).

(h) Community parks and playgrounds.

(i) Road and railroad construction and reconstruction.

(j) Forest practices, as specified in 350-81-270 (2)(y).

(k) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(l) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) ~~Removal/~~Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(o) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(p) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-81-270 (2)(x).

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.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-380

Review Uses with Additional Approval Criteria—Residential Land

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620) and "Approval Criteria for Specified Review Uses," (350-81-390).

(a) Accredited childcare centers within lands designated 1-acre Residential or 2-acre Residential. A childcare center may be allowed in other Residential designations within an existing church or community building.

(b) Schools within an existing church or community building.

(c) Expansion of existing primary or middle schools on land purchased prior to June 8, 1999. For purposes of this section, existing schools means public schools that existed prior to adoption of the original Management Plan on October 15, 1991.

(d) Utility facilities and railroads.

(e) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(f) Fire stations.

(g) Recreation development, subject to compliance with 350-81-610.

(h) Community parks and playgrounds, consistent with the standards of the National Park and Recreation Society regarding the need for such facilities.

(i) Bed and breakfast inns in single family dwellings located on lands designated 5-acre Residential or 10-acre Residential, pursuant to the guidelines in "Bed and Breakfast Inns" (350-81-100).

(j) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(k) Wine sales/tasting rooms in conjunction with an on-site winery, under the following conditions:

(A) The use shall comply with the guidelines in "Home Occupations and Cottage Industries" (350-81-098), with the following exceptions:

(i) The use may employ an unlimited number of outside employees.

(ii) The wine sales/tasting room may include interior and/or exterior space, provided the combined interior and exterior spaces shall not exceed 1,000 square feet.

(iii) The interior space may be located in an existing building or in a new building or addition to an existing building constructed for the primary purpose of housing the wine sales/tasting room.

(iv) The exterior space may be a veranda, patio, or other similar type of structure.

(l) Small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in

"Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

(m) Boarding of horses on lands designated 10-acre Residential. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

AMENDATORY SECTION

350-81-420

Review Uses—Rural Center

(1) The following uses may be allowed within Rural Centers, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources:

(a) One single-family dwelling per legally created parcel.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 350-81-240420 (1)(c).

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, pursuant to guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(e) Duplexes.

(f) Fire stations.

(g) Libraries.

(h) Government buildings.

(i) Community centers and meeting halls.

(j) Schools.

(k) Accredited childcare centers.

(l) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.

(A) Grocery stores.

(B) Variety and hardware stores.

(C) Shops, offices, and repair shops.

(D) Personal services such as barber and beauty shops.

(E) Travelers' accommodations, bed and breakfast inns.

(F) Restaurants.

(G) Taverns and bars.

(H) Gas stations.

(I) Gift shops.

(m) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(n) Utility facilities and railroads.

(o) Recreation development, subject to compliance with 350-81-610.

(p) Places of worship.

(q) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(r) Land divisions, subject to the standards and minimum lot sizes in Policies 6 and 7 in the "Land Use Policies" in Part II, Chapter 5: Commercial Land of the Management Plan.

(s) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(t) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(u) Agricultural structures, except buildings, in conjunction with agricultural use.

(v) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(w) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(z) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

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

AMENDATORY SECTION

350-81-490

Review Uses—Public Recreation and Commercial Recreation

(1) The following uses may be allowed on lands designated GMA-Public Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620) and compliance with 350-81-610 (5)(a) and (c) through (g), where applicable, of the "Approval Criteria for Recreation Uses" contained in the recreation intensity class guidelines (350-81-610):

(a) Publicly-owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-81-610).

(b) Commercial uses and non-resource based recreation uses that are part of an existing or approved resource-based public recreation use, consistent with the guidelines for such uses contained in this section.

(c) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(d) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(2) The following uses may be allowed on lands designated GMA Public Recreation, subject to compliance with the "Approval Criteria for Non-Recreation Uses in Public Recreation designations," (350-81-500), and (350-81-520 through 350-81-620):

(a) One single-family dwelling for each parcel legally created prior to adoption of the Management Plan. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 350-81-490 (2)(c).

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(f) Utility transmission, transportation, communication, and public works facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(3) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural and recreation resources (350-81-520 through 350-81-620) and compliance with 350-81-610 (5)(a) and (c) through (g) of the "Approval Criteria for Recreation Uses" guidelines (350-81-610):

(a) Commercially owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-81-610).

(b) Overnight accommodations that are part of a commercially owned, resource-based recreation use, where such resource-based recreation use occurs on the subject site or on adjacent lands that are accessed through the site, and that meet the following standards:

(A) Buildings containing individual units shall be no larger than 1,500 square feet in total floor area and no higher than 2-1/2 stories.

(B) Buildings containing more than one unit shall be no larger than 5,000 square feet in total floor area and no higher than 2-1/2 stories.

(C) The total number of individual units shall not exceed 25, unless the proposed development complies with standards for clustered accommodations in subsection (4) of this guideline.

(D) Clustered overnight travelers accommodations meeting the following standards may include up to 35 individual units:

(i) Average total floor area of all units is 1,000 square feet or less per unit.

(ii) A minimum of 50 percent of the project site is dedicated to undeveloped, open areas (not including roads or parking areas).

(iii) The facility is in an area classified for high-intensity recreation (Recreation Intensity Class 4).

(c) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and non-resource based recreation uses that are part of an existing or approved resource-based commercial recreation use, consistent with the policies, guidelines, and conditional use criteria for such uses contained in this section.

(d) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(e) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(4) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with the "Approval Criteria for Non-Recreational Uses in Commercial Recreation," (350-81-510), and the guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620):

(a) One single-family dwelling for each lot or parcel legally created prior to adoption of the Management Plan.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline ~~2~~ 4(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(f) Utility transmission, transportation, and communication facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (~~Part II, Chapter 7: General Policies and Guidelines~~) (350-81-096).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(5) Land divisions may be allowed in GMA-Public Recreation, subject to compliance with 350-81-500 (1)(c), and in GMA Commercial Recreation, subject to compliance with 350-81-510 (1)(c).

(6) Lot line adjustments may be allowed in GMA Public Recreation and GMA Commercial Recreation, subject to compliance with the guidelines in "Lot Line Adjustments" (350-81-126).

(7) The following uses may be allowed on lands designated SMA-Public Recreation subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines:

(a) Forest uses and practices, as allowed for in 350-81-270(2), except Forest Land Review Uses (2)(i), (2)(l), (2)(m), and (2)(w).

(b) Public trails, consistent with the provisions in 350-81-620.

(c) Public recreational facilities, consistent with the provisions in 350-81-620.

(d) Public nonprofit group camps, retreats, conference or educational centers, and interpretive facilities.

(e) One single-family dwelling on a parcel of 40 contiguous acres or larger when it meets the conditions described for Agricultural Land (350-81-190 (2)(c)) or Forest Land (350-81-270 (2)(j)), or when shown to be necessary for public recreation site management purposes.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(g) below.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Home occupation and cottage industries, as specified in "Home Occupations and Cottage Industries" (350-81-098).

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Road and railroad construction and reconstruction.

(k) Utility facilities for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Public Recreation land.

(B) The size is the minimum necessary to provide the service.

(l) Agricultural review uses, as allowed for in 350-81-190(2), except Agricultural Land Review Uses (2)(h), (2)(i), (2)(t), and (2)(aa).

(m) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(n) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(o) ~~Removal/D~~demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

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

AMENDATORY SECTION

350-81-520

General Management Area Scenic Review Criteria

The following scenic review guidelines shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

(1) All review uses:

(a) New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

(b) New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in this chapter.

(d) A site plan and land use application shall be submitted for all new buildings, except for buildings smaller than 60 square feet in area and less than or equal to 10 feet in height, as measured at the roof peak. The site plan and application shall include all information required in the site plan guidelines in "Review Uses" 350-81-032(5). Supplemental requirements for developments proposed on lands visible from key viewing areas are included in the key viewing areas guidelines in this chapter.

(e) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

(f) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable.

At a minimum, such reclamation plans shall include:

(A) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-mining existing grades and post-mining final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing, and equipment areas employed for the duration of the use.

(B) Cross-sectional drawings of the site showing pre-mining and post-mining grades.

(C) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.

(D) Description of drainage/erosion control features to be employed for the duration of the use.

(E) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject landscape setting, indicating the species, number, size, and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(g) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to submit written comments on the proposal. State agency comments shall address the following:

(A) Whether the proposed mining is subject to state reclamation permit requirements;

(B) If subject to state jurisdiction, whether an application has been received for a state reclamation permit and, if so, the current status of the application; and

(C) For uses subject to state jurisdiction, any issues or concerns regarding consistency with state reclamation requirements, or any suggested modifications to comply with state reclamation requirements.

The Executive Director may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction.

(2) Key Viewing Areas

(a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

(b) Each development shall be visually subordinate to its setting as seen from key viewing areas.

(c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

(d) The extent and type of conditions applied to a proposed development to achieve visual subordination shall be proportionate to its potential visual impacts as seen from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas.

(ii) The degree of existing vegetation providing screening.

(iii) The distance from the building site to the key viewing areas from which it is visible.

(iv) The number of key viewing areas from which it is visible.

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements).

(ii) Retention of existing vegetation.

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements).

(iv) New landscaping.

(e) New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.

(f) New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.

(g) Existing tree cover screening proposed development from key viewing areas shall be retained as specified in the Landscape Settings Design Guidelines in 350-81-520(3).

(h) The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use and may be applied only after all rea-

sonable efforts to modify the design, building height, and site to comply with the guideline have been made.

(i) An alteration to a building built before November 17, 1986, that already protrudes above the skyline of a bluff, cliff, or ridge as seen from a key viewing area, may itself protrude above the skyline if:

(A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration, and

(B) There is no practicable alternative means of altering the building without increasing the protrusion.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-81-520 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction.

(C) Unless as specified otherwise by provisions in 350-81-520, landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The *Scenic Resources Implementation Handbook* shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-81-520(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Conditions regarding new landscaping or retention of existing vegetation for new developments on lands designated GMA Forest shall meet both scenic guidelines and fuel break requirements in 350-81-300 (1)(a).

(l) Unless expressly exempted by other provisions in 350-81-520, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The *Scenic Resources Implementation Handbook* will include a recommended palette of colors.

(m) The exterior of buildings on lands seen from key viewing areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all key viewing areas by existing topographic features. The *Scenic Resources Implementation Handbook* will include a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those

where the specific application meets recommended thresholds in the "Visibility and Reflectivity Matrices" in the *Implementation Handbook* (once they are created). Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination. Recommended square footage limitations for such surfaces will be provided for guidance in the *Implementation Handbook*.

(n) In addition to the site plan requirements in "Review Uses" 350-81-520~~32~~(5), applications for all buildings visible from key viewing areas shall include a description of the proposed building(s) height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

(o) For proposed mining and associated activities on lands visible from key viewing areas, in addition to submittal of plans and information pursuant to 350-81-520 (1)(f) section of this chapter, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable key viewing areas.

(p) Exterior lighting shall be directed downward and sited, hooded, and shielded such that it is not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(q) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of ~~colors specified in the design guidelines for the subject property's landscape setting~~ dark earth-tone colors found at the specific site or in the surrounding landscape. The specific colors or a list of acceptable colors shall be included as a condition of approval. The *Scenic Resources Implementation Handbook* will include a recommended palette of colors.

(r) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from key viewing areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.

(s) New main lines on lands visible from key viewing areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.

(t) New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas that require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

(u) New communications facilities may protrude above a skyline visible from a key viewing area only upon demonstration that:

(A) The facility is necessary for public service,

(B) The break in the skyline is seen only in the background, and

(C) The break in the skyline is the minimum necessary to provide the service.

(v) Overpasses, safety and directional signs, and other road and highway facilities may protrude above a skyline visible from a key viewing area only upon a demonstration that:

(A) The facility is necessary for public service, and

(B) The break in the skyline is the minimum necessary to provide the service.

(x) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to this guideline may be authorized.

(y) New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building site shall be used.

(z) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.

(aa) All proposed structural development involving more than 200 cubic yards of grading on sites visible from key viewing areas shall include submittal of a grading plan. This plan shall be reviewed by the local government for compliance with key viewing area policies. The grading plan shall include the following:

(A) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:

(i) Existing and proposed final grades.

(ii) Location of all areas to be graded, with cut banks and fill slopes delineated.

(iii) Estimated dimensions of graded areas.

(B) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

(i) Its purpose.

(ii) An estimate of the total volume of material to be moved.

(iii) The height of all cut banks and fill slopes.

(iv) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended.)

(v) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(vi) A description of any other interim or permanent erosion control measures to be used.

(bb) Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest key viewing areas from which it is visible may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to 350-81-520 have been met.

(B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any key viewing areas.

(C) A reclamation plan to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520 (1)(f) and (g).

(D) A written report on a determination of visual subordination has been completed, with findings addressing the extent of visibility of proposed mining activities from key viewing areas, including:

(i) A list of key viewing areas from which exposed mining surfaces (and associated facilities/activities) would be visible.

(ii) An estimate of the surface area of exposed mining surfaces that would be visible from those key viewing areas.

(iii) The distance from those key viewing areas and the linear distance along those key viewing areas from which proposed mining surfaces are visible.

(iv) The slope and aspect of mining surfaces relative to those portions of key viewing areas from which they are visible.

(v) The degree to which potentially visible mining surfaces are screened from key viewing areas by existing vegetation, including winter screening considerations.

(vi) The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

(cc) Unless addressed by 350-81-520 (2)(bb), new production and/or development of mineral resources may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to this chapter have been met.

(B) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc., associated with the use would be fully screened from any key viewing area.

(C) A reclamation plan to restore the area to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520 (1)(f) and (g).

(dd) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

(ee) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarrying activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(3) Landscape Settings

All review uses within the following landscape settings shall comply with the following applicable guidelines:

(a) Pastoral

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas-fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).

(iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

(C) Compatible recreation uses include resource-based recreation of a very low-intensity or low-intensity nature (as defined by 350-81-610) occurring infrequently in the landscape.

(b) Coniferous Woodland

(A) Structure height shall remain below the forest canopy level.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(I) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.

(II) At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas-fir, grand fir, western red cedar, western hemlock, big leaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas).

(III) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, outdoor recreation uses should be low-intensity, and include trails, small

picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur. They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

(c) Oak-Pine Woodland

(A) Structure height shall remain below the tree canopy level in wooded portions of this setting.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.

(ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

For substantially wooded portions:

(iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.

For treeless portions or portions with scattered tree cover:

(iv) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(v) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.

(vi) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(C) Resource-based recreation uses of varying intensities may be compatible with this setting, although most are of low-intensity nature (such as trails or small scenic outlooks). More intensive recreation uses may be compatible where allowed by 350-81-610, although they are generally rare in this setting. As with Woodland settings, intensive recreation uses in Oak-Pine Woodlands may be compatible if widely scattered and not in large concentrations.

(d) Grassland

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible. Exceptions to this guideline are permitted where necessary for farming operations.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(ii) Lower structures that emphasize horizontal lines and blend with this sweeping landscape should be encouraged rather than very tall structures.

(iii) Planting of trees for screening shall not be extensive, in character with the openness of this setting. Where used, screening vegetation shall either tie in with nearby riparian

vegetation in seasonal drainages or emulate windrows. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include Oregon white oak, Lombardy poplar, black locust, black cottonwood (wet locations), Russian olive and ponderosa pine.

(C) Resource-based recreation uses of a very low-intensity or low-intensity nature that occur infrequently are compatible with this setting, and include hiking, hunting and wildlife viewing.

(e) Rural Residential

(A) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

(B) In portions of this setting visible from key viewing areas, and not exempt from visual subordination guidelines (see 350-81-520 (3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as scenic overlooks).

(f) Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland

(A) New development in this setting shall meet the design guidelines described for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In the event of a possible conflict between the two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.

(C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

(g) Residential

(A) In portions of this setting visible from key viewing areas and not exempt from visual subordination guidelines (see 350-81-520 (3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) The exteriors of structures shall be non-reflective unless fully screened from key viewing areas with existing vegetation and/or topography.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iv) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(B) Compatible recreation uses are limited to community park facilities.

(h) Village

(A) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 1/2 stories or less.

(B) For new commercial, institutional (churches, schools, government buildings), or multifamily residential uses on parcels fronting a scenic travel corridor (Washington State Route 14 or the Historic Columbia River Highway) and expansion of existing development for such uses, parking shall be limited to rear or side yards of buildings to the maximum extent practicable.

(C) New vehicular access points to the scenic travel corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.

(D) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly shared landscaped open areas, etc.

(E) New commercial, institutional or multifamily residential uses fronting a scenic travel corridor shall comply with the following landscape requirements:

(i) Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet wide between the new use and the scenic travel corridor roadway.

(ii) The landscape strip required in 350-81-520 (3)(h)(E)(i) shall include shrubs, vegetative ground cover, and, at minimum, one tree. Trees shall be spaced as appropriate to the species and not to exceed 25 feet apart on the average.

(F) The use of building materials that reinforce the Village setting's character, such as wood, logs, or stone, and that reflect community desires, should be encouraged.

(G) Architectural styles that are characteristic of the area (such as 1 1/2-story dormer roof styles in Corbett) and that reflect community desires should be encouraged. Entry signs should be consistent with such architectural styles.

(H) Design features that create a "pedestrian-friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc., should be encouraged.

(I) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.

(J) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.

(K) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

(i) River Bottomlands

(A) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas-fir, western red cedar and western hemlock (west Gorge), and various native willow species.

(iii) At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.

(C) Compatible recreation uses depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible.

In other River Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be compatible, provided that:

(i) their designs emphasize retention and/or enhancement of native riparian communities,

(ii) structures and parking areas are visually subordinate

(iii) they are separated from other areas of concentrated recreation usage by stretches of natural-appearing shoreline and adjacent uplands.

(j) Gorge Walls, Canyons, and Wildlands

(A) New development and expansion of existing development shall be screened so it is not seen from key viewing areas, to the maximum extent practicable.

(B) All trees planted to screen permitted development and uses from key viewing areas shall be native to the area.

(C) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum removal necessary to accommodate facilities otherwise permitted in the underlying land use designation or for safety purposes.

(D) All ~~structures~~ buildings shall be limited in height to a maximum of 1 1/2 stories.

(E) The exteriors of structures shall be non-reflective.

(F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors, unless public safety concerns or federal or state highway standards require otherwise.

(G) Compatible recreation uses are limited to very low or low-intensity resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such compatible uses (such as trails) are generally associated with minimal facility development, if any.

(k) Developed Settings and Visual Subordination Policies

GMA policies to protect key viewing area viewsheds require that all new development on lands seen from key viewing areas be visually subordinate to its landscape setting,

except for "specified developed settings that are not visually sensitive."

Three landscape settings are considered developed settings within this context: Rural Residential, Residential, and Village. Of all GMA lands in these three settings, six particular areas that are not visually sensitive have been identified. New development in these settings shall be compatible with the setting, but not necessarily visually subordinate. New developments in these settings are exempt from the color and siting guidelines in the Key Viewing Areas section of this chapter. These areas are:

(A) Corbett Rural Center (Village)

(B) Skamania Rural Center (Village)

(C) West of Hood River Urban Area, east of Country Club Road (Rural Residential)

(D) Murray's Addition subdivision, The Dalles (Residential)

(E) Two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Residential)

(F) Portion of Underwood Heights along Cooper Avenue, south of Cook-Underwood Road (Rural Residential)

(4) Scenic Travel Corridors

All review uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

(a) For the purposes of implementing this section, the foreground of a scenic travel corridor shall include those lands within 1/4 mile of the edge of pavement of the scenic travel corridor roadway.

(b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway. A variance to this setback requirement may be granted pursuant to 350-81-078(2). All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway, to the maximum extent practicable.

(c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a scenic travel corridor roadway, except in a Rural Center designation (village landscape setting), shall comply with 350-81-520 (4)(b) above, to the maximum extent practicable.

(d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:

(A) An evaluation of potential visual impacts of the proposed project as seen from any key viewing area.

(B) An inventory of any rare plants, sensitive wildlife habitat, wetlands, or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable Management Plan guidelines to protect the resources.

(e) When evaluating possible locations for undergrounding of signal wires or powerlines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the *Columbia River Gorge National Scenic Area Corridor Visual Inventory* (April 1990).

(f) New production and/or development of mineral resources proposed within 1/4 mile of the edge of pavement of a scenic travel corridor may be allowed upon a demonstration that full visual screening of the site from the scenic travel corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a scenic travel corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within timeframes specified in 350-81-520 (2)(ee).

(g) Expansion of existing quarries may be allowed pursuant to 350-81-520 (2)(bb). Compliance with visual subordination requirements shall be achieved within timeframes specified in 350-81-520 (2)(dd).

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

AMENDATORY SECTION

350-81-530

Special Management Area Scenic Review Criteria

(1) SMA Design Guidelines Based on Landscape Settings

(a) The following guidelines apply to all lands within SMA landscape settings regardless of visibility from KVAs (includes areas seen from KVAs as well as areas not seen from KVAs):

(A) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape.

(i) The use of plant species common to the landscape setting shall be encouraged. The use of plant species in rows, as commonly found in the landscape setting, is encouraged.

(B) Coniferous Woodland and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous Woodland and Oak-Pine Woodland landscape.

(i) Buildings shall be encouraged to have a vertical overall appearance in the Coniferous Woodland landscape setting and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(C) Residential: The Residential setting is characterized by concentrations of dwellings.

(i) At Rowena Dell, new buildings shall have a rustic appearance using natural materials. At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(D) River Bottomlands: River Bottomlands shall retain the overall visual character of a floodplain and associated islands.

(i) Buildings shall have an overall horizontal appearance in areas with little tree cover.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(E) Gorge Walls, Canyonlands, and Wildlands: New developments and land uses shall retain the overall visual character of the natural-appearing landscape.

(i) Structures, including signs, shall have a rustic appearance, use nonreflective materials, have low contrast with the surrounding landscape, and be of a Cascadian architectural style.

(ii) Temporary roads shall be promptly closed and revegetated.

(iii) New utilities shall be below ground surface, where feasible.

(iv) Use of plant species non-native to the Columbia River Gorge shall not be allowed.

(2) SMA Guidelines for Development and Uses Visible from KVAs

(a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

(b) New developments and land uses shall be evaluated to ensure that the required scenic standard is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from key viewing areas.

(c) The required SMA scenic standards for all development and uses are summarized in the following table:

REQUIRED SMA SCENIC STANDARDS		
LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Coniferous Woodland, Oak-Pine Woodland	Forest (National Forest Lands), Open Space	Not Visually Evident
River Bottomlands	Open Space	Not Visually Evident
Gorge Walls, Canyonlands, Wildlands	Forest, Agriculture, Public Recreation, Open Space	Not Visually Evident
Coniferous Woodland, Oak-Pine Woodland	Forest, Agriculture, Residential, Public Recreation	Visually Subordinate
Residential	Residential	Visually Subordinate

REQUIRED SMA SCENIC STANDARDS		
LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Pastoral	Forest, Agriculture, Public Recreation, Open Space	Visually Subordinate
River Bottomlands	Forest, Agriculture, Public Recreation	Visually Subordinate

(d) In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development.

(e) Proposed developments or land uses shall be sited to achieve the applicable scenic standard. Development shall be designed to fit the natural topography, to take advantage of landform and vegetation screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.

(f) The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its degree of visibility from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing the degree of visibility, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas,

(ii) The degree of existing vegetation providing screening,

(iii) The distance from the building site to the key viewing areas from which it is visible,

(iv) The number of key viewing areas from which it is visible, and

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they ~~are visually subordinate to meet the scenic standard~~ for their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements),

(ii) Retention of existing vegetation,

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements), and

(iv) New landscaping.

(g) Sites approved for new development to achieve scenic standards shall be consistent with guidelines to protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources.

(h) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from key viewing areas.

(i) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that meeting this guideline is not feasible considering the function of the structure.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) to achieve the required scenic standard from key viewing areas shall be required only when application of all other available guidelines in this chapter is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is necessary to meet the required standard, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to meet the scenic standard within five years or less from the commencement of construction.

(C) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The *Scenic Resources Implementation Handbook* shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in this chapter, and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The *Scenic Resources Implementation Handbook* will include a recommended palette of colors as dark or darker than the colors in the shadows of the natural features surrounding each landscape setting.

(l) The exterior of ~~buildings~~ structures on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. The *Scenic Resources Implementation Handbook* will include a recommended list of exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets approval thresholds in the "Visibility and Reflectivity Matrices" in the *Implementation Handbook*. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure meeting the scenic standard. Recommended square footage limitations for such surfaces will be provided for guidance in the *Implementation Handbook*.

(m) Any exterior lighting shall be sited, limited in intensity, shielded, or hooded in a manner that prevents lights from

being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes.

(n) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed 3 months.

(3) SMA Guidelines for KVA Foregrounds and Scenic Routes

(a) All new developments and land uses immediately adjacent to scenic routes shall be in conformance with state or county scenic route guidelines.

(b) Scenic highway corridor strategies shall be developed and implemented for Interstate 84 (I-84), Washington State Route 14 (SR 14) and the Historic Columbia River Highway (HCRH). For I-84, SR 14 and the HCRH, this involves ongoing implementation (and possible updating) of the associated existing documents. ~~For I-84, a new scenic corridor strategy shall be developed by the end of 2005.~~

(c) The goals of scenic corridor strategies shall include: 1) providing a framework for future highway improvements and management that meet Management Plan scenic guidelines and public transportation needs; and 2) creating design continuity for the highway corridor within the Scenic Area. Corridor strategies shall, at minimum, include design guidelines (e.g. materials, conceptual designs, etc.) for typical projects that are consistent with Management Plan scenic resources provisions and an interdisciplinary, interagency project planning and development process.

(d) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to applicable guidelines in 350-81-530(2).

(A) The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the requirements in the previous section and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.

(B) Findings must evaluate the following:

(i) The limiting factors to meeting the required scenic standard and/or applicable guidelines from the previous section,

(ii) Reduction in project size;

(iii) Options for alternative sites for all or part of the project, considering parcel configuration and on-site topographic or vegetative screening;

(iv) Options for design changes including changing the design shape, configuration, color, height, or texture in order to meet the scenic standard.

(C) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as seen from the foreground of key viewing areas:

(i) Form and Line-Design of the development shall minimize changes to the form of the natural landscape. Development shall borrow form and line from the landscape setting and blend with the form and line of the landscape setting.

Design of the development shall avoid contrasting form and line that unnecessarily call attention to the development.

(ii) Color-Color shall be found in the project's surrounding landscape setting. Colors shall be chosen and repeated as needed to provide unity to the whole design.

(iii) Texture-Textures borrowed from the landscape setting shall be emphasized in the design of structures. Landscape textures are generally rough, irregular, and complex rather than smooth, regular, and uniform.

(iv) Design-Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious whole, using repetition of elements and blending of elements as necessary.

(e) Right-of-way vegetation shall be managed to minimize visual impacts of clearing and other vegetation removal as seen from key viewing areas. Roadside vegetation management (vista clearing, planting, etc.) should enhance views from the highway.

(f) Screening from key viewing areas shall be encouraged for existing and required for new road maintenance, warehouse, and stockpile areas.

(4) SMA Guidelines for Areas Not Seen from KVAs

(a) Unless expressly exempted by other provisions in this chapter, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the *Scenic Resources Implementation Handbook*.

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

AMENDATORY SECTION

350-81-540

General Management Area Cultural Resource Review Criteria

(1) General Provisions for Implementing the Cultural Resources Protection Process.

(a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

(b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic

house or pioneer campsite, the Indian tribal governments do not have to be consulted.

(c) Reconnaissance and Historic Surveys and Survey Reports.

(A) Reconnaissance survey requirements and exceptions.

(i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in ~~350-8081-504540~~ 350-8081-504540 (1)(c)(A)(ii) below.

(ii) A reconnaissance survey shall be required for all proposed uses, except:

(I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

(IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

(V) Proposed uses that would occur on sites that have been adequately surveyed in the past.

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

- Residential development that involves two or more new dwellings for the same project applicant.
- Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
- Public transportation facilities that are outside improved rights-of-way.
- Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.

- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

(B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

(C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

For 350-81-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

(D) Reconnaissance Surveys for Small-Scale Uses.

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

- (i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.
- (ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

(E) Reconnaissance Survey Reports for Small-Scale Uses

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

- (i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.

(ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.

(iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(F) Reconnaissance Surveys for Large-Scale Uses

(i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

(ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:

(I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

(II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

(III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

(IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

(i) A description of the proposed use, including drawings and maps.

(ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

(iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.

(iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information

obtained through archival and ethnographic research and field surveys.

(H) Historic Surveys and Reports

(i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.

(ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.

(iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

(e) Cultural resources are significant if one of the following criteria is satisfied:

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-81-040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons. Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all

such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-81-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude when one of the following conditions exists:

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2(b)(B) above.

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the

eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(C) (iv) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(i) (a) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(ii) (b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

(A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.

(C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethno-

graphic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.59) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.118.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800.59(a)].

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800.59(b)]. Adverse effects on cultural resources include, but are not limited to:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 CFR 800.5.

(B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.

(C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.

(ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar

days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.

(C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.118(d), including, but not limited to:

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.

(v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(6) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] ~~273.705~~, ORS 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be docu-

mented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [350-80-540 (1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [350-80-540 (3)(a)].

Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

(d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

(7) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.

(c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.

(e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [350-81-540 (5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [350-81-540 (5)(c)] are met and the mitigation plan is executed.

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

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-550

Special Management Area Cultural Resource Review Criteria.

(1) General Guidelines for Implementing the Cultural Resources Protection Process

(a) All cultural resource information shall remain confidential, according to Section 6(a)(1)(A) of the Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC 470~~aa~~^{hh} and 36 CFR 296.18.

(b) All cultural resources surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 CFR 61.

(c) The Forest Service will be responsible for performing the literature review and consultation, inventory, evaluations of significance, assessments of effect, and mitigation requirements in 350-81-550(4) for forest practices and National Forest System lands.

(d) New developments or land uses shall not adversely affect significant cultural resources.

(2) The procedures and guidelines in 350-81-540 shall be used to review all proposed developments and land uses other than those on all federal lands, federally assisted projects and forest practices.

(3) The procedures and guidelines in 36 CFR 800 and 350-81-550(4) shall be used by the Executive Director and federal agencies to evaluate new developments or land uses on federal lands, federally assisted projects, and forest practices.

(4) The following procedures as well as the provisions in 36 CFR 800.4 for assessing potential effects to cultural resources and 36 CFR 800.5 for assessing adverse effects to cultural resources shall be used to assess potential effects to cultural resources.

(a) Literature Review and Consultation

(A) An assessment shall be made to determine if any cultural resources listed on the National Register of Historic Places at the national, state or county level exist on or within the area of potential direct and indirect impacts.

(B) A search shall be made of state and county government, National Scenic Area/Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural resources, including consultation with the State Historic Preservation Office and tribal governments. State and tribal government response to the consultation request shall be allowed for 30 days.

(C) Consultation with cultural resource professionals knowledgeable about the area.

(D) A field inventory by a cultural resource professional shall be required if the Forest Service or the Executive Director determines that a recorded or known cultural resource exists on or within the immediate vicinity of a new development or land use, including those reported in consultation with the Tribal governments.

(b) Field Inventory

(A) Tribal representatives shall be invited to participate in the field inventory.

(B) The field inventory shall consist of one or the other of the following guidelines, as determined by the cultural resource professional:

(i) Complete survey: the systematic examination of the ground surface through a controlled procedure, such as walking an area in evenly-spaced transects. A complete survey may also require techniques such as clearing of vegetation, augering or shovel probing of subsurface soils for the presence of buried cultural resources.

(ii) Sample survey: the sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for large or difficult to survey parcels, and is generally accomplished by a stratified random or non-stratified random sampling strategy. A parcel is either stratified by variables such as vegetation, topography or elevation, or by non-environmental factors such as a survey grid.

Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.

(C) A field inventory report shall be prepared, and shall include the following:

(i) A narrative integrating the literature review of section (4)(a) above with the field inventory of section (4)(b) above.

(ii) A description of the field inventory methodology used, including the type and extent of field inventory, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.

(iii) A statement of the presence or absence of cultural resources within the area of the new development or land use.

(iv) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.

(D) The report shall follow the format specified by the Washington Office of Archaeology and Historic Preservation for inventories conducted in the State of Washington. Reports for inventories conducted in the State of Oregon shall follow the format specified by the Oregon State Historic Preservation Office.

(E) The field inventory report shall be presented to the Forest Service or the Executive Director for review.

(c) Evaluations of Significance

(A) When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource in accordance with the criteria of the National Register of Historic Places (36 CFR 60.4).

(B) Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.

(C) Evaluations of the significance of traditional cultural properties shall follow National Register Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultural Properties, within local and regional contexts.

(D) Recommendations for eligibility to the National Register shall be completed for each identified resource, in accordance with National Register criteria A through D (36

CFR 60.4). The Forest Service or the Executive Director shall review evaluations for adequacy.

(E) Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.

(F) An assessment of effect shall be required if the Forest Service or the Executive Director determines that the inventoried cultural resources are significant.

(d) Assessment of Effect

(A) For each significant (i.e., National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.59 ("Assessing Effects"). Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for sections (4)(d)(B) through (4)(d)(D) below. The Forest Service or Executive Director shall review each determination for adequacy.

(B) If the proposed development or change in use will have "No Adverse Effect," as defined by 36 CFR 800.48, to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Standards Requirements" of 36 CFR 800.118(a). If the proposed development or change in use will have an effect then the criteria of adverse effect must be applied (36 CFR 800.5).

(C) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 CFR 800.59(b) to a significant cultural resource, the type and extent of "adverse effect" upon the qualities of the property that make it eligible for the National Register shall be documented (36 CFR 800.6 "Resolution of Adverse Effects"). This documentation shall follow the process outlined under 36 CFR 800.115(e) ("Failure to Resolve Adverse Effects").

(D) If the "effect" appears to be beneficial (i.e., an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.118 ("Documentation Standards Requirements").

(e) Mitigation

(A) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects (36 CFR 800.6 "Resolution of Adverse Effects"). These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

(B) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be affected, and documentation of their concerns, shall be included for all mitigation proposals.

(C) The Forest Service or the Executive Director shall review all mitigation proposals for adequacy.

(5) Discovery During Construction

All authorizations for new developments or land uses shall be conditioned to require the immediate notification of

the Forest Service or the Executive Director if cultural resources are discovered during construction or development.

(a) If cultural resources are discovered, particularly human bone or burials, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery and recommend measures to protect and/or recover the resources.

(b) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:

(A) The applicant shall stop all work in the vicinity of the discovery.

(B) The applicant shall immediately notify the Executive Director, the Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.

(C) The Forest Service or the Executive Director shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.

(D) A cultural resource professional shall evaluate the potential significance of the resource pursuant to 350-81-550 (4)(c) and report the results to the Forest Service or the Executive Director.

(c) The cultural resource review process shall be complete and work may continue if the Forest Service or the Executive Director determines that the cultural resource is not significant.

(d) The cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to 350-81-550 (4)(e) if the Forest Service or the Executive Director determines that the cultural resource is significant.

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

AMENDATORY SECTION

350-81-560

General Management Area Wetland Review Criteria

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the

applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the wetland and the wetlands buffer zone; and

(C) a description of actions that would alter or destroy the wetland.

(2) Commission Rule 350-81-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-81-560(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of wetlands acreage or functions, ~~or~~ and

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-560 (2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-81-560(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

(A) The extent of public need for the proposed use.

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(C) The functions and size of the wetland that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

(i) Restoration: 2:1

(ii) Creation: 3:1

(iii) Enhancement: 4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the pro-

posed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

(A) Forest communities: 75 feet

(B) Shrub communities: 100 feet

(C) Herbaceous communities: 150 feet

(d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(8) Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance

practices needed to achieve the necessary hydrologic conditions.

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

AMENDATORY SECTION

350-801-580

General Management Area Sensitive Wildlife Review Criteria.

(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

Bald eagle habitat

Deer and elk winter range

Elk habitat

Mountain goat habitat

Peregrine falcon habitat

Pika colony area

Pileated woodpecker habitat

Pine marten habitat

Shallow water fish habitat (Columbia R.)

Special streams

Special habitat area

Spotted owl habitat

Sturgeon spawning area

Tributary fish habitat

Turkey habitat

Waterfowl area

Western pond turtle habitat

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

(i) listed as endangered or threatened pursuant to federal or state endangered species acts,

(ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

(iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or

(iv) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, mountain goat, and prairie falcon).

Updated lists of species included in sensitive wildlife sites can be found on the websites for the Washington Department of Fish and Wildlife (Species of Concern list) and the Wildlife Division of Oregon Department of Fish and Wildlife. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) Field Survey

A field survey to identify sensitive wildlife areas or sites shall be required for:

- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-81-580(4) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

- (A) Identify/verify the precise location of the wildlife area or site,
- (B) Ascertain whether the wildlife area or site is active or abandoned, and

(C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

- (A) Biology of the affected wildlife species.
- (B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

- (A) The sensitive wildlife area or site is not active, or
- (B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(5) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone.

Wildlife management plans shall meet the following guidelines:

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the

monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(6) New fences in deer and elk winter range

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

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

AMENDATORY SECTION

350-801-590

General Management Areas Rare Plant Review Criteria.

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are

(A) endemic to the Columbia River Gorge and vicinity,

(B) listed as endangered or threatened pursuant to federal or state endangered species acts, or

(C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) Field Survey

A field survey to identify sensitive plants shall be required for:

- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-81-590(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.

If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

(b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.

(c) New uses shall be prohibited within sensitive plant species buffer zones.

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-81-078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-81-590(5).

(e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.

Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

(5) Protection and Rehabilitation Plans

Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance.

Protection and rehabilitation plans shall meet the following guidelines:

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

(c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

(6) Sensitive Plant Buffer Zones

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(A) Identifies the precise location of the sensitive plants,

(B) Describes the biology of the sensitive plants, and

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

(d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.

Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

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

AMENDATORY SECTION

350-81-600

Special Management Areas Natural Resource Review Criteria

(1) All new developments and uses, as described in a site plan prepared by the applicant, shall be evaluated using the following guidelines to ensure that natural resources are protected from adverse effects. Comments from state and federal agencies shall be carefully considered. (Site plans are described in 350-81-032).

(2) Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas)

(a) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in subsections (2)(a)(B)(i) and (ii) below. These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined below.

(A) All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.

(B) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(i) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.

(ii) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.

(iii) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:

(I) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.

(II) The wetland is not critical habitat.

(III) Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(C) The buffer width shall be increased for the following:

(i) When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone.

(ii) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.

(iii) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.

(D) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(E) Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(F) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.

(b) When a buffer zone is disturbed by a new use, it shall be replanted with only native plant species of the Columbia River Gorge.

(c) The applicant shall be responsible for identifying all water resources and their appropriate buffers. (see above)

(d) Wetlands Boundaries shall be delineated using the following:

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.

(B) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.

(C) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the '1987 Corps of Engineers Wetland Delineation Manual (on-line Edition)'.
(D) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.

(e) Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for streams and the high water mark for ponds and lakes. The project applicant shall be responsible for determining the exact location of the appropriate boundary for the water resource.

(f) The Executive Director may verify the accuracy of, and render adjustments to, a bank full flow, high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary is contested by the project applicant, the Executive Director shall obtain professional services, at the project applicant's expense, or ask for technical assistance from the Forest Service to render a final delineation.

(g) Buffer zones shall be undisturbed unless the following criteria have been satisfied:
(A) The proposed use must have no practicable alternative as determined by the practicable alternative test.
Those portions of a proposed use that have a practicable alternative will not be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.
(B) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:

(i) A documented public safety hazard exists or a restoration/enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question, and

(ii) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project, and

(iii) The proposed project minimizes the impacts to the wetland.
(C) Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.

(3) Wildlife and Plants
(a) Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are within 1000 ft of a sensitive wildlife/plant site and/or area.

Sensitive Wildlife Areas and endemic plants are those areas depicted in the wildlife inventory and listed in the "Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge" and "Columbia Gorge and Vicinity Endemic Plant Species" tables in the Management Plan, including all Priority Habitats listed in this Chapter. The approximate locations of sensitive wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory.

Updated lists of sensitive wildlife and plant species can be found on websites for the Washington Department of Fish and Wildlife, the Wildlife Division of Oregon Department of Fish and Wildlife, and the Oregon or Washington Natural Heritage Programs. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.

(b) The Executive Director shall submit site plans (of uses that are proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife for wildlife issues and by the Oregon or Washington Natural Heritage Program for plant issues).

(c) The Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:
(A) Identify/verify the precise location of the wildlife and/or plant area or site,
(B) Determine if a field survey will be required,
(C) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season, and

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(i) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(ii) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant, (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(iii) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reduced buffer zone is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached

(d) The Executive Director, in consultation with the State and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:

(A) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner 1991).

(B) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(C) Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

(D) Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.

(E) In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.

(F) The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wild-

life Resources" (Oregon Department of Fish and Wildlife 2000) and the Washington guidelines when they become finalized.

(G) The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.

(H) The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.

(I) Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed on the following Priority Habitats Table. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

Priority Habitats Table	
Priority Habitats	Criteria
Aspen stands	High fish and wildlife species diversity, limited availability, high vulnerability to habitat alteration.
Caves	Significant wildlife breeding habitat, limited availability, dependent species.
Old-growth forest	High fish and wildlife density, species diversity, breeding habitat, seasonal ranges, and limited and declining availability, high vulnerability.
Oregon white oak woodlands	Comparatively high fish and wildlife density, species diversity, declining availability, high vulnerability
Prairies and steppe	Comparatively high fish and wildlife density, species diversity, important breeding habitat, declining and limited availability, high vulnerability.
Riparian	High fish and wildlife density, species diversity, breeding habitat, movement corridor, high vulnerability, dependent species.
Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.

Priority Habitats Table	
Priority Habitats	Criteria
Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.
Talus	Limited availability, unique and dependent species, high vulnerability.
Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.

(e) The wildlife/plant protection process may terminate if the Executive Director, in consultation with the Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife/plant protection process may conclude.

(f) If the above measures fail to eliminate the adverse effects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

(g) The Executive Director shall submit a copy of all field surveys (if completed) and mitigation plans to the Forest Service and appropriate state agencies. The Executive Director shall include all comments in the record of application and address any written comments submitted by the state and federal wildlife agency/heritage programs in the final decision.

Based on the comments from the state and federal wildlife agency/heritage program, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(h) The Executive Director shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.

(4) Soil Productivity

(a) Soil productivity shall be protected using the following guidelines:

(A) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.

(B) New developments and land uses shall control all soil movement within the area shown on the site plan.

(C) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.

(D) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

Practicable Alternative Test

(1) An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

(a) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.

(b) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.

(c) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

Mitigation Plan

(1) Mitigation Plan shall be prepared when:

(a) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).

(b) There is no practicable alternative (see the "practicable alternative" test).

(2) In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).

(3) The primary purpose of this information is to provide a basis for the project applicant to redesign the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas and sites, that maximizes his/her development options, and that mitigates, through restoration, enhancement, and replacement measures, impacts to the water resources and/or wildlife/plant area or site and/or buffer zones.

(4) The applicant shall submit the mitigation plan to the Executive Director. The Executive Director shall submit a copy of the mitigation plan to the Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency/

heritage program, the Executive Director shall justify how the opposite conclusion was reached.

(5) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a mitigation plan involving wetland creation.

(6) Mitigation plans shall include maps, photographs, and text. The text shall:

(a) Describe the biology and/or function of the sensitive resources (e.g. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.

(b) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.

(c) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long-term use and integrity of the wildlife/plant area or site).

(d) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.

(e) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans, the local government, appropriate state agencies, and Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.

(7) At a minimum, a project applicant shall provide to the Executive Director a progress report every 3-years that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

(8) A final monitoring report shall be submitted to the Executive Director for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The Executive Director shall submit copies of the monitoring report to the Forest Service; who shall offer technical assistance to the Executive Director in helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.

(9) Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, nat-

ural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:

(a) Restoration and enhancement efforts shall be completed no later than one year after the sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(b) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community.

(c) Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a natural condition. Habitat shall be replicated in composition, structure, and function, including tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such as large woody debris and boulders.

(d) If this standard is not feasible or practical because of technical constraints, a sensitive resource of equal or greater benefit may be substituted, provided that no net loss of sensitive resource functions occurs and provided the Executive Director, in consultation with the appropriate State and Federal agency, determine that such substitution is justified.

(e) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(f) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(A) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(B) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as demonstrated by the 'Practical Alternative Test'.

(C) Fish passage shall be protected from obstruction.

(D) Restoration of fish passage should occur wherever possible.

(E) Show location and nature of temporary and permanent control measures that shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(F) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation),

natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.

(G) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(H) Streambank and shoreline stability shall be maintained or restored with natural revegetation.

(I) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed.

Restoration: 2:1

Creation: 3:1

Enhancement: 4:1

(g) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the

local government to help evaluate such reports and any subsequent activities associated with compliance.

(h) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in guideline (9)(f)(I). These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

Notice of Application Requirements

350-81-630

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
GENERAL MANAGEMENT AREA	-	-	-	-	-	-	-	-
Residential LUD— Review uses except SFDs located adjacent to Agriculture and Forest LUDs, and those uses within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X	-	-	-
Residential LUD— SFDs adjacent to Agriculture and Forest LUDs except those within 1000' of sensitive wildlife area or site, or a rare plant	X	X	X	X	-	X	-	-
Residential LUD— Review uses within 1000' of a sensitive wildlife area or site except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X	-	X	-
Residential LUD— SFDs adjacent to Agriculture and Forest LUDs within 1000' of a sensitive wildlife area or site	X	X	X	X	-	X	X	-
Residential LUD— Review uses within 1000' of a rare plant except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X	-	-	X
Residential LUD— SFDs adjacent to Agriculture and Forest LUDs within 1000' of rare plant	X	X	X	X	-	X	-	X
Agriculture LUD— Review uses except non-farm SFD in Large-Scale Agriculture LUD and uses within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X	X	-	-	-

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Agriculture LUD – Review uses within 1000' of sensitive wildlife area or site except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X	-	X	-
Agriculture LUD – Review uses within 1000' of a rare plant except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X	-	-	X
Agriculture LUD – Non-farm SFD in Large-Scale Agriculture LUD, except those within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X	-	X	-	-
Agriculture LUD – Non-farm SFD in Large-Scale Agriculture within 1000' of sensitive wildlife area or site	X	X	X	X	-	X	X	-
Agriculture LUD – Non-farm SFD in Large-Scale Agriculture within 1000' of rare plant	X	X	X	X	-	X	-	X
Commercial LUD – Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X	-	X	-
Commercial LUD – Review uses within 1000' of a rare plant	X	X	X	X	X	-	-	X
Recreation LUD – Review uses except those within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X	-	-	-
Recreation LUD – Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X	-	X	-
Recreation LUD – Review uses within 1000' of a rare plant	X	X	X	X	X	-	-	X
Open Space LUD – Review uses except those within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X	-	-	-
Open Space LUD – Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X	-	X	-
Open Space LUD – Review uses within 1000' of a rare plant	X	X	X	X	X	-	-	X
Agriculture – Special LUD – Review Uses	X	X	X	X	X	-	-	X
SPECIAL MANAGEMENT AREAS	-	-	-	-	-	-	-	-
Review Uses – All LUDs	X	X	X	X	X	-	X	-
Forest LUD – Review uses except utility facilities, railroads, home occupations, cottage industries, wineries, ag. product process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit learning/research facilities, and those review uses within 1000' feet of a sensitive wildlife area or site, or rare plant	X	X	X	X	X	-	-	-

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Forest LUD – Utility facilities, railroads, home occupations, wineries, ag. produce process and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities, and not within 1000' of a sensitive wildlife area or site, or rare plant	X	X	X	X	-	X	-	-
Forest LUD – Review uses within 1000' of a sensitive wildlife area or site, except utility facilities, railroads, home occupations, wineries, ag. produce process and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X	-	X	-
Forest LUD – Review uses within 1000' of a rare plant except utility facilities, railroads, home occupations, wineries, ag. produce process and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X	-	-	X
Forest LUD – Utility facilities, railroads, home occupations, wineries, ag. produce process and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities within 1000' of a sensitive wildlife area or site	X	X	X	X	-	X	X	-
Forest LUD – Utility facilities, railroads, home occupations, wineries, ag. produce process and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit learning/research facilities within 1000' of a rare plant	X	X	X	X	-	X	-	X
Commercial LUD – Review uses except those within 1000' of a sensitive wildlife area or site, or rare plant	X	X	X	X	-	X	-	X

350-81-630. Notice of Application Requirements

STEP 1:	Send notice of application to:
All Expedited Review Uses	Tribes, USFS, County
All Full Review Uses	Tribes, USFS, County, State
STEP 2:	Additionally send to:
• Single family dwellings in the GMA Residential Land Use Designation adjacent to GMA Agriculture or Forest Land Use Designations;	
• Commercial events and special uses in historic buildings adjacent to GMA Agriculture or Forest Land Use Designations;	
• Non-farm single family dwellings in the GMA Large-Scale Agriculture Land Use Designation;	
• Within GMA Forest Land Use Designations: utility facilities, railroads, home occupations, fruit & produce stands, wineries, wine sales/tasting rooms, ag. product processing and packaging, mineral resources, geothermal resources, aquaculture, boarding of horses, temporary asphalt/batch plants, expansion of non-profit camps/retreats/conference centers, B&Bs, non-profit learning/research facilities, fish processing operations, road spoils disposal sites	Landowners within 500 feet
All other Full and Expedited Review Uses	Landowners within 200 feet
STEP 3:	Additionally send to:
All Full and Expedited Review Uses within 1000 feet of a sensitive wildlife area or site	State Department of Wildlife
All Full and Expedited Review Uses within 1000 feet of a rare plant	State Natural Heritage Program
All Full and Expedited Review Uses within Agriculture-Special Land Use Designation	State Natural Heritage Program

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

Reviser's note: The typographical 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.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on September 27, 2007, at 9:30 a.m.

Date of Intended Adoption: September 27, 2007.

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule amendment is designed to conform to 2006 legislative changes impacting RCW 42.17.710.

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

Statutory Authority for Adoption: RCW 42.17.370.

Statute Being Implemented: RCW 42.17.710.

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

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

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

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

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

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

July 18, 2007

Vicki Rippie
Executive Director

WSR 07-16-002

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed July 18, 2007, 2:30 p.m.]

Continuance of WSR 07-04-083.

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

Title of Rule and Other Identifying Information: Continuance of rule making to amend WAC 390-17-400 Time limit to solicit or accept contributions.

WSR 07-16-014

PROPOSED RULES

SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed July 19, 2007, 11:25 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Spokane Regional Clean Air Agency Regulation I, Article VIII, Solid Fuel Burning Device Standards. Changing the levels

for declaring stage 1 and stage 2 impaired air quality in Spokane County. Modify definitions to agree with those currently in use by other agencies and other house-keeping changes to reflect changes in Washington state department of ecology rules solid fuel burning device rules.

Hearing Location(s): Spokane County Public Works Building, 1026 West Broadway Avenue, Lower level, Spokane, WA 99260, on September 6, 2007, at 9:00 a.m.

Date of Intended Adoption: September 6, 2007.

Submit Written Comments to: Ronald J. Edgar, Spokane Regional Clean Air Agency, 1101 West College Avenue, Suite 403, Spokane, WA 99201-2094, e-mail REdgar@spokanecleanair.org, fax (509) 477-6828, by August 31, 2007.

Assistance for Persons with Disabilities: Contact Ronald J. Edgar by September 3, 2007, (509) 477-4727 ext. 111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change will set levels for curtailment of solid fuel burning devices for Spokane County. Changes in RCW 70.94.473 by SHB 2261 allow Spokane County to set its own curtailment trigger levels until June 30, 2009. The changes to the regulation will set a stage 1 impaired air quality level at 20 micrograms of particulate matter 2.5 micrometers or smaller per cubic meter of air and stage 2 at 30. This change will likely lead to an increased number of solid fuel burning device curtailments and lower fine particulate matter concentrations.

Reasons Supporting Proposal: The United States Environmental Protection Agency has set the new standard for particulate matter 2.5 micrometers or smaller at 35 micrograms per cubic meter of air. In order to protect public health and meet that standard, solid fuel burning devices need to be curtailed at a level lower than the standard.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.473 as changed by SHB 2261.

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

Name of Proponent: Spokane Regional Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ronald J. Edgar, 1101 West College Avenue, Suite 403, Spokane, WA 99201, (509) 477-4727 ext. 111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule. Chapter 19.85 RCW does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local air pollution control authority rule. RCW 34.05.328 does not apply to local air pollution control authority rule development/amendments.

July 10, 2007

Ronald J. Edgar

Chief of Technical Services

ARTICLE VIII

SOLID FUEL BURNING DEVICE STANDARDS

ADOPTED: APRIL 7, 1988

REVISED:

EFFECTIVE:

AMENDATORY SECTION (Amending Order Res. 94-02 Filed 01/06/1994)

SECTION 8.01 PURPOSE

This article establishes emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices in order to attain the National Ambient Air Quality Standards for fine particulate matter (PM~~((+0))2.5~~) and to further the policy of the ~~((Authority))~~ Agency as stated in Article I, Section 1.01 of this Regulation.

SECTION 8.02 APPLICABILITY

The provisions of this article apply to solid fuel burning devices in all areas of Spokane County.

AMENDATORY SECTION (Amending Order Res. 94-18 Filed 08/04/1994)

SECTION 8.03 DEFINITIONS

Unless a different meaning is clearly required by context, words and phrases used in this article shall have the following meaning:

~~((A-))~~ Adequate Source of Heat means a permanently installed furnace or heating system, connected or disconnected from its energy source, designed to heat utilizing oil, natural gas, electricity, or propane and to maintain seventy degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a residence or commercial establishment.

~~((B-))~~ Certified means:

~~((1. A solid fuel burning device, other than a fireplace, has received certification or an exemption certificate from the United States Environmental Protection Agency pursuant to Title 40, Part 60, Subpart AAA of the Code of Federal Regulations, "Standards of Performance for New Residential Wood Heaters"; or))~~

~~((2-))~~ A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100.

~~((C-))~~ Coal stove means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating or indoor cooking, which has substantially all the following characteristics:

1. An opening for loading coal which is located near the top or side of the appliance;
2. An opening for emptying ash which is located near the bottom or the side of the appliance;
3. A system which admits air primarily up and through the fuel bed;
4. A grate or other similar device for shaking or disturbing the fuel bed; and
5. Listing by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.

~~((D-))~~ Cook stove means an appliance designed with the primary function of cooking food and containing an integrally built in oven, with an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate ash pan and an ash cleanout below the firebox. Any device with a fan or heat channels used to dissipate heat into the room shall not be considered a cook stove.

~~((E-))~~ Ecology means the Washington State Department of Ecology.

F. EPA means the United States Environmental Protection Agency or the Administrator of the United States Environmental Protection Agency or his/her designated representative.

~~((G-))~~ Fireplace means a permanently installed masonry fireplace; or a factory-built solid fuel burning device designed to be used with an air-to-fuel ratio greater than or equal to thirty-five to one and without features to control the inlet air-to-fuel ratio other than doors or windows such as may be incorporated into the fireplace design for reasons of safety, building code requirements, or aesthetics.

~~((H-))~~ Furnace means a device which is designed and installed to heat an entire multiple room structure by forcing heated air through permanently installed ducts or by forcing heated water or steam through pipes which result in convective or direct radiation of heat into the rooms.

~~((I-))~~ Reasonable Further Progress has the same meaning as in Section 171(1) of the Federal Clean Air Act (42 USC 7501).

~~((J-))~~ Seasoned Wood means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.

~~((K-))~~ Solid Fuel Burning Device (same as solid fuel heating device) means a device that is designed to burn wood, coal, or any other nongaseous or nonliquid fuels, and includes woodstoves, coal stoves, cook stoves and fireplaces, or any similar device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour.

~~((L-))~~ Smoke Control Zone means the geographic area, impacted by solid fuel combustion smoke, surrounding the Spokane/Spokane Valley Metropolitan area and, after consideration of the contribution of noncertified solid fuel burning devices, population density and urbanization, and impact to the public health (RCW 70.94.477 (2)(a), (b) and (c)), is defined as follows:

Sections 1 through 6, Township 24 N, Range 42 E; Townships 25 and 26 N, Range 42 E; Sections 1 through 24, Township 24 N, Range 43 N; Townships 25, 26 and 27 N, Range 43 E; Sections 19 through 36, Township 28 N, Range 43 E; Sections 1 through 24, Township 24 N, Range 44 E; Township 25 N, Range 44 E; Sections 19 through 36, Township 26 N, Range 44 E; Township 25 N, Range 45 E; Sections 1 through 4, 9 through 16 and 19 through 36, Township 26 N, Range 45 E; Sections 33 through 36, Township 27 N, Range 45 E; Sections 6, 7, 18, 19, 30, and 31, Township 25 N, Range 46 E; Sections 6, 7, 18, 19, 30 and 31, Township 26 N, Range 46 E; Section 31, Township 27 N, Range 46 E.

~~((M-))~~ Substantially Remodeled means any alteration or restoration of a building exceeding sixty percent of the

appraised value of such building within a twelve-month period (RCW 70.94.455).

~~((N-))~~ Treated Wood means wood of any species that has been chemically impregnated, painted, or similarly modified to improve resistance to insects, fungus or weathering.

~~((O-))~~ Woodstove means a wood fueled appliance other than a cook stove with a closed fire chamber which maintains an air-to-fuel ratio of less than thirty-five to one during the burning of ninety percent or more of the fuel mass consumed at the minimum burn rate achievable. Any combination of parts, typically consisting of but not limited to, doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

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

AMENDATORY SECTION (Amending Order Res. 90-08, Filed 07/12/1990)

SECTION 8.04 EMISSION PERFORMANCE STANDARDS

The ~~((Authority))~~ Agency adopts section WAC 173-433-100 "Emission Performance Standards" and Title 40, Part 60, Subpart AAA of the Code of Federal Regulations "Standards of Performance for New Residential Wood Heaters" by reference.

SECTION 8.05 OPACITY STANDARDS

A. A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period.

B. Test method and procedures. EPA reference method 9 - Visual Determination of Opacity of Emissions from Stationary Sources - shall be used to determine compliance with Section 8.05.A.

C. Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

SECTION 8.06 PROHIBITED FUEL TYPES

A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device:

- A. Garbage;
- B. Treated wood;
- C. Plastic products;
- D. Rubber products;
- E. Animals;
- F. Asphaltic products;
- G. Waste petroleum products;
- H. Paints;
- I. Any substance, other than properly seasoned fuel wood, or coal with sulfur content less than 1.0% by weight

burned in a coal stove, which normally emits dense smoke or obnoxious odors;

J. Paper, other than an amount of non-colored paper necessary to start a fire.

AMENDATORY SECTION (Amending Order Res. 94-18, Filed 08/04/1994)

SECTION 8.07 CURTAILMENT

A. Except as provided in Section 8.08, no person shall operate a solid fuel burning device within a defined geographical area under any of the following conditions:

1. Whenever Ecology has declared curtailment under an air pollution episode for the geographical area pursuant to chapter 173-435 WAC and RCW 70.94.715.

2. Whenever ~~(Ecology or)~~ the ~~(Authority)~~ Agency has declared curtailment under a first stage of impaired air quality for the Smoke Control Zone or other geographical area ~~(-and)~~ unless the solid fuel burning device is ~~((not a certified device))~~ one of the following:

a. A nonaffected pellet stove; or

b. A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100.

c. A woodstove certified and labeled by EPA under "40 SFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters": or

d. A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsection (1) and (2) of Section 340-340-262-0110, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 262 - Woodstove Certification" Dated November 1999.

In Spokane County until June 30, 2009 as allowed by RCW 70.94.473 §1(2) (Effective July 22, 2007) ((A)) a first stage of impaired air quality is reached and curtailment may be declared when particulates ~~((ten))~~ two and one half microns and smaller in diameter (PM~~((+0))~~2.5) are measured at any location inside Spokane County at an ambient level of ~~((seventy five))~~ twenty micrograms per cubic meter of air by a method which has been determined, by Ecology or the ~~(Authority)~~ Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix ~~((F))~~L, or equivalent.

3. Whenever ~~(Ecology or)~~ the ~~(Authority)~~ Agency has declared curtailment under a second stage of impaired air quality for the Smoke Control Zone or other geographical area. In Spokane County until June 30, 2009 as allowed by RCW 70.94.473 §1(2) (Effective July 22, 2007) ((A)) a second stage of impaired air quality is reached and curtailment may be declared when particulates ~~((ten))~~ two and one half microns and smaller in diameter (PM~~((+0))~~2.5) are measured at any location inside Spokane County at an ambient level of ~~((one hundred five))~~ thirty micrograms per cubic meter of air by a method which has been determined by Ecology or the ~~(Authority)~~ Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix ~~((F))~~L, or equivalent.

4. After July 1, 1995, if the limitation in RCW 70.94.477(2) is exercised, following the procedure in Section 8.09, and ~~((Ecology or))~~ the ~~(Authority)~~ Agency has

declared curtailment under a single stage of impaired air quality for the Smoke Control Zone or other geographical area. A single stage of impaired air quality is reached and curtailment may be declared when particulates ~~((ten))~~ two and one half microns and smaller in diameter (PM~~((+0))~~2.5) are measured at any location inside Spokane County at an ambient level of ~~((ninety))~~ twenty five micrograms per cubic meter of air by a method which has been determined, by Ecology or the ~~(Authority)~~ Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix ~~((F))~~L, or equivalent.

5. After July 1, 1995, if the limitation in RCW 70.94.477(2) is exercised, following the procedure in Section 8.09, and the solid fuel burning device is not ~~((a certified device or a fireplace.))~~ one of the following:

a. A fireplace

b. A nonaffected pellet stove; or

c. A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100.

d. A woodstove certified and labeled by EPA under "40 SFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters".

e. A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsection (1) and (2) of Section 340-340-262-0110, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 262 - Woodstove Certification" Dated November 1999.

B. In consideration of declaring curtailment under a stage of impaired air quality, the ~~(Authority)~~ Agency shall consider the anticipated beneficial effect on ambient levels of particulates ~~((ten))~~ two and one half microns and smaller in diameter (PM~~((+0))~~2.5), taking into account meteorological factors, the contribution of emission sources other than solid fuel burning devices, and any other factors deemed to have an impact.

C. Any person responsible for a solid fuel burning device which is subject to curtailment and is already in operation at the time curtailment is declared under an episode, or a stage of impaired air quality shall extinguish that device by withholding new solid fuel for the duration of the episode or impaired air quality. Smoke visible from a chimney, flue or exhaust duct after a time period of three hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that smoke was not caused by an applicable solid fuel burning device.

D. The ~~(Authority)~~ Agency, Ecology, Spokane County Health District, fire departments, fire districts, Spokane County Sheriff's Department, or local police having jurisdiction in the area may enforce compliance with solid fuel burning device curtailment after a time period of three hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality.

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

AMENDATORY SECTION (Amending Order Res. 94-02, Filed 01/06/1994)

SECTION 8.08 EXEMPTIONS

A. The provisions of Section 8.07 shall not apply to any person who possesses a valid written exemption, issued by the ~~((Authority))~~ Agency. The ~~((Authority))~~ Agency may issue written exemptions to any person who demonstrates any of the following to the satisfaction of the ~~((Authority))~~ Agency:

1. An economic need to burn solid fuel for residential space heating purposes by qualifying for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the low income energy assistance program (L.I.E.A.P.).

2. That his/her heating system, other than a solid fuel heating device, is inoperable for reasons other than his/her own actions.

3. That there is no adequate source of heat and the structure was constructed or substantially remodeled prior to July 1, 1992.

4. That there is no adequate source of heat and the structure was constructed or substantially remodeled after July 1, 1992 and is outside an urban growth area, as defined in RCW 36.70A ~~((, and is outside an area designated nonattainment for particulates ten microns and smaller in diameter (PM10) in accordance with CFR Title 40, Part 50.6))~~.

B. Written exemptions shall be valid for a period determined by the ~~((Authority))~~ Agency, which shall not exceed one (1) year from the date of issuance. Exemptions may be renewed, provided the applicant meets the applicable requirements at the time of exemption renewal.

C. The provisions of Section 8.07 and the requirement in Section 8.08.A. to obtain a written exemption shall not apply to any person who operates a furnace that is designed to burn wood, coal, or any other nongaseous or nonliquid fuels.

AMENDATORY SECTION (Amending Order Res. 94-18, Filed 08/04/1994)

SECTION 8.09 PROCEDURE TO GEOGRAPHICALLY LIMIT SOLID FUEL BURNING DEVICES

A. After July 1, 1995, if the EPA finds that the Spokane PM10 Nonattainment Area, as defined in CFR Title 40, Part 81, has either:

1. ~~((#))~~ Failed to make Reasonable Further Progress, or
2. ~~((#))~~ Failed to timely attain a National Ambient Air Quality Standard for particulates ten microns and smaller in diameter (PM10), as defined in CFR title 40, Part 50.6, or

3. ~~((*)~~) Violated a National Ambient Air Quality Standard for PM10 after redesignation as an attainment area, and emissions from solid fuel burning devices are determined by the EPA, in consultation with Ecology and the ~~((Authority))~~ Agency, to be a contributing factor to such failure or violation, then one year after such determination, the use of solid fuel burning devices not meeting the standards set forth in RCW 70.94.457, is restricted to areas outside the Smoke Control Zone.

B. Within 30 days of the determination pursuant to Section 8.09.A., the ~~((Authority))~~ Agency shall publish a public notice in a newspaper of general circulation, informing the public of such determination and of the date by which such

restriction on the use of solid fuel burning devices becomes effective.

C. Nothing in Section 8.09 shall apply to the use of fireplaces or to persons who have obtained an exemption pursuant to Section 8.08.A.1.

AMENDATORY SECTION (Amending Order Res. 94-02, Filed 01/06/1994)

SECTION 8.10 RESTRICTIONS ON INSTALLATION OF SOLID FUEL BURNING DEVICES

A. After July 1, 1992, no person shall install a solid fuel burning device that is not a certified device in any new or existing building or structure unless the device is a cook stove, a fireplace, ~~((a furnace))~~, or a device which has been rendered permanently inoperable.

B. After July 1, 1992, no person shall sell, offer for sale, advertise for sale, or otherwise transfer a solid fuel burning device, that is not a certified device to another person unless the device is a cook stove, a fireplace, ~~((a furnace))~~, or a device which has been rendered permanently inoperable.

C. After January 1, 1997, no person shall sell, offer for sale, advertise for sale, or otherwise transfer a fireplace to another person, except masonry fireplaces, unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule (RCW 70.94.457 (1)(b)).

D. After January 1, 1997, no person shall build, sell, offer for sale, advertise for sale, or otherwise transfer a masonry fireplace, unless such fireplace meets Washington State building code design standards as established by the state building code council by rule (RCW 70.94.457(1)(c)).

SECTION 8.11 REGULATORY ACTIONS AND PENALTIES

A person in violation of this article may be subject to the provisions of Article II, Section 2.11, Penalties.

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

WSR 07-16-025
PROPOSED RULES
BUILDING CODE COUNCIL
[Filed July 20, 2007, 3:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-097.

Title of Rule and Other Identifying Information: Amendment of chapter 51-50 WAC further amendment of the 2006 Edition of the International Building Code (IBC).

Hearing Location(s): Spokane City Council Chambers, West 808 Spokane Falls Boulevard, Spokane, WA, on September 14, 2007, at 10:00 a.m.; and at the Tukwila Community Center, 12424 42nd Avenue South, Tukwila, WA, on October 12, 2007, at 10:00 a.m.

Date of Intended Adoption: November 9, 2007.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail

sbcc@cted.wa.gov, fax (360) 586-9383, by October 12, 2006 [2007].

Assistance for Persons with Disabilities: Contact Sue Mathers by August 31, 2007, TTY (360) 586-0772 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal to amend the 2006 International Building Code would make the following changes:

Section 0200: The definition of "nightclub" is revised in accordance with the definition adopted by chapter 434, Laws of 2007 (2SHB 1811).

Section 0308: The description of a Group I-1 occupancy is revised to institutional structures housing over six persons on a twenty-four-hour basis, rather than over sixteen persons, to coordinate with other state regulations.

Section 0310: The Group R-2 description is revised to include congregate care language unintentionally left out of the previous document. The Group R-3 description also adds back in the language regarding congregate care.

Section 0406: A new section 406.5.3 is proposed to require an emergency back-up power source in motor fuel dispensing stations.

Sections 0702, 0704, and 0705: These sections dealing with the requirement that fire walls be constructed to remain standing when the construction on either side collapses is in conflict with the requirements of Chapter 16 requirements for seismic design. Thus, it is proposed to change the definition of "Firewall" and not adopt the two sections titled "Structural stability."

Section 0903: The requirement for automatic fire sprinklers in existing nightclub facilities is revised to coordinate with the new effective date established by chapter 434, Laws of 2007 (2SHB 1811).

Section 1403: Section 1403.2, Weather protection, is amended to clarify that an airspace is not required behind wood or fiber cement siding.

Section 1607: Table 1607.1 is amended to add a new category for live load, "Other assembly areas."

Section 1613: Is added to correct errors found in equations in the ASCE 7 manual.

Section 2702: A new section 2702.2.21 is proposed to require an emergency power source in all Group I-1 and I-2 occupancies.

Section 2900: Table 2902.1 is amended to require lavatories in all patient care areas as defined in new footnote 10.

Section 3001: Section 3002.1 is amended to add a requirement for an elevator sized to accommodate an ambulance stretcher in all Group R-1, R-2, and I occupancy buildings required to provide elevators.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: The council is seeking comments on the issues proposed in the rules shown below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Nogler, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2969; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No disproportionate impact on small business was identified. This rule will modify the adoption of model codes to stay current with national standards for the benefit of industry and Washington state interests. New state amendments clarify and simplify the code.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this section as one of the agencies required to comply with this statute.

June 8, 2007

John P. Neff

Council Chair

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-0200 Chapter 2—Definitions.

SECTION 202—DEFINITIONS.

ADULT FAMILY HOME. See Section 310.2.

CHILD DAY CARE. See Section 310.2.

CHILD DAY CARE HOME, FAMILY. See Section 310.2.

NIGHTCLUB. ~~((An establishment, other than a theater with fixed seating, which includes all of the following:~~

1. Provides live entertainment by paid performing artists or by way of recorded music conducted by a person employed or engaged to do so;

2. Has as its primary source of revenue the sale of beverages of any kind for consumption on the premises and/or cover charges;

3. Has an occupant load of 100 or more as determined by the fire code official; and

4. Includes assembly space without fixed seats considered concentrated or standing space per Table 1004.1.2.

~~Paid performing artists are those entertainers engaged to perform in a for-profit business establishment.)) An A-2 Occupancy use under the 2006 International Building Code in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.~~

PORTABLE SCHOOL CLASSROOM. See Section 902.1.

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. See Section 310.2. This definition is not adopted.

STORY. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above, including basements (also see "Mezzanine" and Section 502.1). It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

STORY ABOVE GRADE PLANE. Any story having its finished floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plane where the finished surface of the floor or roof next above the basement is:

1. More than 6 feet (1829 mm) above grade plane; or
2. More than 12 feet (3658 mm) above the finished ground level at any point.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-0308 Section 308—Institutional Group I.

308.2 Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than ((46)) six persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

- Residential board and care facilities
- Assisted living facilities
- Halfway houses
- Group homes
- Congregate care facilities
- Social rehabilitation facilities
- Alcohol and drug centers
- Convalescent facilities

A facility such as the above with five or fewer persons and adult family homes licensed by the Washington state department of social and health services shall be classified as a Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2.

A facility such as the above providing licensed care to clients in one of the categories listed in Section 310.1 regulated by either the Washington department of health or the department of social and health services shall be classified as Group R-2.

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

- Hospitals
- Nursing homes (both intermediate-care facilities and skilled nursing facilities)
- Mental hospitals
- Detoxification facilities

A facility such as the above with five or fewer persons shall be classified as Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2.

A facility such as the above providing licensed care to clients in one of the categories listed in Section 310.1 regulated by either the Washington department of health or the department of social and health services shall be classified as Group R-2.

308.5.2 Child care facility. A facility that provides supervision and personal care on a less than 24-hour basis for more than five children 2 1/2 years of age or less shall be classified as Group I-4.

- EXCEPTIONS:**
1. A child day care facility that provides care for more than five but no more than 100 children 2 1/2 years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.
 2. Family child day care homes licensed by the Washington state department of social and health services for the care of twelve or fewer children shall be classified as Group R-3.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-0310 Section 310—Residential Group R.

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *International Residential Code* in accordance with Section 101.2. Residential occupancies shall include the following:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

- Boarding houses (transient)
- Hotels (transient)
- Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

- Apartment houses
- Boarding houses (not transient)
- Boarding homes as licensed by department of social and health services under chapter 388-78A WAC
- Convents
- Dormitories
- Fraternities and sororities
- Hotels (nontransient)
- Monasteries
- Motels (nontransient)
- Residential treatment facilities as licensed by department of health under chapter 246-337 WAC
- Vacation timeshare properties

Congregate living facilities with sixteen or fewer occupants are permitted to comply with the construction requirements for Group R-3.

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units as applicable in Section 101.2, including adult family homes and family child day care homes for the care of twelve or fewer children, licensed by the Washington state department of social and health services, or adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours, or congregate living facilities with sixteen or fewer persons. Adult family homes and family child day care homes, or adult and child care facilities that are within a single-family home are permitted to comply with the International Residential Code in accordance with Section 101.2.

Foster family care homes licensed by the Washington state department of social and health services shall be permitted, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

R-4 classification is not adopted. Any reference in this code to R-4 does not apply.

310.2 Definitions.

ADULT FAMILY HOME means a dwelling in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24-hour day.

CHILD DAY CARE HOME, FAMILY is a child day care facility, licensed by the state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. This definition is not adopted.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-0406 Section 406—Motor-vehicle-related occupancies.

406.2.6 Floor surface. Parking surfaces shall be of concrete or similar noncombustible and nonabsorbent materials.

EXCEPTION: Asphalt parking surfaces are permitted at ground level.

[F] 406.5.3 Emergency power. Motor fuel-dispensing facilities shall comply with the requirements of Sections 406.5.3.1 through 406.5.3.4 and the International Fire Code.

[F] 406.5.3.1 Emergency power generation. An emergency power generation system shall be provided in order to allow the facility the ability to dispense motor fuels and liquefied gases.

EXCEPTION: At facilities that normally do not dispense liquefied gases.

[F] 406.5.3.2 Operational performance. Emergency power generation systems shall be sufficient to allow operation of the facility for a minimum of 96 hours.

[F] 406.5.3.3 Capacity. The power system shall have a capacity and rating that supplies all equipment required to be operational at the same time. The generating capacity is not required to be sized to operate all of the connected electrical equipment simultaneously.

[F] 406.5.3.4 Circuits and luminaires. Separate lighting circuits and luminaires shall be required to provide sufficient light with an intensity of not less than 1 foot-candle (11 lux) measured at floor level in all means of egress areas that are clearly a part of an escape route.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 51-50-0702 Section 702—Definitions.

FIREWALL. A fire-resistance-rated wall having protected openings, which restricts the spread of fire and extends continuously from the foundation to or through the roof.

NEW SECTION

WAC 51-50-0704 Section 704—Exterior walls.

704.6 Structural stability. This section is not adopted.

NEW SECTION

WAC 51-50-0705 Section 705—Fire walls.

705.2 Structural stability. This section is not adopted.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout an occupancy with a nightclub. An existing nightclub((s)) constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, ((2007)) 2009. ((The fire code official, for the application of this rule, may establish an occupant load based on the observed use of the occupancy in accordance with Table 1004.1.2.))

903.2.2 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:

1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required in chapter 5 of the building code.
2. Group E occupancies with an occupant load of 50 or less.

903.2.7 Group R. An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

- EXCEPTION: Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
 2. The Group R fire area is only one story.
 3. The Group R fire area does not include a basement.
 4. The Group R fire area is no closer than 30 feet from another structure.
 5. Cooking is not allowed within the Group R fire area.
 6. The Group R fire area has an occupant load of no more than 8.
 7. A hand held (portable) fire extinguisher is in every Group R fire area.

NEW SECTION

WAC 51-50-1403 Section 1403—Performance requirements.

1403.2 Weather protection. Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall shall include flashing as described in Section 1405.3. The exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer, as described in Section 1404.2, and a means of draining water that enters the assembly to the exterior. An air space cavity is not required under the exterior cladding for an exterior wall clad with panel siding made of plywood, engineered wood, hardboard, or fiber cement.

- EXCEPTIONS:
1. A weather-resistant exterior wall envelope shall not be required over concrete or masonry walls designed in accordance with Chapters 19 and 21, respectively.
 2. Compliance with the requirements for a means of drainage, and the requirements of Sections 1404.2 and 1405.3, shall not be required for an exterior wall envelope that has been demonstrated through testing to resist wind-driven rain, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E 331 under the following conditions:
 - 2.1 Exterior wall envelope test assemblies shall include at least one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.
 - 2.2 Exterior wall envelope test assemblies shall be at least 4 feet by 8 feet (1219 mm by 2438 mm) in size.
 - 2.3 Exterior wall assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (psf) (297 kN/m²).
 - 2.4 Exterior wall envelope design shall be subjected to a minimum test exposure duration of 2 hours.

The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope, joints at the perimeter of openings or intersections of terminations with dissimilar materials.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-1607 Section 1607—Live loads.

IBC Table 1607.1 MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS AND MINIMUM CONCENTRATED LIVE LOADS

OCCUPANCY OR USE	UNIFORM (psf)	CONCENTRATED (psf)
4. Assembly areas and theaters		
Fixed seats	60	
Follow spot, projections, and control rooms	50	
Lobbies	100	=====
Movable seats	100	
Stages and platforms	125	
Other assembly areas	100	
5. (Reserved)		-----
9. Decks ^h and Balconies	Same as occupancy served	-----
28. Residential		
One- and two-family dwellings		
Uninhabitable attics without storage ⁱ	10	
Uninhabitable attics with limited storage ^{i, j}	20	
Habitable attics and sleeping areas	30	-----
All other areas	40	
Hotels and multifamily dwellings		
Private rooms and corridors serving them	40	
Public rooms and corridors serving them	100	

NEW SECTION

WAC 51-50-1613 Section 1613—Earthquake loads.

1613.7 Modification of ASCE 7. ASCE 7-05 including Supplement #1 is modified according to this section.

1613.7.1 The following equations found in Section 12.8 and Section 15.4 expressing limitations for the seismic response coefficient C_s shall be defined as follows:

Equation 12.8-5	$C_s = 0.044S_{DS}I \geq 0.01$
Equation 15.4-1	$C_s = 0.044S_{DS}I \geq 0.03$
Equation 15.4-3	$C_s = 0.044S_{DS}I \geq 0.01$

NEW SECTION

WAC 50-51-2702 Section 2702—Emergency and standby power systems.

[F] 2702.2.21 Group I-1 and Group I-2 occupancies. Emergency power and lighting systems in Group I-1 and Group I-2 occupancies shall comply with the requirements of

Sections 2701.2.21.1 through 2702.2.21.3 and the International Fire Code.

[F] 2702.2.21.1 Emergency power. An emergency power system shall be provided. Where the power system is a generator set inside a building, the system shall be located in a separate room enclosed with 1-hour fire barriers or horizontal assemblies. System supervision with manual start and transfer features shall be provided at the fire command center and in accordance with the International Fire Code.

[F] 2702.2.21.1.1 Fuel supply. An on-premises fuel supply, sufficient to operate the emergency power system at its rated load for a duration not less than as required for a class 48, Level 1 system, as specified by NFPA 110, shall be provided. Buildings located in areas with a seismic design category of C, D, or E, or in areas that have a demonstrated utility unreliability, shall have the ability to operate a minimum of 96 hours without refueling.

EXCEPTION: When approved, the system shall be allowed to be supplied by natural gas pipelines.

[F] 2702.21.1.2 Capacity. The power system shall have a capacity and rating that supplies all equipment required to be operational at the same time. The generating capacity is not required to be sized to operate all of the connected electrical equipment simultaneously.

[F] 2702.21.1.3 Connected facilities. Power and lighting facilities for the fire command center and elevators, as required, by the International Fire Code and electrically powered fire pumps required to maintain pressure, shall be transferable to the emergency power source. The emergency power shall be provided for at least one elevator to serve all floors and be transferable to any elevator.

[F] 2702.2.21.2 Separate circuits and luminaires. Separate lighting circuits and luminaires shall be required to provide sufficient light with an intensity of not less than 1 foot-candle (11 lux) measured at floor level in all means of egress corridors, stairways, smokeproof enclosures, elevator cars and lobbies, and other areas that are clearly a part of an escape or evacuation route.

[F] 2702.2.21.2.1 Other circuits. Circuits supplying lighting for the fire command center and mechanical equipment rooms shall be transferable to the emergency power source.

[F] 2702.2.21.3 Emergency systems. Exit signs, exit illumination as required by Chapter 10, and elevator car lighting are classified as emergency systems and shall operate within 10 seconds of failure of the normal power supply and shall be capable of being transferred to the emergency power source.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The section above was filed by the agency as WAC 50-51-2702. However, the other rules for the Building Code Council are found in Title 51 WAC. The section above appears to be WAC 51-50-2702, but pursuant to the requirements of RCW 34.08.040, it is published in the same form as filed by the agency.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-2900 Chapter 29—Plumbing systems.

SECTION 2901—PLUMBING CODE.

Plumbing systems shall comply with the Plumbing Code.

SECTION 2902—GENERAL.

2902.1 Number of fixtures.

2902.1.1 Requirements. Plumbing fixtures shall be provided in the minimum number shown in Table 2902.1 and in this chapter. Where the proposed occupancy is not listed in Table 2902.1, the building official shall determine fixture requirements based on the occupancy which most nearly resembles the intended occupancy.

Plumbing fixtures need not be provided for unoccupied buildings or facilities.

2902.1.2 Private offices. Fixtures only accessible to private offices shall not be counted to determine compliance with this section.

2902.1.3 Occupancy load distribution. The occupant load shall be divided equally between the sexes, unless data approved by the building official indicates a different distribution of the sexes.

2902.1.4 Food preparation areas. In food preparation, serving and related storage areas, additional fixture requirements may be dictated by health codes.

2902.1.5 Other requirements. For other requirements for plumbing facilities, see Section 1210 and Chapter 11.

2902.2 Access to fixtures.

2902.2.1 Location. Plumbing fixtures shall be located in each building or conveniently in a building adjacent thereto on the same property.

2902.2.1.1 Toilet rooms. Toilet rooms shall not open directly into a room used for the preparation of food for service to the public or residents of Group R-2 boarding homes and residential treatment facilities licensed by Washington state.

2902.2.2 Multiple tenants. Access to toilets serving multiple tenants shall be through a common use area and not through an area controlled by a tenant.

2902.2.3 Multistory buildings. Required fixtures shall not be located more than one vertical story above or below the area served.

2902.3 Separate facilities.

2902.3.1 Requirements. Separate toilet facilities shall be provided for each sex.

EXCEPTION: In occupancies serving 15 or fewer persons, one toilet facility designed for use by no more than one person at a time shall be permitted for use by both sexes.

2902.3.2 Food service establishments. When customers and employees share the same facilities, customers accessing the

facilities are excluded from food preparation and storage areas.

2902.4 Pay facilities. Required facilities shall be free of charge. Where pay facilities are installed, they shall be in addition to the minimum required facilities.

2902.5 is not adopted.

2902.6 is not adopted.

SECTION 2903—SPECIAL PROVISIONS.

2903.1 Dwelling units. Dwelling units shall be provided with a kitchen sink.

2903.2 Water closet space requirements. The water closet stool in all occupancies shall be located in a clear space not less than 30 inches (762 mm) in width, with a clear space in front of the stool of not less than 24 inches (610 mm).

2903.3 Water. Each required sink, lavatory, bathtub and shower stall shall be equipped with hot and cold running water necessary for its normal operation.

2903.4 Drinking fountains.

2903.4.1 Number. Occupant loads over 30 shall have one drinking fountain for the first 150 occupants, then one per each additional 500 occupants.

- EXCEPTIONS:
1. Sporting facilities with concessions serving drinks shall have one drinking fountain for each 1000 occupants.
 2. A drinking fountain need not be provided in a drinking or dining establishment.

2903.4.2 Multistory buildings. Drinking fountains shall be provided on each floor having more than 30 occupants in schools, dormitories, auditoriums, theaters, offices and public buildings.

2903.4.3 Penal institutions. Penal institutions shall have one drinking fountain on each cell block floor and one on each exercise floor.

2903.4.4 Location. Drinking fountains shall not be located in toilet rooms.

TABLE 2902.1—MINIMUM PLUMBING FIXTURES^{1,2,4,6}

TYPE OF BUILDING OR OCCUPANCY ⁸	WATER CLOSETS (fixtures per person)		LAVATORIES ⁵ (fixtures per person)		BATHTUB OR SHOWER (fixtures per person)
	MALE ³	FEMALE	MALE	FEMALE	
For the occupancies listed below, use 30 square feet (2.79 m ²) per occupant for the minimum number of plumbing fixtures.					
Group A Assembly places— Conference rooms, dining rooms, drinking establishments, exhibit rooms, gymnasiums, lounges, stages and similar uses including restaurants classified as Group B Occupancies	1:1-25 2:26-75 3:76-125 4:126-200 5:201-300 6:301-400 Over 400, add one fixture for each additional 200 males or 150 females	1:1-25 2:26-75 3:76-125 4:126-200 5:201-300 6:301-400	One per 2 water closets		
For the assembly occupancies listed below, use the number of fixed seating or, where no fixed seating is provided, use 15 square feet (1.39 m ²) per occupant for the minimum number of plumbing fixtures.					
Assembly places— ⁹ Theaters, auditoriums, convention halls, dance floors, lodge rooms, casinos, and such places which have limited time for fixture use (intermissions)	1:1-100 2:101-200 3:201-400 Over 400, add one fixture for each additional 250 males or 50 females	One per 25 Up to 400	1:1-200 2:201-400 3:401-750 Over 750, add one fixture for each additional 500 persons	1:1-200 2:201-400 3:401-750	
Assembly places— Stadiums, arena and other sporting facilities where fixture use is not limited to intermissions	1:1-100 2:101-200 3:201-400 Over 400, add one fixture for each additional 300 males or 100 females	One per 50 Up to 400	1:1-200 2:201-400 3:401-750 Over 750, add one fixture for each additional 500 persons	1:1-200 2:201-400 3:401-750	

TABLE 2902.1—MINIMUM PLUMBING FIXTURES^{1,2,4,6}

TYPE OF BUILDING OR OCCUPANCY ⁸	WATER CLOSETS (fixtures per person)		LAVATORIES ⁵ (fixtures per person)		BATHTUB OR SHOWER (fixtures per person)
	MALE ³	FEMALE	MALE	FEMALE	
For the assembly occupancies listed below, use the number of fixed seating or, where no fixed seating is provided, use 30 square feet (2.79 m ²) per occupant for the minimum number of plumbing fixtures.					
Worship places					
Principal assembly area	One per 150	One per 75	One per 2 water closets		
Educational & activity unit	One per 125	One per 75	One per 2 water closets		
For the occupancies listed below, use 200 square feet (18.58 m ²) per occupant for the minimum number of plumbing fixtures.					
Group B and other clerical or administrative employee accessory use	1:1-15	1:1-15	One per 2 water closets		
	2:16-35	2:16-35			
	3:36-55	3:36-55			
	Over 55, add one for each additional 50 persons				
<u>Patient care areas¹⁰</u>			<u>One per patient care area</u>		
For the occupancies listed below, use 100 square feet (9.3 m ²) per student for the minimum number of plumbing fixtures.					
Group E Schools - for staff use	1:1-15	1:1-15	One per 2 water closets		
	2:16-35	2:16-35			
	3:36-55	3:36-55			
	Over 55, add one fixture for each additional 40 persons				
Schools - for student use	1:1-20	1:1-20	1:1-20	1:1-20	
Day care	2:21-50	2:21-50	2:21-50	2:21-50	
	Over 50, add one fixture for each additional 50 persons		Over 50, add one fixture for each additional 50 persons		
Elementary	One per 30	One per 25	One per 2 water closets		
Secondary	One per 40	One per 30	One per 2 water closets		
For the occupancies listed below, use 50 square feet (4.65 m ²) per occupant for the minimum number of plumbing fixtures.					
Education facilities other than Group E					
Others (colleges, universities, adult centers, etc.)	One per 40	One per 25	One per 2 water closets		
For the occupancies listed below, use 2,000 square feet (185.8 m ²) per occupant for the minimum number of plumbing fixtures.					
Group F and Group H Workshop, foundries and similar establishments, and hazardous occupancies	1:1-10	1:1-10	One per 2 water closets		One shower for each 15 persons exposed to excessive heat or to skin contamination with irritating materials
	2:11-25	2:11-25			
	3:26-50	3:26-50			
	4:51-75	4:51-75			
	5:76-100	5:76-100			
	Over 100, add one fixture for each additional 30 persons				
For the occupancies listed below, use the designated application and 200 square feet (18.58 m ²) per occupant of the general use area for the minimum number of plumbing fixtures.					
Group I⁷					
Hospital waiting rooms	One per room (usable by either sex)		One per room		

TABLE 2902.1—MINIMUM PLUMBING FIXTURES^{1,2,4,6}

TYPE OF BUILDING OR OCCUPANCY ⁸	WATER CLOSETS (fixtures per person)		LAVATORIES ⁵ (fixtures per person)		BATHTUB OR SHOWER (fixtures per person)
	MALE ³	FEMALE	MALE	FEMALE	
Hospital general use areas	1:1-15 2:16-35 3:36-55 Over 55, add one fixture for each additional 40 persons	1:1-15 3:16-35 3:36-55	One per 2 water closets		
Hospital patient rooms:					
Single Bed	One adjacent to and directly accessible from		One per toilet room		One per toilet room
Isolation	One adjacent to and directly accessible from		One per toilet room		One per toilet room
Multibed	One per 4 patients		One per 4 patients		One per 8 patients
Long-term	One per 4 patients		One per 4 patients		One per 15 patients
Jails and reformatories					
Cell	One per cell		One per cell		
Exercise room	One per exercise room		One per exercise room		
Other institutions (on each occupied floor)	One per 25	One per 25	One per 2 water closets		One per 8
For the occupancies listed below, use 200 square feet (18.58 m ²) per occupant for the minimum number of plumbing fixtures.					
Group M					
Retail or wholesale stores	1:1-50 2:51-100 3:101-400 4:201-300 5:301-400 Over 400, add one fixture for each additional 300 males or 150 females	1:1-50 2:51-100 3:101-200 4:201-300 5:301-400	One per 2 water closets		
For Group R Occupancies containing dwelling units or guest rooms, use the table below. For dormitories, use 200 square feet (18.58 m ²) per occupant for the minimum number of plumbing fixtures.					
Group R					
Dwelling units	One per dwelling unit		One per dwelling unit		One per dwelling unit
Hotel, motel, and boarding house guest rooms	One per guest room		One per guest room		One per guest room
Boarding homes licensed by the department of social and health services	One per 8	One per 8	One per 8	One per 8	One per 12
Dormitories	One per 10 Over 10, add one fixture for each additional 25 males and over 8, add one for each additional 20 females	One per 8	One per 12 Over 12, add one fixture for each additional 20 males and one for each additional 15 females	One per 12	One per 8 For females, add one additional unit per each additional 30. Over 150 persons, add one additional unit per each additional 20 persons
For the occupancies listed below, use 5,000 square feet (464.5 m ²) per occupant for the minimum number of plumbing fixtures.					

TABLE 2902.1—MINIMUM PLUMBING FIXTURES^{1,2,4,6}

TYPE OF BUILDING OR OCCUPANCY ⁸	WATER CLOSETS (fixtures per person)		LAVATORIES ⁵ (fixtures per person)		BATHTUB OR SHOWER (fixtures per person)
	MALE ³	FEMALE	MALE	FEMALE	
Group S Warehouses	1:1-10 2:11-25 3:26-50 4:51-75 5:76-100 Over 100, add one for each 30 persons	1:1-10 2:11-25 3:26-50 4:51-75 5:76-100	One per 40 occupants of each sex		One shower for each 15 persons exposed to excessive heat or to skin contamination with poisonous, infectious or irritating materials

¹The figures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction thereof.

²For occupancies not shown, see Section 2902.1.1.

³Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one quarter (25%) of the minimum specified. For men's facilities serving 26 or more persons, not less than one urinal shall be provided.

⁴For drinking fountains, see Section 2903.4.

⁵Twenty-four inches (610 mm) of wash sink or 18 inches (457 mm) of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one lavatory.

⁶For when a facility may be usable by either sex, see Section 2902.3.1.

⁷See WAC 246-320 for definitions, other fixtures and equipment for hospitals.

⁸When a space is accessory to or included as a part of a different occupancy group per Chapter 3, the area per occupant for the minimum plumbing fixture number is to be determined by its own specific use or purpose, not by that of the building's occupancy group.

⁹In multiplex movie theaters, where shows are scheduled at different times, the number of occupants for toilet fixture use may be based upon one-half (50%) of the total in all the auditoriums, but no less than the number in the largest auditorium.

¹⁰Any portion of a health care facility wherein patients are intended to be examined or treated.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-3001 Section 3001—General.

3001.1 Scope. This chapter governs the design, construction, installation, alteration and repair of elevators and conveying systems and their components.

3001.2 Referenced standards. Except as otherwise provided for in this code, the design, construction, installation, alteration, repair and maintenance of elevators and conveying systems and their components shall conform to ASME A17.1, ASME A90.1, ASME B20.1, ALI ALCTV, and ASCE 24 for construction in flood hazard areas established in Section 1612.3.

3001.3 Accessibility. Passenger elevators required to be accessible by Chapter 11 shall conform to ICC A117.1.

3001.4 Change in use. A change in use of an elevator from freight to passenger, passenger to freight, or from one freight class to another freight class shall comply with Part XII of ASME A17.1.

Section 3002—Hoistway enclosures.

3002.4 Elevator car to accommodate ambulance stretcher. In buildings four stories in height or more, and in buildings which are required to have an elevator and contain Group R-1, R-2 or I Occupancies on a level other than the exit discharge level, at least one elevator shall be provided for fire department emergency access to all floors. Such elevator car shall be of such a size and arrangement to accommodate a 24-inch by 76-inch (610 mm by 1930 mm) ambulance stretcher in the horizontal, open position and shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than 3 inches (76 mm) high and shall be placed inside on both sides of the hoistway door frame.

**WSR 07-16-026
PROPOSED RULES
BUILDING CODE COUNCIL**

[Filed July 20, 2007, 3:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-097.

Title of Rule and Other Identifying Information: Amendment of chapter 51-51 WAC, further amendment of the 2006 Edition of the International Residential Code (IRC).

Hearing Location(s): Spokane City Council Chambers, West 808 Spokane Falls Boulevard, Spokane, WA, on September 14, 2007, at 10:00 a.m.; and at the Tukwila Community Center, 12424 42nd Avenue South, Tukwila, WA, on October 12, 2007, at 10:00 a.m.

Date of Intended Adoption: November 9, 2007.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail sbcc@cted.wa.gov, fax (360) 586-9383, by October 12, 2007.

Assistance for Persons with Disabilities: Contact Sue Mathers by August 31, 2007, TTY (360) 586-0772 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal to amend the 2006 International Residential Code would make the following changes:

Sections 0202 and 0301: The definitions of "Balcony" and "Deck" are deleted from Section R202 and Table R301 is

modified to include exterior balconies in the same category and with the same live load as decks.

Section 0302: The provisions related to fire separation distance in Section R302 are amended to retain the requirements from the 2003 edition of the IRC. (Currently an emergency rule under WSR 07-09-103.)

Section 0317: Section R317.2.4, Structural independence, is proposed to be deleted, as it conflicts with the seismic requirements of the code.

Section 0404: Section R404, Foundation and Retaining Walls, is amended to reflect the language adopted for the 2009 edition of the IRC. The 2006 language was felt to be overly restrictive. (Currently an emergency rule under WSR 07-13-069.)

Section 0602: The title of Section R602.9 is amended to read "Foundation cripple walls" to clarify the section applies only to said walls, and the language of the section is amended for consistency with the existing state amendments in Section R602.10.

Section 0703: A third exception is proposed to Section R703.1, General (Exterior Covering), to clarify that an airspace is not required behind wood or fiber cement siding.

Section 1501: Section M1501, Outdoor discharge, is amended to refer to "whole-house cooling attic fans" for consistency with the Mechanical Code and Ventilation and Indoor Air Quality Code.

Section 2439: Section G2439.5 is amended to require that dryer exhaust ducts be protected from penetrations that could collect lint and cause a fire hazard, consistent with the state amendment to the Mechanical Code.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council is seeking comments on the issues proposed in the rules shown below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Nogler, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2969; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No disproportionate economic impact on small business was identified. This rule will modify the adoption of model codes to stay current with national standards for the benefit of industry and Washington state interests. New state amendments clarify and simplify the code.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this

section as one of the agencies required to comply with this statute.

June 8, 2007

John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0202 Section R202—Definitions.

ADULT FAMILY HOME means a dwelling in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

BALCONY, EXTERIOR. Definition is not adopted.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

CHILD DAY CARE HOME, FAMILY is a child day care facility, licensed by the state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

DECK. Definition is not adopted.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.

2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4m²).

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees, or which has a million dollars or less per year in gross sales, of window products.

UNUSUALLY TIGHT CONSTRUCTION. Construction meeting the following requirements:

1. Walls exposed to the outside atmosphere having a continuous water vapor retarder with a rating of 1 perm (57 ng/s·m²·Pa) or less with openings gasketed or sealed;

2. Openable windows and doors meeting the air leakage requirements of the *International Energy Conservation Code*, Section 502.1.4; and

3. Caulking or sealants are applied to areas such as joints around window and door frames, between sole plates and floors, between wall-ceiling joints, between wall panels, at

penetrations for plumbing, electrical and gas lines, and at other openings; or

4. Buildings built in compliance with the 1986 or later editions of the Washington State Energy Code chapter 51-11 WAC, Northwest Energy Code, or Super Good Cents weatherization standards or equivalent.

NEW SECTION

WAC 51-51-0301 Section R301—Design criteria.

**TABLE R301.5
MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(in pounds per square foot)**

USE	LIVE LOAD
Attics with limited storage ^{b,g,h}	20
Attics without storage ^b	10
Decks ^c and exterior balconies	40
Fire escapes	40
Guardrails and handrails ^d	200 ⁱ
Guardrails in-fill components ^f	50 ⁱ
Passenger vehicle garages ^a	50 ^a
Rooms other than sleeping rooms	40
Sleeping rooms	30
Stairs	40 ^e

^aElevated garage floors shall be capable of supporting a 2,000-pound load applied over a 20-square-inch area.

^bAttics without storage are those where the maximum clear height between joist and rafter is less than 42 inches, or where there are not two or more adjacent trusses with the same web configuration capable of containing a rectangle 42 inches high by 2 feet wide, or greater, located within the plane of the truss. For attics without storage, this live load need not be assumed to act concurrently with any other live load requirements.

^cIndividual stair treads shall be designed for the uniformly distributed live load or a 300-pound concentrated load acting over an area of 4 square inches, whichever produces the greater stresses.

^dA single concentrated load applied in any direction at any point along the top.

^eSee Section R502.2.1 for decks attached to exterior walls.

^fGuard in-fill components (all those except the handrail), balusters and panel fillers shall be designed to withstand a horizontally applied normal load of 50 pounds on an area equal to 1 square foot. This load need not be assumed to act concurrently with any other live load requirement.

^gFor attics with limited storage and constructed with trusses, this live load needs to be applied only to those portions of the bottom chord where there are two or more adjacent trusses with the same web configuration capable of containing a rectangle 42 inches high or greater by 2 feet wide or greater, located within the plane of the truss. The rectangle shall fit between the top of the bottom chord and the bottom of any other truss member, provided that each of the following criteria is met:

¹The attic area is accessible by a pull-down stairway or framed opening in accordance with Section R807.1; and

²The truss has a bottom chord pitch less than 2:12.

^hAttic spaces served by a fixed stair shall be designed to support the minimum live load specified for sleeping rooms.

ⁱGlazing used in handrail assemblies and guards shall be designed with a safety factor of 4. The safety factor shall be applied to each of the concentrated loads applied to the top of the rail, and to the load on the in-fill components. These live loads shall be determined independent of one another, and loads are assumed not to occur with any other live load.

NEW SECTION

WAC 51-51-0302 Section R302—Location on lot.

R302.1 Exterior walls. Exterior walls with a fire separation distance less than 3 feet (914 mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet (610 mm) from the line used to determine the fire separation distance.

EXCEPTION: Detached garages accessory to a dwelling located within 2 feet of a lot line may have roof eave projections not exceeding 4 inches.

Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

EXCEPTION: Tool and storage sheds, playhouses and similar structures exempted from permits by Section R105.2 are not required to provide wall protection based on location on the lot. Projections beyond the wall shall not extend over the lot line.

R302.2 Openings. Openings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance less than 3 feet (914 mm). This distance shall be measured perpendicular to the line used to determine the fire separation distance.

EXCEPTION: 1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.
2. Foundation vents installed in compliance with this code are permitted.

R302.3 Penetrations. Penetrations located in the exterior wall of a dwelling with a fire separation distance of less than 3 feet (914 mm) shall be protected in accordance with Section R317.3.

EXCEPTION: Penetrations shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0317 Section R317—Dwelling unit separation.

R317.2 Townhouses. Each townhouse shall be considered a separate building and shall be separated by fire-resistance-rated wall assemblies meeting the requirements of Section R302 for exterior walls.

EXCEPTION: A common 2-hour fire-resistance-rated wall is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. Penetrations of electrical outlet boxes shall be in accordance with Section R317.3.

R317.2.1 Continuity. The fire-resistance-rated wall or assembly separating townhouses shall be continuous from the foundation to the underside of the roof sheathing, deck or slab. The fire-resistance-rating shall extend the full length of the wall or assembly, including wall extensions through and separating attached enclosed accessory structures.

Where a story extends beyond the exterior wall of a story below:

1. The fire-resistance-rated wall or assembly shall extend to the outside edge of the upper story; or
2. The underside of the exposed floor-ceiling assembly shall be protected as required for projections in Section R302.

R317.2.4 Structural independence. Each individual townhouse shall be structurally independent.

EXCEPTIONS:

1. Foundation supporting exterior walls or common walls.
2. Structural roof and wall sheathing from each unit may be fastened to the common wall framing.
3. Nonstructural wall coverings.
4. Flashing at termination of roof covering over common wall.
5. Townhouses separated by a common 2-hour fire-resistive rated wall as provided in Section R317.2.
6. Floor sheathing may fasten to the floor framing of both units.

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0404 Section R404—Foundation and retaining walls.

R404.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls shall be selected and constructed in accordance with the provisions of Section R404 or in accordance with ACI 318, ACI 332, NCMA TR68-A or ACI 530/ASCE 5/TMS 402 or other approved structural standards. When ACI 318, ACI 332 or ACI 530/ASCE 5/TMS 402 or the provisions of Section R404 are used to design concrete or masonry foundation walls, project drawings, typical details and specifications are not required to bear the seal of the architect or engineer responsible for the design, unless otherwise required by the state law of the jurisdiction having authority.

(Foundation walls that meet all of the following shall be considered laterally supported:

1. Full basement floor shall be 3.5 inches (89 mm) thick concrete slab poured tight against the bottom of the foundation wall.
2. Floor joists and blocking shall be connected to the sill plate at the top of the wall by the prescriptive method called out in Table R404.1(1), or; shall be connected with an approved connector with listed capacity meeting Table 404.1(1).
3. Bolt spacing for the sill plate shall be no greater than per Table R404.1(2).
4. Floor shall be blocked perpendicular to the floor joists. Blocking shall be full depth within two joist spaces of the foundation wall, and be flat blocked with minimum 2-inch by 4-inch (51 mm by 102 mm) blocking elsewhere.
5. Where foundation walls support unbalanced load on opposite sides of the building, such as a daylight basement, the building aspect ratio, L/W , shall not exceed the value specified in Table R404.1(3). For such foundation walls, the rim board shall be attached to the sill with a 20-gage metal angle clip at 24 inches (610 mm) on center, with five 8d nails per leg, or an approved connector supplying 230 pounds per linear foot (3.36 kN/m) capacity.

EXCEPTION: Foundations constructed entirely of concrete with stem walls not exceeding 5 feet (1524 mm) in height and supporting less than 4 feet (1220 mm) of unbalanced backfill are exempt from the lateral bracing requirements of Section R404.1.)

Tables R404.1(1), R404.1(2), and R404.1(3) are not adopted.

**TABLE R404.1.1(3)
10-INCH MASONRY FOUNDATION WALLS WITH REINFORCING**

WHERE $d > 6.75$ INCHES^a

(no changes to Table R404.1.1(3) or footnotes)

R404.3 Wood sill plates. Wood sill plates shall be a minimum of 2-inch by 4-inch nominal lumber. Sill plate anchorage shall be in accordance with Sections R403.1.6 and R602.11.

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0602 Section R602—Wood wall framing.

R602.3 Design and construction. Exterior walls of wood light-framed construction shall be designed and constructed in accordance with the provisions of this chapter and Figures R602.3(1) and R602.3(2) or in accordance with AF&PA's NDS. Components of exterior walls shall be fastened in accordance with Table R602.3(1) through R602.3(4). Exterior walls covered with foam plastic sheathing shall be braced in accordance with Section R602.10. Structural sheathing shall be fastened directly to structural framing members.

R602.3.4 Bottom (sole) plate. Studs shall have full bearing on a 2-inch nominal (38 mm) or larger plate or sill having a width at least equal to the width of the studs.

R602.9 Foundation cripple walls. Foundation cripple walls shall be framed of studs not smaller than the studding above. When exceeding 4 feet (1219 mm) in height, such walls shall be framed of studs having the size required for an additional story.

Cripple walls supporting exterior walls or interior braced wall panels as required in Section R403.1.2 and R403.1.2.1 with a stud height less than 14 inches (356 mm) shall be sheathed on at least one side with a wood structural panel that is fastened to both the top and bottom plates in accordance with Table R602.3(1), or the cripple walls shall be constructed of solid blocking. Cripple walls supporting exterior walls or interior braced wall panels as required in Section R403.1.2 and R403.1.2.1 shall be supported on foundations.

R602.10 Wall bracing. All exterior walls shall be braced in accordance with this section. In addition, interior braced wall lines shall be provided in accordance with Section 602.10.11. For buildings in Seismic Design Categories D_0 , D_1 and D_2 , walls shall be constructed in accordance with the additional requirements of Sections R602.10.11 through R602.11.3.

R602.10.2 Cripple wall bracing.

R602.10.2.1 Seismic Design Categories Other than D_2 . In Seismic Design Categories other than D_2 , cripple walls sup-

porting exterior walls or interior braced wall panels as required in Section R403.1.2 and R403.1.2.1 shall be braced with an amount and type of bracing as required for the wall above in accordance with Table R602.10.1 with the following modifications for cripple wall bracing:

1. The percent bracing amount as determined from Table R602.10.1 shall be increased by 15 percent; and
2. The wall panel spacing shall be decreased to 18 feet (5486 mm) instead of 25 feet (7620 mm).

R602.10.2.2 Seismic Design Category D₂. In Seismic Design Category D₂, cripple walls supporting exterior walls or interior braced wall panels as required in Section R403.1.2 and R403.1.2.1 shall be braced in accordance with Table R602.10.1.

R602.10.2.3 Redesignation of cripple walls. In any Seismic Design Category, cripple walls are permitted to be redesignated as the first story walls for purposes of determining wall bracing requirements. If the cripple walls are redesignated, the stories above the redesignated story shall be counted as the second and third stories, respectively.

R602.10.5 Continuous wood structural panel sheathing. When continuous wood structural panel sheathing is provided in accordance with Method 3 of Section R602.10.3 on all sheathable areas of all exterior walls including areas above and below openings, braced wall panel lengths are not required to be in accordance with Section R602.10.4 provided they are in accordance with Table R602.10.5. Wood structural panel sheathing shall be installed at corners in accordance with Figure R602.10.5. The bracing percentages in Table R602.10.1 for Method 3 shall be permitted to be multiplied by a factor of 0.9 for exterior walls with a maximum opening height that does not exceed 85 percent of the wall height or a factor of 0.8 for exterior walls with a maximum opening height that does not exceed 67 percent of the wall height.

TABLE R602.10.5

LENGTH REQUIREMENTS FOR BRACED WALL PANELS IN A CONTINUOUSLY SHEATHED WALL^{a,b}

(no proposed changes to contents of Table R602.10.5)

For SI: 1 inch = 25.4 mm, 1 foot = 305 mm, 1 pound per square foot = 0.0479 kN/m².

- a. Linear interpolation shall be permitted.
- b. Full-height sheathed wall segments on either side of garage openings that support roofs of light-framed construction only, with roof covering dead loads of 3 psf or less shall be permitted to have a 4:1 height-to-width ratio.
- c. Walls on either or both sides of openings in garages attached to fully sheathed dwellings shall be permitted to be built in accordance with Section R602.10.6.2 and Figure R602.10.6.2 except that a single sill plate shall be permitted and two anchor bolts shall be placed at 1/3 points. In addition, tie-down devices shall not be required and the vertical wall segment shall have a maximum 6:1 height-to-width ratio (with height being measured from top of header to the bottom of the sill plate). This option shall be permitted for the first story of two-story applications in Seismic Design Categories A through C.

R602.10.6 Alternate braced wall panel construction methods. Alternate braced wall panels shall be constructed in accordance with Sections R602.10.6.1 and R602.10.6.2.

R602.10.6.1 Alternate braced wall panels. Alternate braced wall panels constructed in accordance with one of the following provisions shall be permitted to replace each 4 feet (1219 mm) of braced wall panel as required by Section R602.10.4. The maximum height and minimum width of each panel shall be in accordance with Table R602.10.6.

1. In one-story buildings, each panel shall be sheathed on one face with 3/8-inch-minimum-thickness (9.5 mm) wood structural panel sheathing nailed with 8d common or galvanized box nails in accordance with Table R602.3(1) and blocked at all wood structural panel sheathing edges. Two anchor bolts installed in accordance with Figure R403.1(1) shall be provided in each panel. Anchor bolts shall be placed in from each end of the panel a horizontal distance of one-fourth the panel width. Each panel end stud shall have a tie-down device fastened to the foundation, capable of providing an uplift capacity in accordance with Table R602.10.6. The tie-down device shall be installed in accordance with the manufacturer's recommendations. The panels shall be supported directly on a foundation or on floor framing supported directly on a foundation which is continuous across the entire length of the braced wall line. This foundation shall be reinforced with not less than one No. 4 bar top and bottom. When the continuous foundation is required to have a depth greater than 12 inches (305 mm), a minimum 12-inch by 12-inch (305 mm by 305 mm) continuous footing or turned down slab edge is permitted at door openings in the braced wall line. This continuous footing or turned down slab edge shall be reinforced with not less than one No. 4 bar top and bottom. This reinforcement shall be lapped 15 inches (381 mm) with the reinforcement required in the continuous foundation located directly under the braced wall line.

2. In the first story of two-story buildings, each braced wall panel shall be in accordance with Item 1 above, except that the following:

- 2.1 The wood structural panel sheathing shall be provided on both faces;
- 2.2 Sheathing edge nailing spacing shall not exceed 4 inches on center; and
- 2.3 Anchor bolts shall be placed at the center of the panel width and in from each end of the panel a horizontal distance of one-fifth the panel width (three total).

R602.10.7 Panel joints. All vertical joints of panel sheathing shall occur over, and be fastened to, common studs. Horizontal joints in braced wall panels shall occur over, and be fastened to, common blocking of a minimum 2 inches in nominal thickness.

EXCEPTION: Blocking is not required behind horizontal joints in Seismic Design Categories A and B and detached dwellings in Seismic Design Category C when constructed in accordance with Section R602.10.3, braced-wall-panel construction Method 3 and Table R602.10.1, Method 3, or where permitted by the manufacturer's installation requirements for the specific sheathing material.

R602.10.8 Connections. Braced wall panel bottom (sole) plates shall be fastened to the floor framing and top plates

shall be connected to the framing above in accordance with Table R602.3(1). Sill plates shall be fastened to the footing, foundation or slab in accordance with Sections R403.1.6 and R602.11. Where joists are perpendicular to the braced wall lines above, blocking shall be provided under and in line with the braced wall panels. Where joists are perpendicular to braced wall lines below, blocking shall be provided over and in line with the braced wall panels. Where joists are parallel to braced wall lines above or below, a rim joist or other parallel framing member shall be provided at the wall to permit fastening per Table R602.3(1). For buildings in Seismic Design Categories D_0 , D_1 and D_2 , braced wall panels shall also be fastened in accordance with Section R602.11.2.

R602.10.9 Interior braced wall support. This section is not adopted. See Section R403.1.2.

R602.10.10 Design of structural elements. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in Sections R602.10 through R602.10.9, those portions shall be designed and constructed in accordance with accepted engineering practice.

R602.10.11 Bracing in Seismic Design Categories D_0 , D_1 and D_2 . Structures located in Seismic Design Categories D_0 , D_1 and D_2 shall have exterior and interior braced wall lines.

R602.10.11.1 Braced wall line spacing. Spacing between braced wall lines in each story shall not exceed 25 feet (7620 mm) on center in both the longitudinal and transverse directions.

EXCEPTION: In one- and two-story buildings two adjacent braced wall lines shall not exceed 35 feet (10,363 mm) on center in order to accommodate an area not exceeding 900 square feet (84 m²) in each dwelling unit. Spacing between all other braced wall lines shall not exceed 25 feet (7620 mm).

R602.10.11.2 Braced wall panel location. Exterior braced wall lines shall be provided with a braced wall panel located at each end of the braced wall line.

EXCEPTION: For braced wall panel construction Method 3 of Section R602.10.3, the braced wall panel shall be permitted to begin no more than 8 feet (2438 mm) from each end of the braced wall line provided one of the following is satisfied:

1. A minimum 24-inch-wide (610 mm) panel is applied to each side of the building corner and the two 24-inch-wide (610 mm) panels at the corner shall be attached to framing in accordance with Figure R602.10.5; or
2. The end of each braced wall panel closest to the corner shall have a tie-down device fastened to the stud at the edge of the braced wall panel closest to the corner and to the foundation or framing below. The tie-down device shall be capable of providing an uplift allowable design value of at least 1,800 pounds (8 kN). The tie-down device shall be installed in accordance with the manufacturer's recommendations.

R602.10.11.3 Collectors. A designed collector shall be provided if a braced wall panel is not located at each end of a braced wall line as indicated in Section R602.10.11.2 or, when using the Section R602.10.11.2 Exception, if a braced wall panel is more than 8 feet (2438 mm) from each end of a braced wall line.

R602.10.11.4 Cripple wall bracing. In addition to the requirements of Section R602.10.2, where interior braced

wall panels occur without a foundation below, the length of parallel exterior cripple wall bracing shall be one and one-half times the length required by Table R602.10.1. Where cripple walls braced using Method 3 of Section R602.10.3 cannot provide this additional length, the capacity of the sheathing shall be increased by reducing the spacing of fasteners along the perimeter of each piece of sheathing to 4 inches (102 mm) on center.

R602.10.11.5 Sheathing attachment. Adhesive attachment of wall sheathing shall not be permitted in Seismic Design Categories C, D_0 , D_1 and D_2 .

R602.11 Framing and connections for Seismic Design Categories D_0 , D_1 and D_2 . The framing and connection details of buildings located in Seismic Design Categories D_0 , D_1 and D_2 shall be in accordance with Sections R602.11.1 through R602.11.3.

R602.11.1 Wall anchorage. Braced wall line sill plates shall be anchored to concrete or masonry foundations in accordance with Sections R403.1.6 and R602.11. For all buildings in Seismic Design Categories D_0 , D_1 and D_2 and townhouses in Seismic Design Category C, plate washers, a minimum of 0.229 inch by 3 inches by 3 inches (5.8 mm by 76 mm by 76 mm) in size, shall be installed between the foundation sill plate and the nut. The hole in the plate washer is permitted to be diagonally slotted with a width of up to 3/16 inch (5 mm) larger than the bolt diameter and a slot length not to exceed 1-3/4 inches (44 mm), provided a standard cut washer is placed between the plate washer and the nut.

R602.11.2 Interior braced wall panel connections. Interior braced wall panels shall be fastened to floor and roof framing in accordance with Table R602.3(1), to required foundations in accordance with Section R602.11.1, and in accordance with the following requirements:

1. Floor joists parallel to the top plate shall be toe-nailed to the top plate with at least 8d nails spaced a maximum of 6 inches (152 mm) on center.
2. Top plate laps shall be face-nailed with at least eight 16d nails on each side of the splice.

R602.11.3 Stepped foundations. Where stepped foundations occur, the following requirements apply:

1. Where the height of a required braced wall panel that extends from foundation to floor above varies more than 4 feet (1220 mm), the braced wall panel shall be constructed in accordance with Figure R602.11.3.
2. Where the lowest floor framing rests directly on a sill bolted to a foundation not less than 8 feet (2440 mm) in length along a line of bracing, the line shall be considered as braced. The double plate of the cripple stud wall beyond the segment of footing that extends to the lowest framed floor shall be spliced by extending the upper top plate a minimum of 4 feet (1219 mm) along the foundation. Anchor bolts shall be located a maximum of 1 foot and 3 feet (305 and 914 mm) from each end of the plate section at the step in the foundation.
3. Where cripple walls occur between the top of the foundation and the lowest floor framing, the bracing requirements for a story shall apply.

4. Where only the bottom of the foundation is stepped and the lowest floor framing rests directly on a sill bolted to the foundations, the requirements of Section R602.11.1 shall apply.

NEW SECTION

WAC 51-51-0703 Section R703—Exterior covering.

R703.1 General. Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section R703.8. The exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer as required by Section R703.2 and a means of draining water that enters the assembly to the exterior.

EXCEPTIONS: 1. A weather-resistant exterior wall envelope shall not be required over concrete or masonry walls designed in accordance with Chapter 6 and flashed according to Section R703.7 or R703.8.

2. Compliance with the requirements for a means of drainage, and the requirements of Section R703.2 and R703.8, shall not be required for an exterior wall envelope that has been demonstrated to resist wind-driven rain through testing of the exterior wall envelope, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E 331 under the following conditions:

2.1. Exterior wall envelope test assemblies shall include at least one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.

2.2. Exterior wall envelope test assemblies shall be at least 4 feet (1219 mm) by 8 feet (2438 mm) in size.

2.3. Exterior wall assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (299Pa).

2.4. Exterior wall envelope assemblies shall be subjected to a minimum test exposure duration of 2 hours.

The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate: Control joints in the exterior wall envelope; joints at the perimeter of opening penetration; or intersections of terminations with dissimilar materials.

3. The requirement for a means of drainage shall not be construed to mean an air space cavity under the exterior cladding for an exterior wall clad with panel siding made of plywood, engineered wood, hardboard, or fiber cement. A water-resistive barrier as required by Section R703.2 and Table R703.4 will be required on exterior walls.

NEW SECTION

WAC 51-51-1501 Section M1501—General.

M1501 Outdoor discharge. The air removed by every mechanical exhaust system shall be discharged to the outdoors. Air shall not be exhausted into an attic, soffit, ridge vent or crawl space.

EXCEPTION: Whole-house cooling attic fans that discharge into the attic space of dwelling units having private attics shall be permitted.

NEW SECTION

WAC 51-51-2439 Section G2439—Clothes dryer exhaust.

G2439.5 Protection required. Plates or clips shall be placed where nails or screws from finish or other work are likely to penetrate the clothes dryer exhaust duct. Plates or clips shall be placed on the finished face of all framing members where there is less than 1 1/4 inches (32 mm) between the duct and the finished face of the framing material. The plate or clip shall be steel not less than 1/16 inch (1.59 mm) in thickness and of sufficient width to protect the duct.

WSR 07-16-029

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed July 23, 2007, 10:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-096.

Title of Rule and Other Identifying Information: Amendment of chapter 51-54 WAC, adoption and amendment of the 2006 Edition of the International Fire Code (IFC).

Hearing Location(s): Spokane City Council Chambers, West 808 Spokane Falls Boulevard, Spokane, WA, on September 14, 2007, at 10:00 a.m.; and at the Tukwila Community Center, 12424 42nd Avenue South, Tukwila, WA, on October 12, 2007, at 10:00 a.m.

Date of Intended Adoption: November 9, 2007.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail sbcc@cted.wa.gov, fax (360) 586-9383.

Assistance for Persons with Disabilities: Contact Sue Mathers by TTY (360) 586-0772 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules make changes to the state amendments to this code:

IFC 202 changes the definition of nightclubs.

IFC 903.2.1.6 is deleted and the requirements moved to 903.6.2.

IFC 903.6.2 changes the completion date for automatic sprinklers in nightclubs.

IFC 604.2.20 & 604.2.21 address emergency power systems.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council is seeking comments on the issues proposed in the rules shown below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Charles Heath, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2970; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule will update the adoption of model codes to stay current with national standards for the benefit of industry and Washington state interests. New state amendments clarify and simplify the code. No disproportionate economic impact on small business was identified.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this section as one of the agencies required to comply with this statute.

June 8, 2007
John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 07-01-093, filed 12/19/06, effective 7/1/07)

WAC 51-54-0200 Chapter 2—Definitions.

SECTION 202 GENERAL DEFINITIONS.

ADULT FAMILY HOME means a dwelling in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24-hour day.

ELECTRICAL CODE is the National Electrical Code, promulgated by the National Fire Protection Association, as adopted in chapter 296-46 WAC, or the locally adopted Electrical Code.

FAMILY CHILD DAY CARE HOME is a child day care facility, licensed by the state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

NIGHTCLUB. ~~((An establishment, other than a theater with fixed seating, which includes all of the following:~~

~~1. Provides live entertainment by paid performing artists or by way of recorded music conducted by a person employed or engaged to do so;~~

~~2. Has as its primary source of revenue the sale of beverages of any kind for consumption on the premises and/or cover charges;~~

~~3. Has an occupant load of 100 or more as determined by the fire code official; and~~

~~4. Includes assembly space without fixed seats considered concentrated or standing space per Table 1004.1.2.~~

~~Paid performing artists are those entertainers engaged to perform in a for-profit business establishment.)) An A-2 Occupancy use under the 2006 International Building Code~~

in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

EDUCATIONAL GROUP E. Educational Group E Occupancy includes, among others, the use of a building or structure, or a portion thereof, by six or more persons at any one time for educational purposes through the 12th grade. Religious educational rooms and religious auditoriums, which are accessory to churches in accordance with Section 302.2 of the IBC and have occupant loads of less than 100, shall be classified as Group A-3 Occupancies.

Day Care. The use of a building or structure, or portion thereof, for educational, supervision or personal care services for more than five children older than 2 1/2 years of age, shall be classified as a Group E Occupancy.

EXCEPTION: Family child day care homes licensed by the Washington state department of social and health services for the care of twelve or fewer children shall be classified as Group R3.

INSTITUTIONAL GROUP I. Institutional Group I Occupancy includes, among others, the use of a building or structure, or a portion thereof, in which people, cared for or living in a supervised environment and having physical limitations because of health or age, are harbored for medical treatment or other care or treatment, or in which people are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2, I-3 or I-4.

Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

- Residential board and care facilities
- Assisted living facilities
- Halfway houses
- Group homes
- Congregate care facilities
- Social rehabilitation facilities
- Alcohol and drug centers
- Convalescent facilities

A facility such as the above with five or fewer persons and adult family homes licensed by the Washington state department of social and health services shall be classified as a Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2.

A facility such as the above providing licensed care to clients in one of the categories listed in IBC Section 310.1 regulated by either the Washington department of health or the department of social and health services shall be classified as Group R-2.

Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or

custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

- Hospitals
- Nursing homes (both intermediate-care facilities and skilled nursing facilities)
- Mental hospitals
- Detoxification facilities

A facility such as the above with five or fewer persons shall be classified as Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2.

A facility such as the above providing licensed care to clients in one of the categories listed in IBC Section 310.1 regulated by either the Washington department of health or the department of social and health services shall be classified as Group R-2.

Group I-3. (Remains as printed in the IFC.)

Group I-4. Day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with five or fewer persons shall be classified as Group R-3 or shall comply with the *International Residential Code*. Places of worship during religious functions are not included.

Adult care facility. A facility that provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

EXCEPTION: Where the occupants are capable of responding to an emergency situation without physical assistance from the staff, the facility shall be classified as Group A-3.

Child care facility. A facility that provides supervision and personal care on a less than 24-hour basis for more than five children 2 1/2 years of age or less shall be classified as Group I-4.

EXCEPTIONS: 1. A child day care facility that provides care for more than five but no more than 100 children 2 1/2 years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.
2. Family child day care homes licensed by the Washington state department of social and health services for the care of 12 or fewer children shall be classified as Group R3.

RESIDENTIAL GROUP R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or Licensed Care Group LC. Residential occupancies shall include the following:

R-1 Residential occupancies where the occupants are primarily transient in nature, including:

- Boarding houses (transient)
- Hotels (transient)
- Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

- Apartment houses

Boarding houses (not transient)

Boarding homes as licensed by the department of social and health services under chapter 388-78A WAC

Convents

Dormitories

Fraternities and sororities

Hotels (nontransient)

Motels (nontransient)

Monasteries

Residential treatment facilities as licensed by the department of health under chapter 246-337 WAC

Vacation timeshare properties

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units as applicable in Section 101.2, including adult family homes and family child day care homes for the care of 12 or fewer children, licensed by the Washington state department of social and health services, or adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours. Adult family homes and family child day care homes, or adult and child care facilities that are within a single-family home are permitted to comply with the *International Residential Code* in accordance with Section 101.2.

Foster family care homes licensed by the Washington state department of social and health services shall be permitted, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

R-4 classification is not adopted. Any reference in this code to R-4 does not apply.

NEW SECTION

WAC 51-54-0604 Section 604—Emergency and standby power systems.

604.2.20 Group I-1 and Group I-2 occupancies. Emergency power and lighting systems in Group I-1 and Group I-2 occupancies shall comply with the requirements of Sections 604.2.20.1 through 604.2.20.3.

604.2.20.1 Emergency power. An emergency power system shall be provided. Where the power system is a generator set inside a building, the system shall be located in a separate room enclosed with 1-hour fire barriers or horizontal assemblies constructed in accordance with the International Building Code, or both. System supervision with manual start and transfer features shall be provided at the fire command center, as applicable.

604.2.20.1.1 Fuel supply. An on-premises fuel supply, sufficient to operate the emergency power system at its rated load for a duration not less than as required for a class 48, Level 1 system, as specified by NFPA 110, shall be provided. Buildings located in areas with a seismic design category of C, D, or E, or in areas that have a demonstrated utility unreliability, shall have the ability to operate a minimum of 96 hours without refueling.

EXCEPTION: When approved, the system shall be allowed to be supplied by natural gas pipelines.

604.2.20.1.2 Capacity. The power system shall have a capacity and rating that supplies all equipment required to be operational at the same time. The generating capacity is not required to be sized to operate all of the connected electrical equipment simultaneously.

604.2.20.1.3 Connected facilities. Power and lighting facilities for the fire command center and elevators, as applicable and electrically powered fire pumps required to maintain pressure, shall be transferable to the emergency power source. The emergency power shall be provided for at least one elevator to serve all floors and be transferable to any elevator.

604.2.20.2 Separate circuits and luminaires. Separate lighting circuits and luminaires shall be required to provide sufficient light with an intensity of not less than 1 foot-candle (11 lux) measured at floor level in all means of egress corridors, stairways, smokeproof enclosures, elevator cars and lobbies, and other areas that are clearly a part of an escape or evacuation route.

604.2.20.2.1 Other circuits. Circuits supplying lighting for the fire command center and mechanical equipment rooms shall be transferable to the emergency power source.

604.2.20.3 Emergency systems. Exit signs, exit illumination as required by Chapter 10, and elevator car lighting are classified as emergency systems and shall operate within 10 seconds of failure of the normal power supply and shall be capable of being transferred to the emergency power source.

Motor vehicle-related occupancies.

604.2.21 Fuel dispensing stations.

604.2.21.1 Emergency power. Motor fuel-dispensing facilities shall comply with the requirements of Sections 604.2.21.1.1 through 604.2.21.1.4.

604.2.21.1.1 Emergency power generation. Emergency power generation systems shall be installed in accordance with this code and NFPA 110 and 11. An emergency power generation system shall be provided in order to allow the facility the ability to dispense motor fuels and liquefied gases.

EXCEPTION: At facilities that normally do not dispense liquefied gases.

604.2.21.1.2 Operational performance. Emergency power generation systems shall be sufficient to allow operation of the facility for a minimum of 96 hours.

604.2.21.1.3 Capacity. The power system shall have a capacity and rating that supplies all equipment required to be operational at the same time. The generating capacity is not required to be sized to operate all of the connected electrical equipment simultaneously.

604.2.21.1.4 Circuits and luminaires. Separate lighting circuits and luminaires shall be required to provide sufficient light with an intensity of not less than 1 foot-candle (11 lux) measured at floor level in all means of egress areas that are clearly a part of an escape route.

AMENDATORY SECTION (Amending WSR 07-01-093, filed 12/19/06, effective 7/1/07)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

~~(903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout an occupancy with a nightclub. Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2007. The fire code official, for the application of this rule, may establish an occupant load based on the observed use of the occupancy in accordance with Table 1004.1.2.)~~

903.2.2 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:

1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required in Chapter 5 of the building code.
2. Group E Occupancies with an occupant load of 50 or less.

903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION:

Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

903.6.2 Nightclub. An automatic sprinkler system shall be provided throughout an occupancy with a nightclub. An existing nightclub constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 707.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 707.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

WSR 07-16-032
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 23, 2007, 11:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-056.

Title of Rule and Other Identifying Information: Fingerprint record checks—Access to records—Privacy.

Hearing Location(s): Brouillet Conference Room, Office of Superintendent of Public Instruction, P.O. Box 47200, 600 Washington Street, Olympia, WA 98504-7200, on September 4, 2007, at 9:00 a.m.

Date of Intended Adoption: September 5, 2007.

Submit Written Comments to: Charles Schreck, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Charles.Schreck@k12.wa.us, fax (360) 753-4201, by September 3, 2007.

Assistance for Persons with Disabilities: Contact Penny Coker by September 3, 2007, (360) 725-6130.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes are being made as required under SB 5382, which amended RCW 28A.400.303 and 28A.400.305.

Statutory Authority for Adoption: RCW 28A.400.303, 28A.400.305.

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

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Charles Schreck, OPP/Fingerprint, (360) 725-6130.

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

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

July 19, 2007

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 02-06-044, filed 2/27/02, effective 3/30/02)

WAC 392-300-015 Definition—District employee. As used in this chapter, "district employee" shall mean any individual currently employed by or being considered for employment by a school district, a school district contractor, the state school for the deaf, the state school for the blind, an educational service district, ~~((or an))~~ educational service district contractor, or a Bureau of Indian Affairs funded school.

AMENDATORY SECTION (Amending WSR 02-06-044, filed 2/27/02, effective 3/30/02)

WAC 392-300-050 Access to record check data base. School districts, the state school for the deaf, the state school for the blind, educational service districts, Bureau of Indian Affairs funded schools, colleges and universities shall establish written policies or procedures to determine which employees are authorized to access the data base. Access to the superintendent of public instruction's record check data base shall be limited to:

(1) Employees of the superintendent of public instruction processing record check information including employees within the fingerprint records section, the office of professional practices, the legal services section, the certification section or their equivalents in case of future agency reorganization.

(2) Authorized employees of school districts.

(3) Authorized employees of educational service districts.

(4) Authorized employees of college or universities with state board of education approved certification programs.

(5) Authorized employees of the state school for the deaf.

(6) Authorized employees of the state school for the blind.

(7) Authorized employees of Bureau of Indian Affairs funded schools.

(8) Other authorized individuals as determined by the superintendent of public instruction or designee.

Access to the data base will be controlled by a confidential password issued by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 02-06-044, filed 2/27/02, effective 3/30/02)

WAC 392-300-055 Prohibition of redissemination of fingerprint record information by educational service districts, the state school for the deaf, the state school for the blind, school districts, Bureau of Indian Affairs funded schools. Fingerprint record information is highly confidential and shall not be redisseminated to any organization or individual by any educational service district, state school for the deaf, state school for the blind, ~~((or))~~ school district, or Bureau of Indian Affairs funded school.

AMENDATORY SECTION (Amending WSR 02-06-044, filed 2/27/02, effective 3/30/02)

WAC 392-300-060 Protection of fingerprint record information by educational service districts, state school for the deaf, state school for the blind, ~~((and))~~ school districts, and Bureau of Indian Affairs funded schools. Educational service districts, state school for the deaf, state school for the blind, ~~((and))~~ school districts, and Bureau of Indian Affairs funded schools shall have policies and procedures to:

(1) Protect the confidentiality of fingerprint record information, including the secure location of RAP sheets;

(2) Limit access to authorized personnel processing or requiring fingerprint record information to make employment decisions; and

(3) Prevent the unlawful dissemination of fingerprint record information.

Noncompliance with these provisions may allow for the recovery of civil damages under applicable federal and state statutes.

WSR 07-16-049
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 25, 2007, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-115.

Title of Rule and Other Identifying Information: WAC 181-78A-010 Definition of terms, 181-78A-509 Overview—Educational staff associate—School counselor/school psychologist/school social worker professional certificate programs, and 181-78A-535 Approval standard—Program design.

Hearing Location(s): Red Lion Hotel, Yakima Center, 607 East Yakima Avenue, Yakima, WA 98901, on September 12, 2007, at 8:30 a.m.

Date of Intended Adoption: September 12, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by September 9, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by September 9, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESAs are the final certificated educational group making the transition to the residency/professional system. This requires rule changes to allow for full implementation of the ESA professional certificate programs.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236,

phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

July 20, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-010 Definition of terms. The following definitions shall be used in this chapter:

(1) "College or university" means any regionally accredited baccalaureate degree granting Washington institution of higher learning or cooperative group of such institutions which has or develops programs of preparation in education which are submitted to the professional educator standards board for approval.

(2) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.

(3) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.

(4) "Program approval" means the approval by the professional educator standards board of an educator preparation program within Washington state.

(5) "Field experience" means a sequence of learning experiences which occur in actual school settings or clinical or laboratory settings. Such learning experiences are related to specific program outcomes and are designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.

(6) "Regionally accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies:

(a) Middle States, Association of Colleges and Schools;
(b) New England Association of Schools and Colleges;
(c) North Central Association of Colleges and Schools;
(d) Northwest Association of Schools and of Colleges and Universities;

(e) Southern Association of Colleges and Schools;
(f) Western Association of Schools and Colleges: Accrediting Commission for Junior and Senior Colleges.

(7) "An approved performance-based educator preparation program" means a program that requires the candidate to demonstrate in multiple ways, over time, specific professional educator standards board required standards, criteria, knowledge and skills, including, where appropriate, evidence related to positive impact on student learning.

(8) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(9) "Collaboration" (as used in WAC 181-78A-500 through 181-78A-540) means ongoing communication among the professional growth team members using a variety of formats (e.g., conferences, electronic mail, conference calls, etc.) to reach consensus regarding the content - course work, experiences, competencies, knowledges and skills - of the candidate's professional growth plan.

(10) "Professional growth team."

(a) Teacher "professional growth team" means a team comprised of the candidate for professional certification, a colleague specified by the candidate, a college or university advisor appointed by the college or university, and a representative from the school district in which the candidate teaches.

(b) Principal/program administrator "professional growth team," for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a district representative or designee, a professional association representative, and a college or university advisor. "Professional growth team," for the purpose of renewal of the professional certificate, means a team comprised of the individual renewing the certificate and the superintendent, or superintendent designee or appointed representative.

(c) School counselor, school psychologist, and school social worker "professional growth team" for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a college/university ~~((representative))~~ program administrator/designee, and a colleague/peer from the same professional role specified by the candidate. A district representative is also required to serve on the professional growth team. Provided that, a candidate may petition the university to have membership of a district representative waived.

(11) "Individual professional growth plan" means the document which identifies the specific competencies, knowledges, skills and experiences needed to meet the standards set forth in WAC 181-78A-540. The individual professional growth plan shall meet requirements set forth in WAC 181-78A-535 (4)(a).

(12) "Preassessment seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate, in collaboration with members of his/her professional growth team, identifies specific competencies, knowledges, skills and/or experiences needed to meet standards for the certificate as required by WAC 181-78A-540. The preassessment seminar shall meet requirements set forth in WAC 181-78A-535 (4)(a).

(13) "Culminating seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance, and positive impact on student learning. The culminating seminar shall meet requirements set forth in WAC 181-78A-535 (4)(e).

AMENDATORY SECTION (Amending WSR 07-04-005, filed 1/24/07, effective 2/24/07)

WAC 181-78A-509 Overview—Educational staff associate—School counselor/school psychologist/school social worker professional certificate programs. By September 1, 2008, all colleges and universities offering ESA professional certificate programs must be in compliance with the new program standards. To obtain a professional ESA certificate, individuals will need to hold a valid ESA residency certificate, be employed in his/her ESA role in a public school district, professional educator standards board-approved private school or state agency providing educational services for students, and complete a professional educator standards board-approved professional ESA certificate program in his/her ESA role.

(1) The professional certificate requires successful demonstration of the ESA role standards at the professional certificate benchmark levels, or above, and the candidate will need to provide evidence that he/she has had a positive impact on student learning.

(2) The candidate shall develop an individual professional growth plan to be ~~((reviewed and agreed upon after input from and consultation with his/her professional growth team))~~ approved by the professional education advisory board (PEAB) or the professional growth team (PGT). The individual growth plan shall be based on an assessment of the candidate's ability to demonstrate standards at the professional benchmark level and evidence of a positive impact on student learning.

AMENDATORY SECTION (Amending WSR 07-08-050, filed 3/28/07, effective 4/28/07)

WAC 181-78A-535 Approval standard—Program design. The following requirements shall govern the design of the professional certificate program:

(1) **Teacher.**

(a) To be eligible to apply for admission to a professional certificate program, a candidate shall hold a contract as a teacher in a public or a professional educator standards board-approved private school or state agency providing educational services for students and shall have completed provisional status with a school district under RCW 28A.405.220 or the equivalent with a professional educator standards board-approved private school or state agency providing educational services for students or the candidate provides to the program a letter from the candidate's employing district, professional educator standards board-approved private school, or state agency providing educational services for students, documenting the employer's support for the candidate's full admission to the professional certificate program: Provided, That a candidate for the professional teacher's certificate may enroll in and complete the preassessment seminar described in subsection (4)(a) of this section prior to admission to a professional certificate program.

(b) The professional certificate program must be available to all qualified candidates. ~~((An expedited professional certificate process shall be available for out-of-state teachers who have five or more years of successful teaching experience to demonstrate skills and impact on student learning.))~~

(c) Using the descriptions of practice related to the criteria for the professional certificate, as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval, the professional certificate program shall be developed by a college ((~~for~~)), university ((~~for educational service district~~)) and its professional education advisory board. Additional agencies may participate in the development of the program if the college ((~~for~~)), university ((~~for educational service district~~)) and professional education advisory board so choose.

(d) Each program shall consist of:

(i) A preassessment seminar which considers input from the candidate's "professional growth team" (WAC 181-78A-505), the candidate's past experience, the context in which he/she teaches, information from past annual evaluations if the individual chooses, the candidate's personal and professional goals, his/her self-evaluation, and evidences of the candidate's impact on student learning.

The seminar will culminate in preparation and approval of the candidate's individual professional growth plan designed to provide the candidate with the knowledge and skills needed to demonstrate successfully the standards and criteria required by WAC 181-78A-540.

A representative of the college/university and the candidate shall develop the professional growth plan to be reviewed and agreed upon after input from and consultation and "collaboration" (WAC 181-78A-010(9)) with his/her "professional growth team" (WAC 181-78A-010(10)).

The individual professional growth plan shall be based on:

(A) An analysis of the instructional context and teaching assignment(s) to determine strategies which the teacher should use to achieve a positive impact on student learning.

(B) An assessment of the candidate's ability to demonstrate successfully the professional certificate standards and criteria.

(C) Specifications of assistance and instructional components needed and any required course work.

(ii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "effective teaching" as defined in WAC 181-78A-540(1).

(iii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "professional development" as defined in WAC 181-78A-540(2).

(iv) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to professional contributions as defined in WAC 181-78A-540(3).

(v) A culminating seminar in which the candidate presents his/her final documentation and evidence of profes-

sional certificate level knowledge, skill and performance; positive impact on student learning; identification of future goals and professional/career interests; and specification of areas for continuing education and development. The candidate must provide multiple forms of evidence which shall include, but are not limited to, the descriptions of practice related to the criteria for the professional certificate as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval.

(vi) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for appropriate assistance and instruction.

(vii) No limits shall be placed on the number of times a candidate with a valid residency certificate may participate in the culminating seminar.

(2) Principal/program administrator.

(a) To be eligible to apply for enrollment in a professional certificate program, a candidate shall hold a contract as a principal, assistant principal, or program administrator in a public school or professional educator standards board-approved private school.

(b) The professional certificate program must be available to all qualified candidates.

(c) Using the six knowledge and skills standards, and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan shall be based on an assessment of the candidate's ability to demonstrate six standards at the professional certificate benchmark level (WAC 181-78A-270 (2)(b)), performance evaluation data, and an analysis of the administrative context and assignment.

(ii) Formalized learning opportunities, past and current experience, professional development opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards as defined in WAC 181-78A-270 (2)(b).

(iii) A final presentation to a panel that includes experienced administrators, during which the candidate provides evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; and a professional growth plan that includes the identification of future goals and professional/career interests as well as a five-year plan for professional development designed to meet the requirements for certificate renewal.

(e) Candidates who do not successfully complete a final presentation shall receive an individualized analysis of

strengths and weaknesses and a plan for assistance, and shall be allowed additional opportunities to present evidence pertaining to benchmarks not previously met.

(3) Educational staff associate (ESA) - school counselor, school psychologist, school social worker.

(a) To be eligible for enrollment in a professional certificate program, a candidate shall be employed in his/her ESA role in a public school, a professional educator standards board-approved private school, or state agency providing educational services for students.

(b) The professional certificate must be available to all qualified candidates.

(c) Using the knowledge and skills standards in WAC 181-78A-270 (5), (7), and (9), and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) ~~(A preassessment)~~ An entry seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with the ESA candidate's professional growth team (WAC 181-78A-010 (10)(c)) or the professional education advisory board (PEAB). The individual's professional growth plan shall be based on an assessment of the candidate's ability to demonstrate the standards at the professional certificate benchmark level in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

(ii) Formalized learning opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards in the specific ESA role as defined in WAC 181-78A-270 (5), (7), or (9).

(iii) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill, and performance; positive impact on student learning; and specification of areas for continuing education and development.

(e) The candidate will present his/her portfolio to the professional education advisory board (PEAB) or the professional growth team (PGT) who will make a recommendation to the university program administrator/designee regarding the extent to which the candidate meets the professional certificate standards.

(f) Candidates who demonstrate they meet all standards and certification requirements pursuant to WAC 181-79A-150 will be recommended by the university program administrator/designee for the professional certificate.

(g) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for assistance.

~~((f))~~ (h) No limit shall be placed on the number of times a candidate with a valid residency certificate may enroll in the culminating seminar.

**WSR 07-16-050
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed July 25, 2007, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-096.

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

Hearing Location(s): Red Lion Hotel, Yakima Center, 607 East Yakima Avenue, Yakima, WA 98901, on September 12, 2007, at 8:30 a.m.

Date of Intended Adoption: September 12, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236 [47236], Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by September 9, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by September 9, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes the middle level math/science endorsement into two separate endorsements - middle level math and middle level science.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

July 20, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-08-030, filed 3/27/07, effective 4/27/07)

WAC 181-82A-202 Certificate endorsements. Teacher certificates shall be endorsed as follows:

(1) **All levels:**

- (a) Bilingual education.
- (b) Designated arts: Dance.
- (c) Designated arts: Theatre arts.
- (d) Designated arts: Music: Choral, instrumental or general.
- (e) Designated arts, visual arts.
- (f) Designated world languages.
- (g) English as a second language.
- (h) Health/fitness.
- (i) Library media.
- (j) Reading.
- (k) Special education.
- (2) **Early childhood:**
 - (a) Early childhood education.
 - (b) Early childhood special education.
- (3) **Elementary education.**
- (4) **Middle level:**
 - (a) Middle level—Humanities.
 - (b) Middle level—Math(~~science~~).
 - (c) Middle level—Science.
- (5) **Secondary level:**
 - (a) Designated science: Biology.
 - (b) Designated science: Chemistry.
 - (c) Designated science: Earth and space science.
 - (d) Designated science: Physics.
 - (e) Designated career and technical education: Agriculture education, business education, family and consumer sciences education, marketing education, and technology education.
 - (f) English language arts.
 - (g) History.
 - (h) Mathematics.
 - (i) Science.
 - (j) Social studies.
 - (k) Traffic safety.

WSR 07-16-051
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 25, 2007, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-096 [06-23-146].

Title of Rule and Other Identifying Information: WAC 181-82A-206 Endorsement program approval and 181-82A-215 Implementation policies.

Hearing Location(s): Red Lion Hotel, Yakima Center, 607 East Yakima Avenue, Yakima, WA 98901, on September 12, 2007, at 8:30 a.m.

Date of Intended Adoption: September 12, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236 [47236], Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by September 9, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by September 9, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Specifies the process for the professional educator standards board reapproval of educator program based on the newly approved endorsement competencies.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

July 20, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-24-083, filed 12/5/06, effective 1/5/07)

WAC 181-82A-206 Endorsement program approval.

(1) The professional educator standards board shall approve endorsement programs at Washington colleges and universities pursuant to the requirements of this chapter. Only colleges and universities with professional educator standards board-approved residency certificate teacher preparation programs are eligible to apply for approval to offer endorsement programs.

(2) The professional educator standards board will establish performance/competency criteria for obtaining an endorsement. Revision in adopted endorsement competencies may occur only as approved by the professional educator standards board. Each college or university desiring to seek reapproval of an endorsement program for which the competencies have been revised and adopted by the professional educator standards board shall (~~submit a proposal to the board that includes the following information:~~) apply for approval per WAC 181-82A-215.

(a) A narrative statement that describes changes to the endorsement program based on the revised competencies; and

(b) A description of assessment strategies that will be used to assess candidates' capacity/performance related to the revised competencies.

(3) The professional educator standards board shall reapprove programs, based upon revised competencies, for a length of time to coincide with the date of the next regularly scheduled site visit/program review.

(4) The superintendent of public instruction will publish, and make available, competencies for all endorsement areas identified in chapter 181-82A WAC.

(5) Each college or university desiring to establish a new endorsement program shall submit a proposal to the professional educator standards board that includes the following information:

(a) Identification of strategies that will be used to assess candidates' capacity/performance related to the competencies;

(b) A description of evidences that candidates will provide to document their positive impact on student learning in the endorsement area; and

(c) A description of the assessment system by which candidate performance, relative to the competencies, will be aggregated, analyzed, and used for program improvement.

(6) The professional educator standards board shall approve new endorsement programs for a length of time to coincide with the date of the next regularly scheduled site visit/program review.

(7) The professional educator standards board shall determine the schedule and process for endorsement program reviews.

(a) Each institution shall submit endorsement programs for review when requested by the professional educator standards board to ensure that the endorsement programs meet the competencies and to provide assessment data relative to candidate performance.

(b) The professional educator standards board shall approve endorsement programs, based upon program review, for a maximum of five to seven years.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-82A-215 Implementation policies. (1) ~~((In order to offer an endorsement program after August 31, 2003, the timeline by which the colleges and universities will be in full compliance with the approval standards in this chapter shall be reviewed and approved. In order to offer an endorsement program after August 31, 2004, the endorsement program shall be reviewed and approved under the approval standards of this chapter. All teachers who obtain endorsements after September 1, 2003, shall meet the requirements in this chapter. Provided, that colleges and universities may permit an individual enrolled in programs in Washington state to obtain endorsements under the requirements in chapter 181-82 WAC, if the individual completes the endorsement program on, or before August 31, 2005, and the college or university verifies endorsement program completion on or before December 31, 2005. Provided further, that the professional educator standards board or its designee may waive this requirement on a case-by-case basis.~~

(2)) In order to maintain an endorsement for which revised competencies have been adopted by the professional educator standards board after January 1, 2009, each college or university shall seek reapproval per WAC 181-82A-206(2) according to the timeline adopted and published by the professional educator standards board.

(2) All individuals seeking to obtain endorsements after September 1, 2009, shall meet the requirements adopted by the professional educator standards board after January 1, 2007. Prior to September 1, 2009, individuals shall meet endorsement and testing requirements identified on the timeline adopted and published by the professional educator standards board.

(3) Teachers shall be required to obtain a minimum of one endorsement.

WSR 07-16-052

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed July 25, 2007, 3:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-098.

Title of Rule and Other Identifying Information: WAC 181-79A-145 Levels and validity of certificates, 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements, and 181-79A-257 Out-of-state candidates.

Hearing Location(s): Red Lion Hotel, Yakima Center, 607 East Yakima Avenue, Yakima, WA 98901, on September 12, 2007, at 8:30 a.m.

Date of Intended Adoption: September 12, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by September 9, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by September 9, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows individuals to count a school counselor national board for professional teaching standards certificate in lieu of the school counselor professional certificate and properly aligns the timelines of the professional certificate.

Reasons Supporting Proposal: This is consistent with other state policy for national board certificates and teacher professional certificates.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

July 20, 2007
Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial/residency and continuing/professional certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply.

(2) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) An individual who completes a national board certification assessment but does not earn national board certification, may use that completed assessment to renew the residency certificate for two years.

(iv) Individuals who complete the requirements in their school district professional growth plan may use that com-

pleted plan to maintain the continuing certificate or renew the professional certificate.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(d) Renewals based on conditions other than those described in WAC 181-79A-250 (2)(a) and (b) may be appealed to the professional educator standards board, or its designated appeals committee. The following conditions apply to such appeals:

(i) Individuals who appeal shall present a rationale and evidence to support their request to have their residency certificates renewed.

(ii) The professional educator standards board, or its designated appeals committee, in making its decision shall determine the length of the renewal and may establish specific conditions (such as course work requirements) as prerequisites for the reissuance of the residency certificate.

(3) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

(4) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued. An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards outlined in WAC 181-78A-540:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in RCW 28A.415.023.

(I) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;

(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

(IV) Is specifically required to obtain advanced levels of certification; or

(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five year periods for individuals employed as a principal, assistant principal or program administrator in a public school or professional educator standards board-approved private school by:

(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning;

(III) Relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b);

(IV) Explicitly connect to the evaluation process;

(V) Reflect contributions to the school, district, and greater professional community; and

(VI) Identify areas in which knowledge and skills need to be enhanced.

(B) Verification of satisfactory performance evaluations for the five year periods; and

(C) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or professional educator standards board-approved private school may have their professional certificate renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.

(c) School counselors, school psychologists, or school social workers.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a

public school, professional educator standards board-approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:

- (I) Emphasize continuous learning;
- (II) Positively impact student learning; and
- (III) Reflect contributions to the school, district, and greater professional community; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or professional educator standards board-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(C) Provided that, a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national board certificate, whichever is greater.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Initial and residency certificates. The initial certificate (residency certificate for teachers after August 31, 2000,) shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who passes the WEST-B and meets one of the following:

- (a) Qualifies under provisions of the interstate compact.
- (b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter and has completed a state approved preparation program at a regionally accredited college or university in the professional field

for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4).

(c) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) or (b) of this subsection, an initial/residency certificate shall be issued to a candidate who holds an appropriate degree from a regionally accredited college or university and also holds or has held a certificate in the role, comparable to an initial/residency certificate, issued by another state and has practiced at the P-12 level in that respective role outside the state of Washington for three years: Provided further, That the teacher preparation program through which the teacher earned their teaching certificate included a supervised classroom-based internship.

(d) Provided further, That if a candidate for a teacher's certificate would qualify under (b) of this subsection, but for the fact that he or she has completed an approved teacher preparation program in a subject area that is not listed in chapter 181-82 WAC as a Washington endorsement, the candidate shall be issued a certificate that bears the out-of-state area of program preparation. It shall be noted on the certificate so issued that the subject area listed is not a Washington state endorsement.

(e) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(f) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

(2) Continuing certificate. The continuing certificate shall be issued to administrators and educational staff associates on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

(3) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course

work or certification activities are equivalent to that college/university's approved program.

AMENDATORY SECTION (Amending WSR 07-12-006, filed 5/24/07, effective 6/24/07)

WAC 181-79A-145 Levels and validity of certificates.

Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has lapsed or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors, school psychologists, and school social workers no later than September 1, 2005.

(b) ~~((The residency certificate for principals, program administrators, and educational staff associates is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250 (2)(b) and (c).~~

~~((e)))~~ The first issue of a residency certificate for teachers employed in a school district or state agency that provides educational services for students or a state approved private school shall be valid until the holder ~~((is no longer on provisional status))~~ has completed two successful years of service in a teaching role. When the teacher ~~((for the first time in their career))~~ completes ((provisional status)) two successful years of service in a teaching role, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the teacher must earn a professional certifi-

cate or meet residency renewal requirements under WAC 181-79A-250 (2)(a).

~~((d))~~ The first issue of a residency certificate for teachers employed in a state approved private school shall be valid until the holder has completed two years of successful teaching. When the teacher for the first time in their career completes two years of successful teaching, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the teacher must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(a).

~~((e)))~~ (c) The first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two successful years of service in the role. When the principal, program administrator, or educational staff associate ~~((for the first time in their career))~~ completes two years of successful service in the role in a school district, state approved private school, or state agency, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(b) and (c).

~~((f)))~~ (d) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors, school psychologists, and school social workers beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Provided further that a professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language/culture certificates: The first peoples' language/culture certificate will be issued beginning in January 2007. The first peoples' language/culture certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

WSR 07-16-053

PROPOSED RULES

**PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed July 25, 2007, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-008.

Title of Rule and Other Identifying Information: WAC 181-78A-319 Program approval requirements—Field experience for school social workers.

Hearing Location(s): Red Lion Hotel, Yakima Center, 607 East Yakima Avenue, Yakima, WA 98901, on September 12, 2007, at 8:30 a.m.

Date of Intended Adoption: September 12, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by September 9, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by September 9, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Individuals who hold a master's degree in social work, but have not completed a school social work certification program, will need to complete 300 hours of volunteer experience in school social work in a K-12 setting under the guidance of a certified school social worker.

Reasons Supporting Proposal: Social workers complete 900 - 1000 hour internship as part of their MSW degree program. Many of the post-MSW candidates seeking certification to work in school have completed a previous internship, or have since gained actual paid work experience, in serving children, youth and families.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

July 20, 2007

Nasue Nishida

Policy and Research Analyst

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

WAC 181-78A-319 Program approval requirement—Field experience for school social workers. Approved school social worker preparation programs shall require all candidates to complete a supervised, advanced level internship that is in compliance with the most current accreditation standards of the Council of Social Work Educa-

tion, with a minimum of 300 hours in a school setting, providing on-the-job professional service. Supervision shall be provided by a site supervisor or faculty field supervisor who holds current Washington state certification as a school social worker and has a minimum of three years of professional experience in this role. Supervision, which may include on-site visits, will be provided for a minimum of one hour per week until the internship is completed.

If an individual has not completed an approved school social worker program, the individual must hold a master's degree in social work from a regionally accredited university which has a council on social work education (CWSE) accredited program and complete 300 hours of volunteer experience with a certified school social worker in a K-12 school setting. When the individual has obtained verification of that experience signed by a school district administrator, the individual shall complete the required course in social work and school law through a regionally accredited university approved to offer a school social work certification program. Upon completion of all requirements, the individual may be recommended by the university for certification.

WSR 07-16-087

PROPOSED RULES

GAMBLING COMMISSION

[Filed July 30, 2007, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-008.

Title of Rule and Other Identifying Information: New chapter 230-21 WAC, Public disclosure.

Hearing Location(s): Hilton Garden Inn, 401 East Yakima Avenue, Yakima, WA 98901, (509) 494-5004, on September 14, 2007, at 9:30 a.m.

Date of Intended Adoption: September 14, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by September 1, 2007, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. This file is to provide notification that rules regarding public disclosure are under review and are now being rewritten in plain English.

Overview of chapter 230-21 WAC, Public disclosure rules changed

SUBSTANTIVE RULE CHANGES:

Post-1/1/2008 WAC 230-21-005 Purpose.

Pre-1/1/2008 WAC 230-60-001 Purpose.

This rule was amended to change the RCW reference number. When the RCW was recodified the number our rule referred to was no longer in use.

REPEALER**Pre-1/1/2008 WAC 230-60-010 Definitions.**

This rule was repealed to reflect the current Public Records Act, chapter 42.56 RCW.

Post-1/1/2008 230-21-005 Types of public records, location, and times available.**Pre-1/1/2008 WAC 230-60-025 Public records available—Location—Time available.**

The rule needed to be updated to reflect the current version of the Public Records Act. References to chapter 42.17 RCW and chapter 230-60 WAC are removed and replaced by references to chapter 42.56 RCW. Also, the reference to non-disclosure of "investigative procedures," is eliminated. Availability of records is clarified.

Post-1/1/2008 WAC 230-21-015 Public records officers.**Pre-1/1/2008 WAC 230-60-030 Public records officers.**

The only change to the rule is to update a citation to the Public Records Act.

REPEALER**Pre-1/1/2008 WAC 230-60-035 Office hours.**

The current rule is repetitive and needs to be repealed. The agency's normal office hours are stated in WAC 230-21-005.

Post-1/1/2008 WAC 230-21-020 Requests for public records.**Pre-1/1/2008 WAC 230-60-040 Requests for public records.**

The rule is updated to reflect compliance with the current Public Records Act, chapter 42.56 RCW. Requests for public disclosure no longer require the requestor to refer to the "current commission record index," so that subpart has been eliminated from the rule.

Post-1/1/2008 WAC 230-21-015 Public records officers.**Pre-1/1/2008 WAC 230-60-030 Public records officers.**

The only change to the rule is to update a citation to the Public Records Act.

REPEALER**Pre-1/1/2008 WAC 230-60-045 Copying.**

We are repealing WAC 230-60-045, rule governing fee for copying public records because it is covered under the Public Records Act, RCW 42.56.120.

REPEALER**Pre-1/1/2008 WAC 230-60-050 Exemptions.**

Staff is proposing to repeal WAC 230-60-050 (1) and (2), sections covering exemptions for public records and the agency requirements for denying requests based on exemptions because they are established in the Public Records Act, RCW 42.56.070.

REPEALER**Pre-1/1/2008 WAC 230-60-065 Records index.**

Staff is proposing to repeal WAC 230-60-065, which reiterates the agency's requirement to maintain a system of

indexing for the dissemination of public records because it is covered in the Public Records Act, RCW 42.56.070(5).

REPEALER**Pre-1/1/2008 WAC 230-60-100 Interpretive and policy statements.**

Staff repealed WAC 230-60-100 Interpretive policy and policy statement, because the information it covers is in the Administrative Procedure Act, RCW 34.05.230.

Reasons Supporting Proposal: To make our rules manual more user friendly. To make rules easier to find and understand.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impacts statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

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

July 30,2007

Susan Arland

Rules Coordinator

Chapter 230-21 WAC**PUBLIC DISCLOSURE****NEW SECTION**

WAC 230-21-001 Purpose. The purpose of this chapter is to ensure the Washington state gambling commission complies with the Public Records Act, chapter 42.56 RCW.

NEW SECTION

WAC 230-21-005 Types of public records, location, and times available. All public records of the commission are available for public inspection and copying unless the law provides otherwise. The location of the records and times they are available are:

(1) **Location of public records** - All public records of the commission are located at our administrative office in Lacey.

(2) **Times available** - All public records are available for inspection and copying during normal office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Unless someone makes in advance a written

request to view them, public records may not be available during the period 12:00 noon to 1:00 p.m.

NEW SECTION

WAC 230-21-010 Public records officers. The director designates the public records officers in charge of our public records. These persons must be located in our main administrative offices. Public records officers are responsible for:

- (1) Implementing our rules regarding the release of public records;
- (2) Coordinating the staff of the commission in this regard;
- (3) Maintaining, keeping current, and publishing an index of all agency records as chapter 42.56 RCW requires; and
- (4) Generally insuring staff complies with chapter 42.56 RCW.

NEW SECTION

WAC 230-21-015 Requests for public records. According to chapter 42.56 RCW, members of the public may inspect, copy, or get copies of public records if they comply with the following procedures:

- (1) Make a request in writing on the form we require and have available at our administrative office; and
- (2) Present the form at our administrative office during normal office hours to commission staff designated to receive requests, or send it by mail; and
- (3) Commission staff must assist the public in identifying the appropriate public record requested; and
- (4) If a person is not specifically authorized by law to obtain lists of names of individuals from public records, that person must complete a statement agreeing not to release or use the public record information for commercial purposes.

NEW SECTION

WAC 230-21-020 Denying public disclosure requests. With all denials of requests for public records, we provide a written statement explaining the reason for the denial. The statement includes:

- (1) The specific exemption that authorizes us to withhold the record; and
- (2) A brief explanation of how the exemption applies to the record we withheld.

NEW SECTION

WAC 230-21-025 Protection of public records. We are a law enforcement and regulatory agency and a licensing agency.

(1) Individuals may inspect the public records at the administrative offices where we file and maintain the records. An authorized member of our staff must accompany and observe the inspection.

(2) We will deny inspection and withdraw the records if the individual inspecting the records:

- (a) Is damaging, altering, or substantially disorganizing them; or

- (b) Attempts to remove them; or
- (c) Is excessively interfering or will unduly interfere with our other essential functions.

WSR 07-16-088 PROPOSED RULES GAMBLING COMMISSION

[Filed July 30, 2007, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-058.

Title of Rule and Other Identifying Information: New chapter 230-16 WAC, Manufacturers, distributors and gambling service suppliers.

Hearing Location(s): Hilton Garden Inn, 401 East Yakima Avenue, Yakima, WA 98901, (509) 494-5004, on September 14, 2007, at 9:30 a.m.

Date of Intended Adoption: September 14, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by September 1, 2007, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. This filing is to provide notification that rules regarding manufacturers, distributors and gambling service suppliers are under review and are now being rewritten in plain English.

Overview of chapter 230-16 WAC, Manufacturer, distributor, and gambling service supplier rules changed

SUBSTANTIVE RULE CHANGES:

Post-1/1/2008 WAC Manufacturers, distributors, and gambling service suppliers must comply with all requirements.

Pre-1/1/2008 WAC 230-30-090 All devices must comply with rules.

We changed this requirement for manufacturers and distributors to include gambling service suppliers as well. We also recommended expanding the requirement from "devices" to all equipment and services which the licensees offer.

REPEALER

Pre-1/1/2008 WAC 230-12-210 Prices charged by manufacturers, distributors and operators for goods and services not to be fixed by agreement.

Pre-1/1/2008 WAC 230-12-225 Repair or service not to be conditioned upon exclusive supply arrangement.

Pre-1/1/2008 WAC 230-12-230 Agreements restricting freedom to buy and sell—Prohibited.

Pre-1/1/2008 WAC 230-12-250 No division of territories allowed.

We repealed these rules because we have removed many of the other restraints on credit and sales relationships between manufacturers and distributors. We believe that we overlooked these rules during that previous rules package we repealed during the budget streamlining process.

Post-1/1/2008 WAC 230-16-050 Punch board and pull-tab quality control program.

Pre-1/1/2008 WAC 230-30-030 Punch board and pull-tab quality control program—Special inspections, defective devices, reimbursements, and fees.

We have removed the penalty stated in the current rule of "up to one hundred dollars." We believe that the amount of the penalty could be less or more depending on given circumstances. This change makes the new rule consistent with others where we have removed penalties to allow more discretion in the enforcement of the rule.

Post-1/1/2008 WAC 230-16-065 Approvals needed before offering progressive jackpot pull-tab series.

Pre-1/1/2008 WAC 230-30-025 Progressive jackpot pull-tab series—Definitions—Restrictions—Operating procedures.

We recommend placing the requirement explicitly in the rule. It's always been implied that manufacturers and distributors requesting our review have to pay ahead, but, for the sake of clarity, we want it stated outright.

Post-1/1/2008 WAC 230-16-100 Seal card pull-tab series.

Pre-1/1/2008 WAC 230-30-034 Seal card pull-tab series—Definitions—Restrictions.

The post-1/1/2008 rule on bonus and step-up flares, WAC 230-16-060 already sets out the requirements for what information must be included on a bonus flare, so we removed the cross reference with that rule and the requirement from this rule.

Post-1/1/2008 WAC 230-16-105 Disposable bingo cards.

Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

We propose removing the phrase "shall be manufactured and controlled using processes and procedures that ensure integrity of the activity and facilitates regulation by the commission" from this rule. If manufacturers follow all of our rules in the construction of disposable bingo cards, that ensures integrity; whereas, in other manufacturer processes, such as those for chips, we don't lay out as many rules and manufacturers must make their own arrangements for ensuring integrity and facilitating regulation.

Post-1/1/2008 WAC 230-16-110 Duplicate bingo cards.

Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

We propose removing the "immediately" restriction from subsection (3)(d) and (e) of the current rule. Manufacturers cannot "immediately" do reimburse operators and us if they must wait until we validate the claim for damage caused by duplicate bingo cards.

Post-1/1/2008 WAC 230-16-120 Bingo card manufacturing control system.

Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

In this rule, we changed the wording that is used. We refer in the current rule to "audit systems" which preserve the integrity of the cards produced. We recommend changing this phrase to "control systems" to eliminate the potential confusion that the accounting meanings of the word "audit" might bring.

A second change is also necessary in this rule: All references to keno bingo are removed since we no longer authorize keno bingo.

Post-1/1/2008 WAC 230-16-125 Disposable bingo card packing slip and package label.

Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

We have changed the provision for one percent error of margin in each shipping unit to a more positive statement that we "prohibit shipping of marketing units with a margin of error greater than one percent." The restatement makes the restriction much more easily read.

Post-1/1/2008 WAC 230-16-130 Disposable bingo card sales.

Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

In the new rule, we recommend moving the citation of RCW 9.46.0356 into the statutory authority of the rule. RCW 9.46.356 discusses bingo played without a license.

We also recommend removing the language about Class A, B, and unlicensed bingo games from the rule. We don't restrict sales of partial containers to these classes of licensees and therefore we think it's confusing to mention them here.

Post-1/1/2008 WAC 230-16-150 Control system for electronically generated bingo cards.

Pre-1/1/2008 WAC 230-20-106 Electronically generated bingo card method of receiving bingo income.

In this rule, we propose changing the wording that is used. We refer in the current rule to "audit systems" which preserve the integrity of the cards produced. We recommend changing this phrase to "control systems" to eliminate the potential confusion that the accounting meanings of the word "audit" might bring.

Post-1/1/2008 WAC 230-16-155 Electronic card facsimiles.

Pre-1/1/2008 WAC 230-40-070 Licensee to furnish all cards, chips and other services.

We recommend moving the requirements for manufacturers of electronic card facsimiles into the new manufacturers, distributors, and gambling service suppliers chapter. This change places the rule in a more logical spot in the overall Title 230 and prevents manufacturers from having to find these requirements in another chapter.

We also recommend including language about independent certification and WSGC certification in the rule. Once again, this places the information in a more logical location and it aligns the rule with current enforcement practice.

Post-1/1/2008 WAC 230-16-165 Purchasing I.D. stamps.

Pre-1/1/2008 WAC 230-08-017 Control of gambling equipment—Use of identification and inspection services stamps.

We recommend removing the phrase "Or commission staff may attach" from the I.D. stamp rule for two reasons:

1. It seems obvious; and
2. Because we don't tell ourselves what we can do.

We also recommend removing "They must submit the appropriate fee" from the rule language. The word "purchase" implies a fee must be paid and, thus, we reduce redundancy.

Post-1/1/2008 WAC 230-16-155 Electronic card facsimiles.

Pre-1/1/2008 WAC 230-08-017 Control of gambling equipment—Use of identification and inspection services stamps.

In the post-1/1/2008 rule we added amusement games and electronic bingo card daubers to the list of items requiring I.D. stamps. This change will eliminate duplication of requirements in other rules and places the responsibility for placing I.D. stamps appropriately on the manufacturers which is where we enforce it.

Post-1/1/2008 WAC 230-16-185 Accounting records for manufacturers and distributors.

Pre-1/1/2008 WAC 230-08-025 Accounting records to be maintained by distributors and manufacturers.

As we have done in several other rules, we recommend adding the definition of "reconcile" to the rule in subsection (3)(d) to mean that the manufacturer or distributor must compare the two balances, resolve any differences, and document the comparison and the differences in writing.

Generally accepted accounting principles (GAAP) already requires them to record all cash receipts in an original book of entry, for example, a sales journal, a check register, or a separate cash receipts journal. However, we are spelling out explicitly how they must maintain these records.

Post-1/1/2008 WAC 230-16-190 Sales invoices for manufacturers and distributors.

Pre-1/1/2008 WAC 230-08-025 Accounting records to be maintained by distributors and manufacturers.

We removed the stated penalty from this rule as we did earlier in WAC 230-16-015. The current rule states, "we may assess a fee of up to fifty dollars per incomplete invoice." However, our enforcement experience tells us that the amount could be more or less, given the circumstances of the infraction.

We also propose getting rid of the commission approval for sales invoices. We explicitly tell them what is required in the sales invoice, there seems to be no need for us to recheck the format and issue an approval.

Post-1/1/2008 WAC 230-16-200 Sales journals for manufacturers and distributors.

Pre-1/1/2008 WAC 230-08-025 Accounting records to be maintained by distributors and manufacturers.

We removed language about "Sales and leases of general purpose equipment and supplies indirectly related to gambling activities" from the rule. This information is already a part of the accounting records manufacturers and distributors must keep and eliminating it here reduces redundancy within the rules.

Reasons Supporting Proposal: To make our rules manual more user friendly. To make rules easier to find and understand.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

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

July 30, 2007

Susan Arland

Rules Coordinator

Chapter 230-16 WAC

MANUFACTURER, DISTRIBUTOR, AND GAMBLING SERVICE SUPPLIER RULES

GENERAL RULES FOR MANUFACTURERS, DISTRIBUTORS, AND GAMBLING SERVICE SUPPLIERS

NEW SECTION

WAC 230-16-001 Manufacturers, distributors, and gambling service suppliers must comply with all requirements. Manufacturers, distributors, and gambling service suppliers and their licensed representatives must ensure that their business operations, services, and the gambling equipment they manufacture, distribute, or sell comply with chapter 9.46 RCW and Title 230 WAC.

NEW SECTION

WAC 230-16-005 Transporting, displaying, and selling gambling equipment at trade shows and conventions. Licensed manufacturers and distributors selling gambling equipment authorized by state or federal law may transport, display, and accept orders for the sale or lease of their products at trade shows and conventions as long as:

- (1) They notify us in writing of the nature, date, and location ten days before the trade show or convention; and
- (2) Their target audience of the trade show or convention are operators of authorized gambling activities in Washington; and

(3) They deliver all gambling equipment purchased or leased at the trade show or convention to the operator's authorized location.

PUNCH BOARD AND PULL-TAB REQUIREMENTS

NEW SECTION

WAC 230-16-010 Manufacturers, distributors, and gambling service suppliers must comply with punch board and pull-tab rules. Manufacturers, distributors, and gambling service suppliers and their representatives must comply with WAC 230-14-030, 230-14-080, and 230-14-085.

NEW SECTION

WAC 230-16-015 Punch board and pull-tab sales restrictions. (1) Manufacturers, distributors, and manufacturer and distributor representatives must sell or distribute punch boards, pull-tabs, pull-tab dispensers, or related equipment only to other distributor, distributor representative, or punch board and pull-tab licensees.

(2) Distributor and distributor representatives must buy punch boards, pull-tabs, pull-tab dispensers, or related equipment only from other manufacturer, distributor, or distributor representatives.

(3) Manufacturers must not sell any punch board or pull-tab series unless the winning punches or pull-tabs are randomly distributed and mixed among all other punches or pull-tabs in that board or series.

(4) Sales promotion statements, demonstrations, or implications must not imply:

(a) One portion of a pull-tab series contains more winners than other portions; or

(b) Some series sell more pull-tabs before winning pull-tabs are reached in the distribution.

NEW SECTION

WAC 230-16-020 Sales to Indian tribes. Licensed manufacturers, distributors, and gambling service suppliers may sell to Indian tribes operating Class II activities that are legal under federal law.

NEW SECTION

WAC 230-16-025 Punch board construction. Manufacturers must design, construct, and manufacture punch boards to eliminate any patterns between punch boards or portions of punch boards from which someone could determine the location or approximate location of winning punches.

(1) Manufacturers must randomly distribute and mix winning punches among all other punches in the punch board. To ensure no patterns exist, manufacturers must:

(a) Mix the form or permanent number sheets before cutting; and

(b) Thoroughly mix all strips after the strips have been crimped and before inserting them into the punch boards; and

(c) When filling punch boards, change the process for filling each separate set to prevent any pattern between sets of punch boards; and

(d) Include no more than eight punch boards from one set of boards in any case shipped to Washington.

(2) Manufacturers must make serial numbers on punch boards nonsequential to ensure no pattern exists which would allow someone to track the boards through serial numbers.

(3) Manufacturers must:

(a) Guarantee that all numbers or symbols listed as winners on the flare are present in the board; and

(b) Seal all punch boards to prevent anyone from using any method, including light or markings, to discover the number or symbol on a punch before punching it out of the board; and

(c) Not allow punch boards with taped sides, corners, or edges.

(4) Manufacturers may place stickers on the back of the punch boards naming additional numbers or symbols they guarantee to be in the board. The additional numbers or symbols must not exceed five percent of the total punches in the board, unless the manufacturer receives written permission from us.

(5) Punch boards are exempt from secondary verification code requirements.

NEW SECTION

WAC 230-16-030 Step up punch board construction. Manufacturers of step up boards must:

(1) Completely seal all cards, strips, or punches to prevent winner identification before the punch is removed from the board; and

(2) Thoroughly mix all cards, strips, or punches that contain the winners to ensure that no pattern of winners exists; and

(3) Have at least twenty-five different face sheets for use on boards with seals covering the winners; and

(4) Randomly distribute face sheets during the manufacturing process.

NEW SECTION

WAC 230-16-035 Pull-tab construction. Manufacturers must:

(1) File their label or trademark with us before printing pull-tabs; and

(2) Construct, glue, seal, or band pull-tabs to prevent the discovery of the winning numbers, symbols, or set of symbols, or game protection before the pull-tab is dispensed or opened by use of:

(a) Markings; or

(b) Difference in size; or

(c) Paper fiber; or

(d) Color; or

(e) Printing; or

(f) Any other method; and

(3) Construct all pull-tabs so that, when offered for sale to the public, they are virtually opaque and free of security defects detectable by:

(a) High intensity lights; or

- (b) Peeking; or
- (c) Any other method; and
- (4) Construct all pull-tabs, except banded and latex covered pull-tabs, using a two or three ply paper stock construction; and
- (5) Make winning and losing sheets for each game using the same paper stock; and
- (6) For all progressive pull-tab series, make winning and losing sheets for each game using the same paper stock at the same time as the series; and
- (7) Conspicuously print the series number and their name, label, or trademark on the pull-tab so both are readily visible before opening the pull-tab; and
- (8) Perforate or clean-cut the openings centered over the symbols or numbers to allow players to easily open pull-tabs while preventing pull-tabs from opening prematurely in normal handling. Perforate on both horizontal lines of the opening and either perforate or clean-cut the vertical or elliptical line where players grasp the tab for opening after bending the edge of a ticket down. Manufacturers may include information to show players how to open the pull-tab or remove the latex to determine the symbols or numbers; and
- (9) Not repeat series numbers used on that same manufacturer's form number within a three-year period.

NEW SECTION

WAC 230-16-040 Winner protection and secondary verification codes. (1) Each manufacturer must create methods of winner protection for each punch board and pull-tab series, except spindle-type pull-tab series. This protection must allow operators, us, and other law enforcement personnel to distinguish opened winning pull-tabs from nonwinning, altered, or forged pull-tabs, or pull-tabs from another series. Manufacturers must:

- (a) Establish a primary winner protection for each pull-tab series; and
- (b) Use special numbers, colors, designs, ink, or any combination of these to create the primary winner protection; and
- (c) Completely hide the protection from view and ensure it is undetectable before players open the pull-tabs; and
- (d) Provide a written explanation of each winner protection method to us. The written explanation must include details and pictures, diagrams, or samples necessary to thoroughly explain the method; and
- (e) Notify us in writing of any changes to protection schemes; and
- (f) Use winner protection to identify winning pull-tabs after they have been purchased and opened and distinguish them from nonwinning pull-tabs.

(2) Pull-tabs that award prizes greater than twenty dollars must use a secondary verification code to prevent counterfeiting. We must approve all secondary verification methods before manufacturers use them within the state.

NEW SECTION

WAC 230-16-045 Defective punch boards, pull-tabs, or pull-tab dispensers. (1) If we determine that punch boards, pull-tabs, or pull-tab dispensers do not meet our

requirements, the director may order manufacturer(s) to recall all defective products and all similarly constructed or printed products.

(2) If the director orders a recall, we immediately notify the manufacturer of the:

- (a) Product to be recalled; and
 - (b) Reason for the recall; and
 - (c) Effective date of the recall; and
 - (d) Any other specific requirements.
- (3) We follow verbal notice with a written notification.
- (4) Immediately upon receiving oral notification, manufacturers must cease shipping affected product in the state and initiate actions to ensure complete compliance with the recall.
- (5) Manufacturers must notify all distributors within seventy-two hours of:
- (a) The items recalled; and
 - (b) The effective date of recall; and
 - (c) The arrangement for the prompt return of the defective items.
- (6) Once they've been notified, distributors must immediately stop sales and delivery of the product. We notify each licensed distributor, in writing, of:

- (a) The recall; and
 - (b) The effective dates; and
 - (c) The products involved; and
 - (d) Any special instructions.
- (7) Before any reintroduction of any recalled or similar item, the manufacturer must first submit the revised or reworked item to us for review, evaluation, and approval. We notify the manufacturer, in writing, of the approval or disapproval.

(8) The manufacturer must send a copy of the approval letter to distributors with the next five shipments of the reworked item.

(9) Manufacturers must reimburse distributors the actual cost the distributor paid for each punch board, pull-tab series, or pull-tab dispenser the director orders recalled. Manufacturers of recalled punch boards, pull-tab series, or pull-tab dispensers must compensate distributors for time and expenses incurred during a recall. Compensation must not exceed fifty cents per punch board or pull-tab series the distributor actually returned to the manufacturer or twenty-five dollars per pull-tab dispenser.

NEW SECTION

WAC 230-16-050 Punch board and pull-tab quality control program. To ensure the integrity of punch boards and pull-tab series, we maintain a quality control program. This program includes a level of inspection and evaluation we deem necessary to ensure punch boards and pull-tabs meet the standards of chapter 9.46 RCW and Title 230 WAC. Manufacturers must pay for administering this program. The program includes at least:

- (1) **Special inspections** - We may select any punch board or pull-tab series to examine in any manner for quality or integrity, including punching out or pulling all chances remaining on the board or series. Manufacturers must reimburse distributors or operators for unused games we select for

quality control testing purposes. We determine the reimbursement process. We may bill manufacturers for the cost of quality control investigations which exceed forty hours of our staff time.

(2) **Defective punch boards or pull-tab series** - When a punch board or pull-tab series is defective, operators must:

(a) Remove the board or series from play and notify us. We complete a quality control report which operators must use to return the board or series to the distributor or manufacturer; and

(b) Return punch boards or pull-tab series which have been opened, prepared for play, or placed out for play to the manufacturer or distributor; and

(c) Return defective or recalled boards or series which are unopened to the distributor or manufacturer without a quality control report.

(3) **Credits or reimbursements for defective punch boards or pull-tab series:**

(a) Manufacturers must reimburse distributors or operators for the cost of a replacement board or series which are returned under subsection (2) of this section; and

(b) Manufacturers may, at their discretion, reimburse operators for only actual net losses resulting from the play of a board or series because of its defect; and

(c) For credits and reimbursements for defective punch boards or pull-tab series, manufacturers or distributors:

(i) Must properly record all boards or series returned on a credit memo. WAC 230-16-190 explains requirements for credit memos; and

(ii) May reimburse operators for actual net losses. Manufacturers must keep adequate supporting documentation for all reimbursements.

(4) **Our fees to recover costs for defective punch boards or pull-tab series** - We may assess a fee for each defective punch board or pull-tab series sold to operators for which we complete a quality control report. We do not assess this fee beyond the fifth series of a particular form number with the same defect.

NEW SECTION

WAC 230-16-055 Bonus or step up flares. In addition to other flare requirements, manufacturers of step up punch board and bonus pull-tab flares must:

(1) Develop and use at least twenty-five randomly distributed versions of flares for each form number of a bonus series; and

(2) Construct flares which contain prizes determined after players receive the corresponding winning chance so that it is impossible to determine the prizes before removing the prize covering; and

(3) Label the middle or advance level with "Advance Section" in at least one-quarter inch lettering; and

(4) Label the top tier level with "Bonus Section" in at least one-quarter inch lettering; and

(5) Clearly state on the flare the number of winners which could be awarded in the top tier level in at least three-eighths inch lettering. In addition, clearly display the number of winners and the number of advances in each advance level; and

(6) Clearly display all prizes for each advance and bonus level so that only the winners within the possible combinations are shown. Where applicable, use the word "OR" to show the possible combinations for winning the bonus prizes; and

(7) Not show duplicate references to prizes on the flare.

NEW SECTION

WAC 230-16-060 Assembly and packaging of pull-tab series. When assembling and packaging a pull-tab series, manufacturers must:

(1) Place each pull-tab series in one packaging container; and

(2) Not assemble the winning and losing pull-tabs in a way that would allow prize manipulation; and

(3) Mix pull-tabs before placing them in their final container to ensure pull-tabs are separated from their original collated row position and dispersed among all rows in the container; and

(4) Place a packing slip inside the container with the name of manufacturer, series number, date of packaging, and the name or identification of the person who packaged the series. Manufacturers may print this information on the flare or the outside of the container. Manufacturers must have this information readily available if we request it; and

(5) Print on the outside of the container a message stating that operators must remove the pull-tabs from the container and thoroughly mix them before putting them out for play. Manufacturers must:

(a) Print the information on:

(i) A crack-and-peel sticker and place it on the outside of the packaging container; or

(ii) A packing slip placed inside the container; or

(b) Request our approval to exempt packages of jar tickets from this requirement.

PROGRESSIVE JACKPOT PULL-TAB SERIES

NEW SECTION

WAC 230-16-065 Approvals needed before offering progressive jackpot pull-tab series. (1) For progressive jackpot series, the director approves:

(a) All gambling equipment for use in the series; and

(b) The process used to manufacture the series; and

(c) The secondary win code.

(2) Gambling related software must, at least:

(a) Prevent all persons other than the manufacturer representative from changing data once it is entered; and

(b) Retain in memory a record of transactions for a game until the operator totals, prints, and clears the transactions, even if the unit's primary power source is disrupted.

(3) Those requesting approval must pay all costs related to our review.

NEW SECTION

WAC 230-16-070 Prizes in progressive jackpot pull-tab series. Prizes for progressive jackpot pull-tab series must meet the following requirements:

(1) Manufacturers must determine the starting jackpot prize and corresponding jackpot accrual rate needed to meet the sixty percent payout requirement. Manufacturers must include this information in the package with each series; and

(2) The minimum jackpot accrual rate must generate an accrued jackpot prize of at least sixty percent of the total gross gambling receipts available from the series when added to the starting jackpot prize and instant winners; and

(3) Instant winners must be at least forty percent of total gross gambling receipts available from the series; and

(4) The starting jackpot must, at least, equal the value of the highest instant winner; and

(5) Maximum contribution to a progressive jackpot for each individual progressive pull-tab series must be five thousand dollars. The contribution amount specifically excludes portions carried over from previous series.

NEW SECTION

WAC 230-16-075 Assembly and packaging of progressive pull-tab series. (1) Manufacturers must include the packing slip and flare with the first box of a series.

(2) Manufacturers may package progressive jackpot pull-tab series in more than one container if they:

(a) Shrink wrap all boxes and seal them with a manufacturer sticker or seal; and

(b) Identically label each box with a referencing system that identifies, at least:

(i) Series number; and

(ii) Individual box and total boxes per series (for example, "seven of nine"); and

(iii) I.D. stamp numbers; and

(c) Mark cases to identify the contents during shipping, including:

(i) Series number; and

(ii) Case reference and total cases per set; and

(d) Package and ship each box or case together.

EVENT PULL-TAB SERIES

NEW SECTION

WAC 230-16-080 Event pull-tab series. (1) Manufacturers must ensure that event pull-tab series meet all standards of construction for other pull-tab series; and

(2) Manufacturers must ensure the flare for event pull-tab series meets requirements for flares and substitute flares and explain:

(a) The number of chances available to advance to the event round; and

(b) How the event round winner is determined; and

(c) The number of instant winner pull-tabs, if available; and

(d) The number of winning event round pull-tabs at each level.

BONUS PULL-TAB SERIES

NEW SECTION

WAC 230-16-085 Bonus pull-tab series with carry-over jackpots. Bonus pull-tab series with carry-over jackpots must:

(1) Have not less than one winner out of ten, so the chance of winning the carry-over jackpot is ten percent or higher; and

(2) Have only one advance level on the flare; and

(3) Have at least one guaranteed chance to win the carry-over jackpot; and

(4) Have all chances included on the flare covered to prevent determining the concealed numbers or symbols before the player opens the chance. If perforated windows are used, manufacturers must cover the numbers or symbols with latex, foil, or other approved means; and

(5) Meet all standards for bonus pull-tab flares.

CARRY-OVER JACKPOTS

NEW SECTION

WAC 230-16-090 Secondary win codes for carry-over jackpots. Manufacturers must ensure that secondary win codes on pull-tab series with carry-over jackpots are not repeated within any three-year period.

NEW SECTION

WAC 230-16-095 Prizes in carry-over jackpot pull-tab series. Manufacturers must:

(1) Determine the contribution amount and the method of play and disclose both on the flare; and

(2) Ensure guaranteed prizes are sixty percent or more of gross receipts available from the pull-tab series. "Guaranteed prizes" means all prizes available, excluding the contribution amount or carry-over jackpot; and

(3) Ensure the contribution amount for each series does not exceed five hundred dollars. "Contribution amount" means the amount from each series that is added to the carry-over jackpot.

SEAL CARD PULL-TAB SERIES

NEW SECTION

WAC 230-16-100 Seal card pull-tab series. (1) Manufacturers of seal card pull-tab series must meet all standards of pull-tab construction, including the seals on the flare; and

(2) The seal card pull-tab series must include forms to attach to the pull-tabs. The forms must list enough information to contact the winners of the seal card round; and

(3) Manufacturers must meet all requirements for flares and substitute flares. The flare may include up to two seals. The second seal may be offered as an additional prize, not as an alternative to the original seal prize; and

(4) The flare must clearly state:

(a) The number of tabs available to advance to the seal card round; and

- (b) How the seal card round winner is determined; and
- (c) The number of instant winner tabs; and
- (d) The number of winning seal card round tabs; and
- (5) If using perforated windows for the seal on the flare, manufacturers must cover the numbers or symbols to prevent detection of the winner before opening.

BINGO CARDS

NEW SECTION

WAC 230-16-105 Disposable bingo cards. (1) Manufacturers of disposable bingo cards must:

- (a) Create quality control methods to ensure manufacturing processes, including collating of bingo cards into packets, meet our requirements; and
- (b) Document these methods; and
- (c) Provide the documentation to us on request.
- (2) Manufacturers must collate packets of cards so that each page:
 - (a) Is from a different set of cards; and
 - (b) Has consistent skips throughout the entire collation; and
 - (c) Contains cards that are different when compared to other cards in the packet; and
 - (d) Has a different color or border pattern.
- (3) Manufacturers must prepare and make available a master verification system for each type or product line of bingo cards they make to provide operators and us the ability to verify winning cards. Master verification systems must:
 - (a) Provide a facsimile of each card within a set of cards by the card number; and
 - (b) Display the exact numbers and the location or configuration of numbers or symbols on the card.

NEW SECTION

WAC 230-16-110 Duplicate bingo cards. (1) We prohibit duplicate cards within a specific product line. Manufacturers must:

- (a) Imprint each card in a specific product line with a unique set of numbers and unique configurations of numbers; and
- (b) Ensure that there are no duplicate cards in a set or collation sold to distributors or operators.
- (2) Manufacturers may collate duplicate cards into packets if they:
 - (a) Locate the duplicates at different page levels in the packets; and
 - (b) Indicate to the buyer that they intend those cards for use only during separate games within a session, including "on-the-way" games.
- (3) If manufacturers discover duplicate cards, or we or another licensee notify them of duplicate cards, they must immediately:
 - (a) Stop marketing the product line containing duplicate cards; and
 - (b) Recall all sets and collations of packets or books containing duplicate cards at the same page level; and

- (c) Take steps to correct manufacturing or collating processes to ensure they do not sell duplicate cards to operators, and inform us in writing about the steps taken; and
- (4) When we validate claims, manufacturers must reimburse:
 - (a) Operators who submit claims for prizes paid because of duplicate cards; and
 - (b) Us for all of our costs incurred investigating duplicate card complaints.

NEW SECTION

WAC 230-16-120 Bingo card manufacturing control system. (1) In each set of bingo cards, manufacturers must include a control system that:

- (a) Identifies each card by a card number printed on the face of the card. However, we exempt "player selection" game cards from this requirement; and
- (b) Consecutively numbers each sheet of cards within a set. However, if manufacturers have alternative controls and they disclose those to operators, they do not have to number the sheets; and
- (c) Assigns each set of cards manufactured as a specific product line, using the same color and border pattern, and a unique serial number. Manufacturers must print the serial number on each card; and
- (d) Identifies that specific set and each specific card within that set; and
- (e) Tracks the transfer of cards from the point of manufacture to operators; and
- (f) Facilitates sale by the operator to the player.
- (2) We approve all new control systems.

NEW SECTION

WAC 230-16-125 Disposable bingo card packing slip and package label. Manufacturers of disposable bingo cards must establish marketing units that are complete and contain the correct number of cards or packets they have chosen. Manufacturers must complete a packing slip for each set of cards or collation of packets and either enclose it inside the shipping container or in an envelope attached to the container. Additionally:

- (1) Manufacturers must label each marketing unit in a way that allows the contents to be determined without opening. The label must include, at least:
 - (a) The I.D. stamp numbers; and
 - (b) Serial number or, if packets, serial number of the top page; and
 - (c) Color and border pattern or, if packets, color and border pattern of the top page; and
 - (d) Number of the carton and the total number of cartons included in the marketing unit.
- (2) If the marketing unit contains more than one container, manufacturers must include the packing slip in or attach it to the first container. The packing slip must include:
 - (a) The manufacturer's name; and
 - (b) Descriptions of the product, including the "series," "on," "cut," and "up"; and
 - (c) The records entry label that matches the I.D. stamp; and

(d) The serial number or, if packets, the serial number of the top page; and

(e) The color and border pattern or, if packets, colors and border patterns of all sets and the collation sequence; and

(f) A record of any skips (missing cards, sheets of cards, or packets); and

(g) The number of the carton and the total number of cartons included in the marketing unit.

(3) Manufacturers must mark the specific cards or packets on the marketing unit packing slip. Manufacturers may have a margin of error up to one percent, as long as they document all missing cards, sheets, or packets on the packing slip enclosed in the first container of the marketing unit. We prohibit shipping of marketing units with a margin of error greater than one percent.

NEW SECTION

WAC 230-16-130 Disposable bingo card sales. (1) Manufacturers of disposable bingo cards must sell each set or collation as a single unit.

(2) We allow distributors to open containers for Class E and below operators and operators of authorized unlicensed activities:

(a) At an operator's request to change the "on," "up," and "cut." When a modification is made, the distributor must reseal the carton and note all changes on the packing label; or

(b) To provide cards to individuals for recreational activities; or

(c) To provide cards for "promotional contests of chance."

(3) Subsets must have at least one container, except distributors may open the container and sell cards in smaller quantities described in subsection (2) of this section.

NEW SECTION

WAC 230-16-135 "Player selection" bingo cards. Manufacturers and distributors of "player selection" bingo cards must:

(1) Meet all requirements for disposable bingo cards; and

(2) Print cards on two-part, self-duplicating paper that provides an original and duplicate copy.

NEW SECTION

WAC 230-16-140 "Hidden face" bingo cards. Manufacturers and distributors of "hidden face" bingo cards must:

(1) Meet all requirements for disposable bingo cards; and

(2) Print, fold, and seal each card or sheet of cards so that no one may determine the numbers or configurations of numbers on the card, or the card number until opened; and

(3) Have a separate numbering system for each card or sheet that randomly distributes numbers that is not connected with the card number printed in the "free" space; and

(4) Mix cards or sheets so that:

(a) No relationship exists between the card numbers and separate numbering system within a set or subset; and

(b) No patterns or consistent relationships of location exist between specific card numbers in subsets from different sets; and

(5) Imprint the serial number and the card or sheet number from subsection (3) of this section on the outside of the cards or sheets of cards so that it is visible for recording without opening; and

(6) Make sets of cards that contain at least six thousand unique faces or patterns of numbers. Subsets of "hidden face" bingo cards must contain at least one thousand cards or sheets of cards.

NEW SECTION

WAC 230-16-145 Electronically generated bingo card computer systems. Manufacturers of electronically generated bingo cards for electronic bingo daubers must use a computer to store the bingo cards and interface with a printer. The computer must:

(1) Retain in memory a record of transactions for a session until the operator totals, prints, and clears the transactions, even if the unit's primary power source is disrupted; and

(2) Compute a total of all transactions occurring during the current session and print out the total on request; and

(3) Maintain and control the time and date of sale and transaction number in a manner that prohibits change or resetting except by the manufacturer or qualified service personnel. Operators must retain a detailed record, supported by service documents for each service call involving a change of the time, date, or transaction number; and

(4) Secure the electronically stored bingo cards in a way that prevents an operator or player from modifying them. The system must not allow operators to exchange, transfer, refund, or modify the price of cards issued to a player in any way after the sale is made. The system must store cards on "erasable programmable read only memory" (EPROM), "compact disc read only memory" (CDROM), "write once read many" disc drives (WORM), or other systems we approve.

NEW SECTION

WAC 230-16-150 Control system for electronically generated bingo cards. Manufacturers of electronically generated bingo cards for electronic bingo daubers must imprint their cards with a control system that includes at least:

(1) A card number; and

(2) A consecutive transaction number for each sheet of cards that does not repeat in less than 999,999 transactions; and

(3) The name of the licensee operating the activity; and

(4) The time and date of the transaction; and

(5) The game number; and

(6) The amount paid for the opportunity to play each game. If the operator uses the combination receipting method, they may substitute the customer receipt number; and

(7) The total amount paid; and

(8) The face number and the card number the manufacturer assigned or, if used in "player selection games," the face numbers the player selected.

ELECTRONIC CARD FACSIMILESNEW SECTION

WAC 230-16-155 Electronic card facsimiles. (1) Manufacturers of electronic card facsimiles must ensure their system:

- (a) Produces accurate facsimiles of one or more standard deck(s) of cards; and
- (b) Randomly shuffles cards before each round of play or shoe loading; and
- (c) Contains a backup system that records and displays at least five previous rounds of play; and
- (d) Contains security protocols which prevent unauthorized access; and
- (e) Is operated by card room personnel and does not allow players to play solely against the equipment; and
- (f) Allows testing of the computer software; and
- (g) Operates only under card room internal controls specific to each system.

(2) Manufacturers must have a licensed game testing laboratory test and certify that the system complies with subsection (1) of this section.

(3) Manufacturers must also submit their system to us for testing, as explained in WAC 230-06-050, with the certification from the independent laboratory and receive our approval before operating the system.

I.D. STAMPSNEW SECTION

WAC 230-16-160 I.D. stamps for gambling equipment. (1) If gambling equipment requires our approval, manufacturers and distributors must not attach I.D. stamps to the equipment until we approve it.

(2) Manufacturers must permanently and prominently attach our I.D. stamps to their gambling equipment. Once attached, no one may remove or tamper with the I.D. stamps. Manufacturers must attach I.D. stamps to:

- (a) Punch boards; and
- (b) Pull-tab flares; and
- (c) Pull-tab dispensers; and
- (d) Disposable bingo card packing slips; and
- (e) Coin or token activated amusement games operated at locations with a Class A license; and
- (f) Electronic bingo card daubers; and
- (g) Electronic card facsimile tables; and
- (h) Other items specified by the director.

NEW SECTION

WAC 230-16-165 Purchasing I.D. stamps. (1) Manufacturers must purchase I.D. stamps from us and attach them to the equipment specified in this chapter.

(2) Any manufacturer may return damaged stamps to us with a detailed listing of the damaged stamps and must pay a service charge. We will then replace the I.D. stamps.

(3) Owners of gambling equipment which require annual I.D. stamps must purchase I.D. stamps from us and attach them to their gambling equipment. Annual I.D. stamps

expire on December 31 each year, even if the equipment was placed out for play mid-year.

(4) Owners of pull-tab dispensers must purchase I.D. stamps to replace worn I.D. stamps on pull-tab dispensers. The owner must send us:

- (a) A copy of the invoice for the purchase of the dispenser from the manufacturer, distributor, or operator; or
- (b) A complete description of the pull-tab dispenser, serial number, manufacturer, and the previous I.D. stamp number, if known.

NEW SECTION

WAC 230-16-170 I.D. stamps must be visible. (1) I.D. stamps on gambling equipment must be visible to allow inspection.

(2) If equipment is packaged within protective materials, the I.D. stamps must be visible for inspection without removing any of the packaging (for example, shrink wrap).

(3) If more than one piece of gambling equipment is packed in a container, manufacturers must list the I.D. stamp numbers on the outside of the container.

NEW SECTION

WAC 230-16-175 Placing I.D. stamps and records entry labels. (1) Manufacturers must attach I.D. stamps and records entry labels to approved gambling equipment in the following way:

(a) **Punch boards** - On the reverse side of the board in an area that will not obstruct removal of punches. If sufficient space is not available on the reverse side, licensees may wrap the records entry labels around or partially attach them to the edge of the punch board as long as this does not obstruct display of prizes available or other information we require.

(b) **Pull tabs** - On the face or reverse side of the flare. If placed on the face, the I.D. stamps and records entry labels must not obstruct prizes available or other information we require.

(c) **Disposable bingo cards** - On the packing label on the outside of the shipping carton. Manufacturers must attach records entry labels to the packing slip. When they pack a set or collation of cards in more than one shipping container, manufacturers may attach the I.D. stamp to the first container and print the I.D. stamp number on all remaining shipping containers.

(2) **Electronic pull-tab dispensers, electronic bingo card daubers, and electronic facsimile card tables** - Manufacturers or owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the pull-tabs available for play, the bingo cards, or the card facsimiles.

(3) **Electromechanical and mechanical pull-tab dispensers** - Manufacturers or owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the pull-tabs available for play or the card facsimiles. Licensees may discard records entry labels.

(4) **Amusement games** - Owners must attach I.D. stamps on the outside of the main body, in an area that is not

normally removed and replaced, and in a way that does not obstruct the view of the amusement game prizes.

NEW SECTION

WAC 230-16-180 Record retention for I.D. stamp records. Manufacturers must keep records that provide an accountability trail for all I.D. stamps purchased.

(1) For I.D. stamps attached to gambling equipment and sold, manufacturers must keep the I.D. stamps records for at least three years and include, at least:

- (a) The name of the purchaser;
- (b) The date of the sale; and
- (c) The invoice number recording the sale.

(2) For all unused or damaged I.D. stamps, manufacturers must indefinitely retain the I.D. stamps or provide records that include enough detail to allow us to account for all I.D. stamps.

RECORDKEEPING

NEW SECTION

WAC 230-16-185 Accounting records for manufacturers and distributors. Manufacturers and distributors must keep and maintain a complete set of records for their licensed activity. They must, at least:

(1) Use the double entry accounting method, update these records at least once a month and provide a monthly balance for each account; and

(2) Maintain their records in accordance with generally accepted accounting principles and ensure the records can be reconciled to the licensee's federal income tax return; and

(3) Keep:

(a) **Cash disbursements book (check register)** - Manufacturers and distributors must document all expenses, both gambling and nongambling related, with invoices or other appropriate supporting documents. They must enter information monthly and include, at least:

- (i) The date the check was issued or payment made;
- (ii) The number of the check; and
- (iii) The name of the payee; and
- (iv) Type of expense; and

(b) **Cash receipts** - Manufacturers and distributors must keep a record of cash sales and cash received from all sources. They must enter information for each payment received monthly and include, at least, the:

- (i) Date; and
- (ii) Name of the person paying; and
- (iii) Amount; and

(c) **General ledger** - Manufacturers and distributors whose gambling related sales are greater than five hundred thousand dollars per year must have a general ledger which contains, in addition to all other accounts by month, a separate sales account for each type of sale; and

(d) **Bank reconciliation** - Manufacturers and distributors must reconcile their accounts each month. "Reconcile" means the manufacturer or distributor must compare the two balances, resolve any differences, and document the comparison and the differences in writing; and

(e) **Copies of all financial data** - Manufacturers and distributors must keep copies of all financial data that supports tax reports to governmental agencies; and

(4) Maintain copies of all agreements regarding sales or leasing of gambling equipment and supplies that fully disclose all terms.

NEW SECTION

WAC 230-16-190 Sales invoices for manufacturers and distributors. Manufacturers and distributors must document each sale of equipment or services, any return or refund, or any other type of transfer of punch boards, pull-tabs, pull-tab dispensers, or bingo equipment, including bingo cards, with a standard sales invoice.

Sales invoices and credit memos - These invoices and credit memos must:

(1) Be prenumbered sequentially at the time of purchase, using not less than four digits. Manufacturers and distributors may use computer generated numbering systems if:

(a) The system numbers the invoices and credit memos sequentially; and

(b) The manufacturers and distributors use the same system for all sales; and

(c) The manufacturers and distributors must not use a manual override function; and

(2) Record:

(a) The date of sale. Distributors must also enter the date of delivery if different from the date of sale; and

(b) The customer's name and complete business address; and

(c) A full description of each item sold or service provided, including the I.D. stamp number for each item, if attached; and

(d) The quantity and price of each item, including each merchandise prize for punch boards or pull-tabs; and

(e) The gross amount of each sale, including all discount terms and the total dollar amount of any discount; and

(3) Have three parts including, at least:

(a) The original, which must be given to the customer; and

(b) One which must be filed by customer name; and

(c) One which must be filed by invoice number or in an electronic sales journal, if we approve it.

NEW SECTION

WAC 230-16-195 Additional requirements for sales invoices. (1) In addition to the requirements of WAC 230-16-310, manufacturers and distributors must complete sales invoices that include:

(a) For distributors, a separate line for each I.D. stamp number; and

(b) Space for the operator to either attach a records entry label or enter the I.D. stamp number and the date they placed the equipment out for play, adjacent to the written entry the distributor makes; and

(c) For each punch board or pull-tab, at least:

(i) Trade name of the game; and

(ii) Type of gambling equipment; and

(iii) Form number or other manufacturer-assigned method to specifically identify a board or series, including the size or number of chances; and

(iv) I.D. stamp number; and

(d) For each pull-tab dispenser, at least:

(i) Trade name of the dispenser; and

(ii) Type of dispenser; and

(iii) I.D. stamp number; and

(e) For each set of cards or collation of packets of disposable bingo cards, at least:

(i) Type of product, including product line; and

(ii) Description of product, including the number of cartons, "series," "on," "cut," and "up"; and

(iii) I.D. stamp number; and

(iv) Serial number or, if packets, serial number of the top page; and

(v) Color and border pattern or, if packets, color and border pattern of the top page; and

(vi) The unit or package number when a series or collation has been divided; and

(vii) For disposable bingo cards to be sold for linked bingo prize games the beginning and ending sheet numbers sold to or returned from the operator; and

(f) For merchandise prizes, at least:

(i) The date of purchase; and

(ii) The company's name and complete business address; and

(iii) A full description of each item purchased; and

(iv) The quantity of items purchased; and

(v) The cost per individual items purchased; and

(g) For sequentially prenumbered card game recordkeeping forms, at least:

(i) Type of form; and

(ii) Beginning and ending serial numbers; and

(iii) Quantity of forms; and

(h) For all other gambling equipment, at least:

(i) Trade name of device; and

(ii) Type of device; and

(iii) Serial number or other identification numbers or characteristics; and

(2) Manufacturers and distributors must record and maintain information documenting the sales of progressive jackpot pull-tabs in a separate filing system. They may use a computerized system to separately track this information and provide immediate reports.

NEW SECTION

WAC 230-16-200 Sales journals for manufacturers and distributors. Manufacturers and distributors must keep a monthly sales journal containing, at least:

(1) Each date of sale; and

(2) Each sale invoice number; and

(3) The name of the person paying; and

(4) Sales by category, including:

(a) Punch boards that pay out:

(i) Cash; and

(ii) Merchandise prizes; and

(b) Pull-tab series that pay out:

(i) Cash; and

(ii) Merchandise prizes; and

(c) Pull-tab dispensers; and

(d) Merchandise intended for punch boards or pull-tab series prizes; and

(e) Bingo equipment; and

(f) Sales directly related to gambling activities, including pull-tab dispensers, equipment leases, or sales and supplies; and

(5) The total amount of each invoice.

NEW SECTION

WAC 230-16-205 Record retention for manufacturers and distributors. Manufacturers and distributors must retain the following for at least three years after the end of their fiscal year:

(1) All required accounting records; and

(2) Monthly records; and

(3) Sales invoices; and

(4) Sales receipts; and

(5) Sales journals; and

(6) Credit memos.

NEW SECTION

WAC 230-16-210 Alternative formats for record-keeping. Manufacturers and distributors must receive advanced written approval from us for any alternative format of recording, such as:

(1) Sales invoice numbers explained in WAC 230-16-190 (1)(a); or

(2) Invoice files by customer name and invoice number; or

(3) Tracking progressive jackpot pull-tab series; or

(4) Sales journals; or

(5) Cash disbursements book (check register).

NEW SECTION

WAC 230-16-215 Accounting records and record retention for gambling service suppliers. Gambling service suppliers (service suppliers) must maintain records that document services they provide and receipts of payments for those services.

(1) Service suppliers must maintain an accounting system that includes, at least:

(a) **Sales invoices** - Sales invoices or detailed monthly billing statements issued to each customer. Service suppliers must maintain copies of these invoices or billing statements on their premises; and

(b) Sales journal - The sales journal must contain, at least, the following by month:

(i) Date of sale; and

(ii) The invoice number; and

(iii) The name of the person paying; and

(iv) Category of each service provided; and

(v) Payment amount; and

(c) **Cash receipts** - Service suppliers must record all cash receipts in an original book of entry like a sales journal, a check register, or a separate cash receipts journal. This

record must include cash sales and cash received from all sources and, at least the following, by month:

- (i) Date the payment was received; and
- (ii) Name of the person paying; and
- (iii) Payment amount; and

(d) **Bank statements** - Service suppliers must maintain copies of all deposits, deposit slips, and receipts; and

(e) **General ledger** - Service suppliers whose gambling related activities are greater than five hundred thousand dollars per year must have a general ledger which contains, in addition to all other accounts by month, a separate sales account for each type of activity; and

(f) **Copies of all financial data** - Service suppliers must maintain copies of all financial data that supports tax reports to governmental agencies.

(2) Service suppliers must:

(a) Maintain copies of all contracts they enter into with their customers which fully disclose all terms; and

(b) Keep and maintain required records for three years following the end of their fiscal year.

NEW SECTION

WAC 230-16-220 Activity reports by manufacturers and distributors. Manufacturers and distributors must submit activity reports to us twice a year for sales and services related to gambling activities. The activity reports must be in the format we require and must:

- (1) Cover the periods:
 - (a) January 1 through June 30; and
 - (b) July 1 through December 31; and

(2) Be received at our administrative office or post-marked no later than thirty days following the end of the reporting period; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the manufacturer or distributor or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

(4) Be submitted regardless of the level of activity. If no activity was conducted during the period, a report stating "no activity" must be submitted; and

(5) Be filed even if they do not renew their license. They must file a report for the period between the previous report filed and the expiration date of the license.

**WSR 07-16-090
PROPOSED RULES
DEPARTMENT OF HEALTH**

[Filed July 30, 2007, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-096.

Title of Rule and Other Identifying Information: Chapter 246-320 WAC, Hospital licensing regulations (construction standards only).

Hearing Location(s): Department of Health, Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501-7852, on September 7, 2007, at 1:00 p.m.

Date of Intended Adoption: September 20, 2007.

Submit Written Comments to: Allen Spaulding, 310 Israel Road S.E., Tumwater, WA 98501-7852, e-mail al.spaulding@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by September 3, 2007.

Assistance for Persons with Disabilities: Contact Allen Spaulding by August 31, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules adopt new hospital construction requirements. This is accomplished through adopting the 2006 edition of the Guidelines for Design and Construction of Health Care Facilities as published by the American Institute of Architects, 1735 New York Avenue N.W., Washington, D.C. 20006, and Washington amendments in WAC 246-320-600. The guidelines are nationally recognized and developed by the Facilities Guidelines Institute with assistance from the United States Department of Health and Human Services. Nationally, forty-six states have adopted the guidelines as the minimum health care construction guidelines for health care facilities.

The proposed rules are, in most cases, less stringent than the current rules.

**Sample of Washington amendments in WAC 246-320-600 that mitigate new costs associated with adopting the national guidelines.
July 30, 2007**

Guideline	Washington amendment (cost savings)
2.1.3 Functional Requirements The facility shall incorporate the following information into the functional program commensurate with the scope and purpose of the project. 2.1.3.4 Consideration of potential future expansion that may be needed to accommodate increased demand.	2.1.3.4 This section is not adopted.
2 Infection Control Risk Assessment Process 2.1.1 ICRA Panel: The ICRA shall be conducted by a panel with expertise in infection control, direct patient care, risk management, facility	2.1.1 ICRA Panel The ICRA shall be conducted by a panel with expertise in the areas affected by the project; at a minimum this would

Guideline	Washington amendment (cost savings)
design, construction and construction phasing, ventilation, safety, and epidemiology.	include infection control, epidemiology and facility representation.
<p>*1.2.2 Swing Beds When the concept of swing beds is part of the functional program, care shall be taken to include requirements for all intended categories.</p> <p>A1.2.2 Swing Beds Facility design for swing beds often requires additional corridor doors and provisions for switching nurse call operations from one nurse station to another depending on use.</p>	<p>1.2.2 Swing Beds When the concept of swing beds is part of the functional program, care shall be taken to include requirements for all intended categories. Nursing homes and long-term care units must be distinct and separate from swing bed units.</p> <p>A1.2.2 Swing Beds Every bed must be able to provide both acute care and long-term care. The concept is that the patient would not have to be moved, rather their status would change from "acute" to "swing bed" status.</p>
<p>2.3.10 Housekeeping Room 2.3.10.1 Housekeeping rooms shall be directly accessible from the unit or floor they serve and may serve more than one nursing unit on a floor.</p>	<p>2.3.10.1 Housekeeping rooms shall be directly accessible from the unit or floor they serve and may serve more than one nursing unit on a floor. Housekeeping and soiled rooms may be combined.</p>
<p>3.1.1.1 Capacity (1) In new construction, the maximum number of beds per room shall be one unless the functional program demonstrates the necessity of a two-bed arrangement. Approval of a two-bed arrangement shall be obtained from the licensing authority.</p>	<p>3.1.1.1 Capacity (1) In new construction, the maximum number of beds per room shall be two.</p>
<p>(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no</p>	<p>(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no</p>

Guideline	Washington amendment (cost savings)
more than the present capacity, with a maximum of four patients.	more than the present capacity with a maximum of four patients.
<p>*3.1.1.5 Hand-washing stations. These shall be provided to serve each patient room. (1) A hand-washing station shall be located in the toilet room. (2) A hand-washing station shall be provided in the patient room in addition to that in the toilet room. This shall be located outside the patient's cubicle curtain and convenient to staff entering and leaving the room. (3) A hand sanitation station in patient rooms utilizing waterless cleaners may be used in renovation of existing facilities where existing conditions prohibit an additional hand-washing station.</p> <p>A3.1.1.5 Where renovation work is undertaken, every effort should be made to meet this standard. Where space does not permit the installation of an additional hand-washing station in the patient room, or where it is technically infeasible, the authority having jurisdiction may grant approval of alternative forms of hand cleansing.</p>	<p>3.1.1.5 Handwashing Stations. These shall be provided to serve each patient room. (1) A hand-washing station shall be provided in the toilet room. (2) Or, in private rooms, a hand-washing station shall be provided in the patient room provided alcohol-based hand sanitizers are provided in the toilet room. The hand-washing station shall be located outside the patient's cubicle curtain and convenient to staff entering and leaving the room. (3) A hand sanitation station in patient rooms utilizing waterless cleaners shall be permitted in renovations of existing facilities where existing conditions prohibit an additional hand-washing station.</p>
<p>5.3.5.4 Scrub facilities. Two scrub positions shall be provided near the entrance to each operating room. (3) In new construction, view windows at scrub stations permitting observation of room interiors shall be provided.</p>	<p>5.3.5.4 Scrub Facilities. Two scrub positions shall be provided near the entrance to each operating room. (3) View windows at scrub stations not required.</p>

Guideline	Washington amendment (cost savings)
<p>8.2.2.3 Doors (2) Door size. (a) General. Where used in these guidelines, door width and height shall be the nominal dimension of the door leaf, ignoring projections of frame and stops. Note: Although these standards are intended to accommodate access by patients and patient equipment, size of office furniture, etc., shall also be considered. (b) Inpatient bedrooms. (i) New construction. The minimum door size for inpatient bedrooms in new work shall be 3 feet 8 inches (1.12 meters) wide and 7 feet (2.13 meters) high to provide clearance for movement of beds and other equipment. (ii) Renovation. Existing doors of not less than 2 feet 10 inches (86.36 centimeters) wide may be considered for acceptance where function is not adversely affected and replacement is impractical. (c) Rooms for stretchers/wheelchairs. Doors to other rooms used for stretchers (including hospital wheeled-bed stretchers) and/or wheelchairs shall have a minimum width of 2 feet 10 inches (86.36 centimeters).</p>	<p>8.2.2.3 Doors (2) Door Size. (a) General. Where used in these guidelines, door width and height shall be the nominal dimension of the door leaf, ignoring projections of frame and stops. Note: While these standards are intended for access by patients and patient equipment, size of office furniture, etc., shall also be considered. (b) Inpatient bedrooms. (i) New construction. The minimum door size for inpatient bedrooms in new work areas shall be 4 feet (1.22 meters) wide and 7 feet (2.13 meters) high to provide clearance for movement of beds and other equipment. (ii) Renovation. Existing doors of not less than 2 feet 10 inches (86.36 centimeters) wide may be considered for acceptance where function is not adversely affected and replacement is impractical. (c) Rooms for stretchers/wheelchairs. Doors to other rooms used for stretchers (including hospital wheeled-bed stretchers) and/or wheelchairs shall have a minimum width of 2 feet 10 inches (86.36 centimeters).</p>

Reasons Supporting Proposal: The constituency and affected parties have urged the department to move forward with the construction portion of the rules. This is due in part to the potential health care construction cost savings and recognition of the proposed standards as an established industry standard.

Statutory Authority for Adoption: Chapter 70.41 RCW.
 Statute Being Implemented: RCW 70.41.030.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Chad Beebe, Tumwater, Washington, (360) 236-2944; Implementation and Enforcement: Steven Saxe, Tumwater, Washington, (360) 236-2900.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose new, more minor costs on affected businesses that employ fifty individuals or less (RCW 19.85.020(1)).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Allen Spaulding, 310 Israel Road S.E., Tumwater, WA 98501-7852, phone (360) 236-2929, fax (360) 236-2901, e-mail al.spaulding@doh.wa.gov.

July 31 [30], 2007

Mary C. Selecky
 Secretary

AMENDATORY SECTION (Amending WSR 04-11-057, filed 5/17/04, effective 6/17/04)

WAC 246-320-010 Definitions. For the purposes of this chapter and chapter 70.41 RCW, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "Abuse" means injury or sexual abuse of a patient under circumstances indicating the health, welfare, and safety of the patient is harmed. Person "legally responsible" will include a parent, guardian, or an individual to whom parental or guardian responsibility is delegated (e.g., teachers, providers of residential care and treatment, and providers of day care):

(a) "Physical abuse" means damaging or potentially damaging nonaccidental acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means verbal behavior, harassment, or other actions which may result in emotional or behavioral problems, physical manifestations, disordered or delayed development.

(2) (~~"Accredited" means approved by the joint commission on accreditation of healthcare organizations (JCAHO).~~

(3) ~~"Administrative business day" means Monday, Tuesday, Wednesday, Thursday, or Friday, 8:00 a.m. to 5:00 p.m., exclusive of recognized state of Washington holidays.~~

(4)) "Agent," when used in a reference to a medical order or a procedure for a treatment, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

~~((5) "Airborne precaution room" means a room that is designed and equipped to care for patients known or suspected to be infected with microorganisms transmitted by airborne droplet nuclei (small particle residue [five microns or smaller in size] of evaporated droplets containing microorganisms that remain suspended in the air and can be widely dispersed by air currents within a room or over a long distance).~~

(6)) (3) "Alcoholism" means an illness characterized by lack of control as to the consumption of alcoholic beverages, or the consumption of alcoholic beverages to the extent an individual's health is substantially impaired or endangered, or

his or her social or economic function is substantially disrupted.

~~((7))~~ (4) "Alteration" (~~(=~~

(a) "~~Alteration~~") means any change, addition, (~~remodel~~) or modification (~~(in construction, or occupancy)~~) to an existing hospital or a portion of an existing hospital.

~~((b) "Major alteration" means any physical change within an existing hospital that changes the occupancy (as defined in state building code) and scope of service within a room or area, results in reconstruction to major portions of a floor or department, or requires revisions to building systems or services.~~

~~((c))~~ "Minor alteration" means ~~((any physical change to an existing hospital which does not affect the structural integrity of the hospital building))~~ renovation that does not require an increase in capacity to structural, mechanical or electrical systems, which does not affect fire and life safety, and which does not add beds or facilities ~~((over those for which the hospital is))~~ in addition to that for which the hospital is currently licensed.

~~((8))~~ "Ambulatory" means an individual physically and mentally capable of walking or traversing a normal path to safety, including the ascent and descent of stairs, without the physical assistance of another person.

(9) "Area" means a portion of a room or building that is separated from other functions in the room or portions of the building by a physical barrier or adequate space.

~~((10))~~ (5) "Assessment" means the: (a) Systematic collection and review of patient-specific data; (b) process established by a hospital for obtaining appropriate and necessary information about each individual seeking entry into a health care setting or service; and (c) information to match an individual's need with the appropriate setting and intervention.

~~((11))~~ (6) "Authentication" means the process used to verify that an entry is complete, accurate, and final.

~~((12))~~ "Bathing facility" means a bathtub or shower, but does not include sitz bath or other fixtures designated primarily for therapy.

(13) "Birthing room" or "labor-delivery-recovery (LDR) room" or "labor-delivery-recovery-postpartum (LDRP) room" means a room designed and equipped for the care of a woman, fetus, and newborn, and to accommodate her support people during the complete process of vaginal childbirth.

~~((14))~~ (7) "Child" means an individual under the age of eighteen years.

~~((15))~~ "Clean" when used in reference to a room, area, or facility means space or spaces and/or equipment for storage and handling of supplies and/or equipment which are in a sanitary or sterile condition.

(16) "Communication system" means telephone, intercom, nurse call or wireless devices used by patients and staff to communicate.

~~((17))~~ (8) "Critical care unit or service" means the specialized medical and nursing care provided to patients facing an immediate life-threatening illness or injury. The care is provided by multidisciplinary teams of highly experienced and skilled physicians, nurses, pharmacists or other allied health professionals who have the ability to interpret complex therapeutic and diagnostic information and access to highly sophisticated equipment.

~~((18))~~ (9) "Department" means the Washington state department of health.

~~((19))~~ "Detoxification" means the process of ridding the body of the transitory effects of intoxication and any associated physiological withdrawal reaction.

~~((20))~~ "Dialysis facility" means a separate physical and functional nursing unit of the hospital serving patients receiving renal dialysis.

(21) "Dialysis station" means an area designed, equipped, and staffed to provide dialysis services for one patient.

~~((22))~~ (10) "Dietitian" means an individual meeting the eligibility requirements for active membership in the American Dietetic Association described in Directory of Dietetic Programs Accredited and Approved, American Dietetic Association, edition 100, 1980.

~~((23))~~ "Direct access" means access to one room from another room or area without going through an intervening room or into a corridor.

~~((24))~~ (11) "Double-checking" means verification of patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons legally qualified to administer such agent prior to administration of the agent.

~~((25))~~ (12) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official U.S. pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

~~((26))~~ "Drug dispensing" means an act entailing the interpretation of an order for a drug or biological and, pursuant to that order, proper selection, measuring, labeling, packaging, and issuance of the drug for a patient or for a service unit of the facility.

~~((27))~~ "Easily cleanable" means readily accessible and made with materials and finishes fabricated to permit complete removal of residue or dirt by accepted cleaning methods.

(28) "Electrical receptacle outlet" means an outlet where one or more electrical receptacles are installed.

~~((29))~~ (13) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

~~((30))~~ (14) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including, but not limited to, administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

~~((31))~~ (15) "Emergency triage" means the immediate patient assessment by a registered nurse, physician, or physi-

cian assistant to determine the nature and urgency of the person's medical need and the time and place care and treatment is to be given.

~~((32))~~ "Facilities" means a room or area and equipment serving a specific function.

~~((33))~~ "Failure or major malfunction" means an essential environmental, life safety or patient care function, equipment or process ceasing operation or capability of working as intended and any back up, reserve or replacement to the function, equipment or process has not occurred or is nonexistent. Such as, but not limited to, the:

~~(a) Normal electrical power ceases and the emergency generator(s) do not function;~~

~~(b) Ventilation system ceases to operate or reverses air flow and causes contaminated air to circulate into areas where it was not designated or intended to flow; or~~

~~(c) Potable water in the hospital becomes contaminated so it cannot be used.~~

~~((34))~~ (16) "Family" means individuals important to and designated by a patient who need not be relatives.

~~((35))~~ "Faucet controls" means wrist, knee, or foot control of the water supply:

~~(a) "Wrist control" means water supply is controlled by handles not less than four and one-half inches overall horizontal length designed and installed to be operated by the wrists;~~

~~(b) "Knee control" means the water supply is controlled through a mixing valve designed and installed to be operated by the knee;~~

~~(c) "Foot control" means the water supply is controlled through a mixing valve designed and installed to be operated by the foot.~~

~~((36))~~ (17) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the hospital.

~~((37))~~ "Grade" means the level of the ground adjacent to the building. The ground must be level or slope downward for a distance of at least ten feet away from the wall of the building. From there the ground may slope upward not greater than an average of one foot vertical to two feet horizontal within a distance of eighteen feet from the building.

~~((38))~~ "He, him, his, or himself" means an individual of either sex, male or female, and does not mean preference for nor exclude reference to either sex.

~~((39))~~ (18) "High-risk infant" means an infant, regardless of gestational age or birth weight, whose extrauterine existence is compromised by a number of factors, prenatal, natal, or postnatal needing special medical or nursing care.

~~((40))~~ (19) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include:

(a) Hotels, or similar places furnishing only food and lodging, or simply domiciliary care;

(b) Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more;

(c) Nursing homes, as defined and which come within the scope of chapter 18.51 RCW;

(d) Birthing centers, which come within the scope of chapter 18.46 RCW;

(e) Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

(f) Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

(g) Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

~~((41))~~ (20) "Individualized treatment plan" means a written statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

~~((42))~~ (21) "Infant" means a baby or very young child up to one year of age.

~~((43))~~ "Infant station" means a space for a bassinet, incubator, or equivalent, including support equipment used for the care of an individual infant.

~~((44))~~ "Inpatient" means a patient receiving services that require admission to a hospital for twenty-four hours or more.

~~((45))~~ "Intermediate care nursery" means an area designed, organized, staffed, and equipped to provide constant care and treatment for mild to moderately ill infants not requiring neonatal intensive care, but requiring physical support and treatment beyond support required for a normal neonate and may include the following:

~~(a) Electronic cardiorespiratory monitoring;~~

~~(b) Gavage feedings;~~

~~(c) Parenteral therapy for administration of drugs; and~~

~~(d) Respiratory therapy with intermittent mechanical ventilation not to exceed a continuous period of twenty-four hours for stabilization when trained staff are available.~~

~~((46))~~ "Interventional service facility" means a facility other than operating room (OR) where invasive procedures are performed.

~~((47))~~ (22) "Invasive procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

~~((48))~~ "JCAHO" means joint commission on accreditation of healthcare organizations.

(49) "Labor room" means a room in which an obstetric patient is placed during the first stage of labor, prior to being taken to the delivery room.

(50) "Labor delivery recovery (LDR) room," "birthing room," or "labor delivery recovery postpartum (LDRP) room" means a room designed and equipped for the care of a woman, fetus, and newborn and to accommodate her support people during the complete process of vaginal childbirth.

(51)) (23) "Licensed practical nurse," abbreviated LPN, means an individual licensed under provisions of chapter 18.78 RCW.

~~((52))~~ "Long term care unit" means a group of beds for the accommodation of patients who, because of chronic illness or physical infirmities, require skilled nursing care and related medical services but are not acutely ill and not in need of the highly technical or specialized services ordinarily a part of hospital care.

(53) "Maintainable" means able to preserve or keep in an existing condition.

(54)) (24) "Maintenance" means the work of keeping something in suitable condition.

~~((55))~~ "Major permanent loss of function" means sensory, motor, physiological, or intellectual impairment not present on admission requiring continued treatment or lifestyle change. When this condition cannot be immediately determined, the designation will be made when the patient is discharged with continued major loss of function, or two weeks have elapsed with persistent major loss of function, whichever occurs first.

(56)) (25) "Medical staff" means physicians and may include other practitioners appointed by the governing authority to practice within the parameters of the governing authority and medical staff bylaws.

~~((57))~~ (26) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

~~((58))~~ "Movable equipment" means equipment not built in, fixed, or attached to the building.

(59) "Must" means compliance is mandatory.

(60)) (27) "Multidisciplinary treatment team" means a group of individuals from the various disciplines and clinical services who assess, plan, implement, and evaluate treatment for patients.

~~((61))~~ (28) "Neglect" means mistreatment or maltreatment; an act or omission evincing; a serious disregard of consequences of a magnitude constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision necessary for patient level of development, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts of commission or omission which may result in emotional or behavioral problems, physical manifestations, and disordered development.

~~((62))~~ (29) "Neonate" or "newborn" means a newly born infant under twenty-eight days of age.

~~((63))~~ "Neonatal intensive care nursery" means an area designed, organized, equipped, and staffed for constant nursing, medical care, and treatment of high-risk infants who may require:

(a) Continuous ventilatory support, twenty-four hours per day;

(b) Intravenous fluids or parenteral nutrition;

(c) Preoperative and postoperative monitoring when anesthetic other than local is administered;

(d) Cardiopulmonary or other life support on a continuing basis.

(64)) (30) "Neonatologist" means a pediatrician who is board certified in neonatal-perinatal medicine or board eligible in neonatal-perinatal medicine, provided the period of eligibility does not exceed three years, as defined and described in *Directory of Residency Training Programs* by the Accreditation Council for Graduate Medical Education, American Medical Association, 1998 or the *American Osteopathic Association Yearbook and Directory*, 1998.

~~((65))~~ "Newborn nursery care" means the provision of nursing and medical services described by the hospital and appropriate for well and convalescing infants including supportive care, ongoing physical assessment, and resuscitation.

(66)) (31) "New construction" means any of the following:

(a) New ((buildings)) facilities to be licensed as a hospital;

(b) ((Additions to an existing hospital);

(c) Conversion of an existing building or portions thereof for use as a hospital;

(d)) Alterations ((to an existing hospital)).

~~((67))~~ (32) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

~~((68))~~ "Notify" means to provide notice of required information to the department by the following methods, unless specifically stated otherwise in this chapter:

(a) Telephone;

(b) Facsimile;

(c) Written correspondence; or

(d) In person.

(69) "Nursing unit" means a separate physical and functional unit of the hospital including a group of patient rooms, with ancillary, administrative, and service facilities necessary for nursing service to the occupants of these patient rooms.

(70) "Nutritional assessment" means an assessment of a patient's nutritional status conducted by a registered dietitian.

(71) "Nutritional risk screen" means a part of the initial assessment that can be conducted by any trained member of the multidisciplinary treatment team.

(72) "Observation room" means a room for close nursing observation and care of one or more outpatients for a period of less than twenty-four consecutive hours.

(73) "Obstetrical area" means the portions or units of the hospital designated or designed for care and treatment of women during the antepartum, intrapartum, and postpartum periods, and/or areas designed as nurseries for care of newborns.

~~((74))~~ (33) "Operating room (OR)" means a room within the surgical department intended for invasive and noninvasive procedures requiring anesthesia.

~~((75))~~ "Outpatient" means a patient receiving services that generally do not require admission to a hospital bed for twenty-four hours or more.

~~((76))~~ "Outpatient services" means services that do not require admission to a hospital for twenty-four hours or more.

~~((77))~~ (34) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services at the hospital.

~~((78))~~ "Patient care areas" means all nursing service areas of the hospital where direct patient care is rendered and all other areas of the hospital where diagnostic or treatment procedures are performed directly upon a patient.

~~((79))~~ "Patient related technology" means equipment used in a patient care environment to support patient treatment and diagnosis, such as electrical, battery and pneumatic powered technology as well as support equipment and disposables.

~~((80))~~ (35) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

~~((81))~~ (36) "Pharmacist" means an individual licensed by the state board of pharmacy to engage in the practice of pharmacy under the provisions of chapter 18.64 RCW as now or hereafter amended.

~~((82))~~ (37) "Pharmacy" means the central area in a hospital where drugs are stored and are issued to hospital departments or where prescriptions are filled.

~~((83))~~ (38) "Physician" means an individual licensed under provisions of chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

~~((84))~~ (39) "Prescription" means an order for drugs or devices issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe drugs or devices in the course of his or her professional practice for a legitimate medical purpose.

~~((85))~~ "Pressure relationships" of air to adjacent areas means:

(a) Positive (P) pressure is present in a room when the:

(i) Room sustains a minimum of 0.001 inches of H₂O pressure differential with the adjacent area, the room doors are closed, and air is flowing out of the room; or

(ii) Sum of the air flow at the supply air outlets (in CFM) exceeds the sum of the air flow at the exhaust/return air outlets by at least 70 CFM with the room doors and windows closed;

(b) Negative (N) pressure is present in a room when the:

(i) Room sustains a minimum of 0.001 inches of H₂O pressure differential with the adjacent area, the room doors are closed, and air is flowing into the room; or

(ii) Sum of the air flow at the exhaust/return air outlets (in CFM) exceeds the sum of the air flow at the supply air outlets by at least 70 CFM with the room doors and windows closed;

(c) Equal (E) pressure is present in a room when the:

(i) Room sustains a pressure differential range of plus or minus 0.0002 inches of H₂O with the adjacent area, and the room doors are closed; or

(ii) Sum of the air flow at the supply air outlets (in CFM) is within ten percent of the sum of the air flow at the exhaust/return air outlets with the room doors and windows closed.

~~((86))~~ (40) "Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition ((usually requiring specialized equipment)).

~~((87))~~ "Protective precaution room" means a room designed and equipped for care of patients with a high risk for contracting infections, such as bone marrow and organ transplant patients.

~~((88))~~ (41) "Protocols" and "standing order" mean written descriptions of actions and interventions for implementation by designated hospital personnel under defined circumstances and authenticated by a legally authorized person under hospital policy and procedure.

~~((89))~~ (42) "Psychiatric service" means the treatment of patients pertinent to the psychiatric diagnosis whether or not the hospital maintains a psychiatric unit.

~~((90))~~ "Psychiatric unit" means a separate area of the hospital specifically reserved for the care of psychiatric patients (a part of which may be unlocked and a part locked), as distinguished from "seclusion rooms" or "security rooms" as defined in this section.

~~((91))~~ "Reassessment" means ongoing data collection comparing the most recent data with the data collected on the previous assessment(s).

~~((92))~~ (43) "Recovery unit" means a special physical and functional area for the segregation, concentration, and close or continuous nursing observation and care of patients for a period of less than twenty-four hours immediately following anesthesia, obstetrical delivery, surgery, or other diagnostic or treatment procedures which may produce shock, respiratory obstruction or depression, or other serious states.

~~((93))~~ (44) "Registered nurse" means an individual licensed under the provisions of chapter 18.79 RCW and practicing in accordance with the rules and regulations promulgated thereunder.

~~((94))~~ "Remodel" means the reshaping or reconstruction of a part or area of the hospital.

~~((95))~~ (45) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, an apparatus, or a drug given not required to treat a patient's medical symptoms.

~~((96))~~ (46) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

~~((97))~~ (47) "Seclusion room" means a small, secure room specifically designed and organized for temporary placement, care, and observation of one patient and for an environment with minimal sensory stimuli, maximum security and protection, and visual observation of the patient by authorized personnel and staff. Doors of seclusion rooms are provided with staff-controlled locks.

~~((98))~~ "Secretary" means the secretary of the department of health.

~~(99) "Self-administration of drugs" means a patient administering or taking his or her own drugs from properly labeled containers. Provided, That the facility maintains the responsibility for seeing the drugs are used correctly and the patient is responding appropriately.~~

~~(100) "Sensitive area" means a room used for surgery, transplant, obstetrical delivery, nursery, post-anesthesia recovery, special procedures where invasive techniques are used, emergency or critical care including, but not limited to, intensive and cardiac care or areas where immunosuppressed inpatients are located and central supply room.~~

~~(101)) (48) "Sexual assault" has the same meaning as in RCW 70.125.030.~~

~~((102) "Sinks":~~

~~(a) "Clinic service sink (siphon jet)" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inch diameter.~~

~~(b) "Scrub sink" means a plumbing fixture of adequate size and proper design for thorough washing of hands and arms, equipped with knee, foot, electronic, or equivalent control, and gooseneck spout without aerators including brush and handsfree soap dispenser.~~

~~(c) "Service sink" means a plumbing fixture of adequate size and proper design for filling and emptying mop buckets.~~

~~(d) "Handsfree handwash sink" means a plumbing fixture of adequate size and proper design to minimize splash and splatter and permit handwashing without touching fixtures, with adjacent soap dispenser with foot control or equivalent and single service hand drying device.~~

~~(e) "Handwash sink" means a plumbing fixture of adequate size and proper design for washing hands, with adjacent soap dispenser and single service hand drying device.~~

~~(103) "Soiled" (when used in reference to a room, area, or facility) means space and equipment for collection or cleaning of used or contaminated supplies and equipment or collection or disposal of wastes.~~

~~(104) "Special procedure" means a distinct and/or special diagnostic exam or treatment, such as, but not limited to, endoscopy, angiography, and cardiac catheterization.~~

~~(105)) (49) "Staff" means paid employees, leased or contracted persons, students, and volunteers.~~

~~((106) "Stretcher" means a four-wheeled cart designed to serve as a litter for the transport of an ill or injured individual in a horizontal or recumbent position.~~

~~(107)) (50) "Surgical procedure" means any manual or operative procedure performed upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defect, prolonging life or relieving suffering, and involving any of the following:~~

~~(a) Incision, excision, or curettage of tissue or an organ;~~

~~(b) Suture or other repair of tissue or an organ including a closed as well as an open reduction of a fracture;~~

~~(c) Extraction of tissue including the premature extraction of the products of conception from the uterus; or~~

~~(d) An endoscopic examination with use of anesthetizing agents.~~

~~((108)) (51) "Surrogate decision-maker" means an individual appointed to act on behalf of another. Surrogates~~

make decisions only when an individual is without capacity or has given permission to involve others.

~~((109) "Through traffic" means traffic for which the origin and destination are outside the room or area serving as a passageway.~~

~~(110) "Toilet" means a room containing at least one water closet.~~

~~((111)) (52) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:~~

~~(a) Pharmacologic, surgical, or supportive;~~

~~(b) Specific for a disorder; or~~

~~(c) Symptomatic to relieve symptoms without effecting a cure.~~

~~((112) "Treatment room" means a hospital room for medical, surgical, dental, or psychiatric management of a patient.~~

~~(113)) (53) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient.~~

~~((114) "Water closet" means a plumbing fixture fitted with a seat and device for flushing the bowl of the fixture with water.~~

~~(115) "Will" means compliance is mandatory.~~

~~(116) "Window" means a glazed opening in an exterior wall.~~

~~(a) "Maximum security window" means a window that can only be opened by keys or tools under the control of personnel. The operation will be restricted to prohibit escape or suicide. Where glass fragments may create a hazard, safety glazing and other appropriate security features will be incorporated. Approved transparent materials other than glass may be used.~~

~~(b) "Relite" means a glazed opening in an interior partition between a corridor and a room or between two rooms to permit viewing.~~

~~(c) "Security window" means a window designed to inhibit exit, entry, and injury to a patient, incorporating approved, safe transparent material.~~

~~(117) "Work surface" means a flat hard horizontal surface such as a table, desk, counter, or cart surface.))~~

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-165 Management of human resources. The purpose of the management of human resources section is to ensure the hospital provides competent staff consistent with scope of services.

Hospitals will:

(1) Establish, review, and update written job descriptions for each job classification;

(2) Conduct periodic staff performance reviews;

(3) Ensure qualified and competent staff are available to operate each department;

(4) Ensure supervision of staff;

(5) Document verification of current staff licensure, certification, or registration;

(6) Complete tuberculosis screening for new and current employees consistent with the ~~((current guidelines of the~~

Centers for Disease Control and Prevention (CDC) as defined by WAC 246-320-99902(15)) *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities, 1994. Morbidity Mortality Weekly Report (MMWR) Volume 43, October 28, 1994;*

- (7) Provide orientation to the work environment;
- (8) Provide information on infection control to staff upon hire and annually which includes:
 - (a) Education on general infection control in accordance with WAC 296-62-08001 bloodborne pathogens exposure control; and
 - (b) General and department specific infection control measures related to the work of each department in which the staff works; and
 - (9) Establish and implement an education plan that verifies or arranges for the appropriate education and training of staff on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310.

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-265 Infection control program. The purpose of the infection control program section is to identify and reduce the risk of acquiring and transmitting nosocomial infections and communicable diseases between patients, employees, medical staff, volunteers, and visitors.

Hospitals must develop and implement an infection control program and will:

- (1) Designate a member or members of the staff to:
 - (a) Oversee, review, evaluate, and approve the activities of the infection control program and the infection control aspects of appropriate hospital policies and procedures; and
 - (b) Provide consultation;
- (2) Assure staff managing the infection control program have:
 - (a) Documented evidence of a minimum of two years experience in a health related field; and
 - (b) Training in the principles and practices of infection control;
- (3) Adopt and implement written policies and procedures consistent with the published guidelines of the centers for disease control and prevention (CDC) regarding infection control in hospitals, to guide the staff. Where appropriate, policies and procedures are specific to the service area and address:
 - (a) Receipt, use, disposal, processing, or reuse of hospital and nonhospital equipment to assure prevention of disease transmission;
 - (b) Prevention of cross contamination between soiled and clean items during sorting, processing, transporting, and storage;
 - (c) Environmental management and housekeeping functions, including:
 - (i) The process for approval of disinfectants, sanitation procedures, and equipment;
 - (ii) Cleaning areas used for surgical procedures as appropriate, before, between, and after cases;

- (ii) General hospital-wide daily and periodic cleaning; and
- (iv) A laundry and linen system that will ensure:
 - (A) The supply of linen/laundry is adequate to meet the needs of the hospital and patients; and
 - (B) Standards used for processing linens assure that clean linen/laundry is free of toxic residues and within industry standard pH range(s) ~~(and~~
 - ~~(C) Processing and storage in accordance with WAC 246-320-595(3));~~
 - (d) Occupational health consistent with current practice;
 - (e) Attire;
 - (f) Traffic patterns;
 - (g) Antisepsis and handwashing;
 - (h) Scrub technique and surgical preparation;
 - (i) Biohazardous waste management in accordance with applicable federal, state, and local regulations;
 - (j) Barrier and transmission precautions; and
 - (k) Pharmacy and therapeutics; and
 - (4) Establish and implement a plan for:
 - (a) Public health coordination, including a system for reporting communicable diseases in accordance with chapter 246-100 WAC Communicable and certain other diseases; and
 - (b) Surveillance and investigation consistent with WAC 246-320-225 Improving organizational performance.

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-365 Specialized patient care services.

The purpose of the specialized patient care services section is to guide the development of the plan for patient care. This is accomplished by ensuring availability of materials and resources and through establishing, monitoring, and enforcing policies and procedures that promote the delivery of quality health care in specialized patient care areas.

Hospitals will:

- (1) Meet the requirements in Inpatient care services, WAC 246-320-345;
- (2) Adopt and implement policies and procedures which address accepted standards of care for each specialty service;
- (3) Assure physician oversight for each specialty service by a physician with experience in those specialized services;
- (4) Assure staff for each nursing service area are supervised by a registered nurse who provides a leadership role to plan, provide, and coordinate care;
- (5) If providing surgery and interventional services:
 - (a) Adopt and implement policies and procedures that address appropriate access:
 - (i) To areas where invasive procedures are performed; and
 - (ii) To information regarding practitioner's delineated privileges for operating room staff;
 - (b) Provide:
 - (i) Emergency equipment, supplies, and services available in a timely manner and appropriate for the scope of service; and
 - (ii) Separate refrigerated storage equipment with temperature alarms, when blood is stored in the surgical department;

(6) If providing a post anesthesia recovery unit (PACU), adopt and implement written policies and procedures requiring:

(a) The availability of an authorized practitioner in the facility capable of managing complications and providing cardiopulmonary resuscitation for patients when patients are in the PACU; and

(b) The immediate availability to the PACU of a registered nurse trained and current in advanced cardiac life support measures;

(7) If providing obstetrical services:

(a) Have capability to perform cesarean sections twenty-four hours per day; or

(b) Meet the following criteria when the hospital does not have twenty-four hour cesarean capability:

(i) Limit planned obstetrical admissions to "low risk" obstetrical patients as defined in WAC 246-329-010(13) childbirth centers;

(ii) Inform each obstetrical patient in writing, prior to the planned admission, of the hospital's limited obstetrical services as well as the transportation and transfer agreements;

(iii) Maintain current written agreements for adequately staffed ambulance and/or air transport services to be available twenty-four hours per day; and

(iv) Maintain current written agreements with another hospital to admit the transferred obstetrical patients;

(c) Ensure one licensed nurse trained in neonatal resuscitation is in the hospital when infants are present;

(8) If providing an intermediate care nursery, have nursing, laboratory, pharmacy, radiology, and respiratory care services appropriate for infants:

(a) Available in a timely manner; and

(b) In the hospital during assisted ventilation;

(c) Ensure one licensed nurse trained in neonatal resuscitation is in the hospital when infants are present;

(9) If providing a neonatal intensive care nursery, have:

(a) Nursing, laboratory, pharmacy, radiology, and respiratory care services appropriate for neonates available in the hospital at all times;

(b) An anesthesia practitioner, neonatologist, and a pharmacist on call and available in a timely manner twenty-four hours a day; and

(c) One licensed nurse trained in neonatal resuscitation in the hospital when infants are present;

(10) If providing a critical care unit or services, have:

(a) At least two licensed nursing personnel skilled and trained in care of critical care patients on duty in the hospital at all times when patients are present, and:

(i) Immediately available to provide care to patients admitted to the critical care area; and

(ii) Trained and current in cardiopulmonary resuscitation including at least one registered nurse with:

(A) Training in the safe and effective use of the specialized equipment and procedures employed in the particular area; and

(B) Successful completion of an advanced cardiac life support training program; and

(b) Laboratory, radiology, and respiratory care services available in a timely manner;

(11) If providing an alcoholism and/or chemical dependency unit or services:

(a) Adopt and implement policies and procedures that address development, implementation, and review of the individualized treatment plan, including the participation of the multidisciplinary treatment team, the patient, and the family, as appropriate;

(b) Ensure provision of patient privacy for interviewing, group and individual counseling, physical examinations, and social activities of patients; and

(c) Provide staff in accordance with WAC 246-324-170(3);

(12) If providing a psychiatric unit or services:

(a) Adopt and implement policies and procedures that address development, implementation, and review of the individualized treatment plan, including the participation of the multidisciplinary treatment team, the patient, and the family, as appropriate;

(b) Ensure provision of patient privacy for interviewing, group and individual counseling, physical examinations, and social activities of patients;

(c) Provide staff in accordance with WAC 246-322-170(3); and

(d) Provide:

(i) Separate patient sleeping rooms for children and adults;

(ii) Access to at least one seclusion room;

(iii) For close observation of patients;

(13) If providing a long-term care unit or services, provide an activities program designed to encourage each long-term care patient to maintain or attain normal activity and achieve an optimal level of independence;

(14) If providing an emergency care unit or services, provide basic, outpatient emergency care including:

(a) Capability to perform emergency triage and medical screening exam twenty-four hours per day;

(b) At least one registered nurse skilled and trained in care of emergency department patients on duty in the hospital at all times, and:

(i) Immediately available to provide care; and

(ii) Trained and current in advanced cardiac life support;

(c) Names and telephone numbers of medical and other staff on call must be posted; and

(d) Communication with agencies as indicated by patient condition;

(15) If providing renal dialysis service:

(a) Meet (~~WAC 246-320-99902(2) for~~) the Association for the Advancement of Medical Instrumentation (AAMI) Standards, Dialysis Edition, 2005:

(i) The cleaning and sterilization procedures if dialyzers are reused;

(ii) Water treatment, if necessary to ensure water quality; and

(iii) Water testing for bacterial contamination and chemical purity;

(b) Test dialysis machine for bacterial contamination monthly or demonstrate a quality assurance program establishing effectiveness of disinfection methods and intervals;

(c) Take appropriate measures to prevent contamination, including backflow prevention in accordance with ((WAC 246-320-525(4)(a))) the state plumbing code;

(d) Provide for the availability of any special dialyzing solutions required by a patient; and

(e) Through a contract provider, that provider must meet the requirements in this section.

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-405 Management of environment for care. The purpose of the management of environment for care section is to ((~~reduce and control~~) manage the) environmental hazards and risks, prevent accidents and injuries, and maintain safe conditions for patients, visitors, and staff.

(1) The hospital will designate a person or persons responsible to develop, implement, monitor, and follow-up on safety, security, hazardous materials, emergency preparedness, life safety, patient related technology, utility system, and physical plant elements of the management plan.

(2) Safety. The hospital will:

(a) Establish and implement a plan to:

(i) Maintain a physical environment free of hazards; and
(ii) Reduce the risk of injury to patients, staff, and visitors;

(b) Report and investigate safety related incidents and when appropriate correct and/or take steps to avoid reoccurrence in the future; and

(c) Educate and review periodically with staff, policies and procedures relating to safety and job-related hazards.

(3) Security. The hospital will:

(a) Establish and implement a plan to maintain a secure environment for patients, visitors, and staff, including a plan to prevent abduction of patients;

(b) Educate staff on security procedures; and

(c) If they have a designated security staff, assure security staff have a minimum level of training and competency commensurate with their assigned responsibility, as defined by the hospital.

(4) Hazardous materials and waste. The hospital will:

(a) Establish and maintain a program to safely control hazardous materials and waste in accordance with applicable federal, state, and local regulations;

(b) Provide space and equipment for safe handling and storage of hazardous materials and waste;

(c) Investigate all hazardous materials or waste spills, exposures, and other incidents, and report as required to appropriate agency(s);

(d) Educate staff on policies and procedures relating to safe control of hazardous materials and waste.

(5) Emergency preparedness. The hospital will:

(a) Establish and implement a disaster plan designed to meet both internal and external disasters. The plan is:

(i) Specific to the hospital;

(ii) Relevant to the area;

(iii) Internally implementable, twenty-four hours a day, seven days a week; and

(iv) Reviewed and revised periodically;

(b) Ensure the disaster plan identifies:

(i) Who is responsible for each aspect of the plan; and
(ii) Essential and key personnel who would respond to a disaster;

(c) Include in the plan:

(i) Provision for staff education and training; and

(ii) A debriefing and evaluation after each disaster incident or drill.

(6) Life safety. The hospital will:

(a) Establish and implement a plan to maintain a fire-safe environment of care that meets fire protection requirements established by the Washington state patrol, fire protection bureau;

(b) Investigate fire protection deficiencies, failures, and user errors; and

(c) Orient, educate, and drill staff on policies and procedures relating to life safety management and emergencies.

(7) Patient related technologies. The hospital will:

(a) Establish and implement a plan to:

(i) Complete a technical and an engineering review to ensure that patient related technology will function safely and with appropriate building support systems;

(ii) Inventory all patient related technologies that require preventive maintenance;

(iii) Address and document preventive maintenance (PM); and

(iv) Assure quality delivery of service, independent of service vendor or methodology;

(b) Investigate, report, and evaluate procedures in response to system failures; and

(c) Educate staff regarding relevant patient related medical technology.

(8) Utility systems. The hospital will:

(a) Establish and implement a plan to:

(i) Maintain a safe, controlled, comfortable environment;

(ii) Assess and minimize risks of utility system failures, and ensure operational reliability of utility systems;

(iii) Investigate utility systems management problems, failures, or user errors and report incidents and corrective actions; and

(iv) Address and document preventive maintenance (PM);

(b) Educate staff on utility management policies and procedures.

(9) Physical plant. The hospital will provide:

(a) Storage;

(b) Plumbing with:

(i) A water supply providing hot and cold water under pressure which conforms to the quality standards of the department;

(ii) Hot water supplied for bathing and handwashing purposes not exceeding 120°F; and

(iii) The cross connection controls meeting requirements ((~~in WAC 246-320-525(4)(a); and~~

~~(iv) Medical gas piping meeting requirements in WAC 246-320-9902(6) and (10))~~ of the state plumbing code;

(c) Ventilation:

(i) To prevent objectionable odors and/or excessive condensation; and

(ii) With air pressure relationships ((~~meeting the requirements in WAC 246-320-525 (Table 525-3))~~) as designed and

approved by the department when constructed and maintained within industry standard tolerances;

(d) ~~((Interior finishes suitable to the function in accordance with WAC 246-320-525(6);))~~ Clean interior surfaces and finishes;

(e) ~~((Electrical with:~~

~~(i)) Functional patient call system((s in accordance with WAC 246-320-525 (Table 525-1); and~~

~~(ii) Tamper resistant receptacles in waiting areas and where noted in Table 525-5 and WAC 246-320-99902(3)).~~

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-500 Applicability of WAC 246-320-500 through ~~((246-320-99902))~~ 246-320-600. The purpose of ~~((the new))~~ construction regulations is to provide ~~((minimum standards))~~ for a safe and effective patient care environment ~~((consistent with other applicable rules and regulations without redundancy and contradictory requirements. Rules allow flexibility in achieving desired outcomes and enable hospitals to respond to changes in technologies and health care innovations)).~~ These rules are not retroactive and are intended to be applied as outlined below.

(1) These regulations apply to ~~((a))~~ hospitals ~~((as defined in RCW 70.41.020))~~ including:

(a) ~~((Including:~~

~~(i))~~ New buildings to be licensed as a hospital;

~~((ii))~~ (b) Conversion of an existing building or portion ~~((thereof))~~ of an existing building for use as a hospital;

~~((iii))~~ (c) Additions to an existing hospital;

~~((iv))~~ (d) Alterations to an existing hospital; and

~~((v))~~ (e) Buildings or portions of buildings licensed as a hospital and used for ~~((outpatient care facilities))~~ hospital provider services;

~~((b))~~ (f) Excluding nonpatient care ~~((areas))~~ buildings used exclusively for administration functions.

(2) The requirements of chapter 246-320 WAC in effect at the time the application~~((s))~~ and fee~~((s and construction documents))~~ are submitted to the department ~~((for review with)),~~ and project number is assigned by the department, apply for the duration of the construction project.

(3) Standards for design and construction.

Facilities constructed and intended for use under this chapter shall comply with:

(a) The following chapters of the 2006 edition of the *Guidelines for Design and Construction of Health Care Facilities* as published by the American Institute of Architects, 1735 New York Avenue, N.W., Washington D.C. 20006, as amended in this section:

(i) 1.1 Introduction

(ii) 1.2 Environment of Care

(iii) 1.3 Site

(iv) 1.4 Equipment

(v) 1.5 Planning, Design and Construction

(vi) 1.6 Common Requirements

(vii) 2.1 General Hospital

(viii) 2.2 Small Inpatient Primary Care Hospitals

(ix) 2.3 Psychiatric Hospital

(x) 2.4 Rehabilitation Facilities

(xi) 3.1 Outpatient Facilities

(xii) 3.2 Primary Care Outpatient Centers

(xiii) 3.3 Small Primary (Neighborhood) Outpatient Facilities

(xiv) 3.4 Freestanding Outpatient Diagnostic and Treatment Facilities

(xv) 3.5 Freestanding Urgent Care Facilities

(xvi) 3.6 Freestanding Birthing Centers

(xvii) 3.7 Outpatient Surgical Facilities

(xviii) 3.8 Office Surgical Facilities

(xix) 3.9 Gastrointestinal Endoscopy Facilities

(xx) 3.10 Renal Dialysis Centers

(xxi) 3.11 Psychiatric Outpatient Centers

(xxii) 3.12 Mobile, Transportable, and Relocatable Units

(xxiii) 4.2 Hospice Facility

(b) *The National Fire Protection Association, Life Safety Code, NFPA 101, 2000.*

(c) *The State Building Code* as adopted by the state building code council under the authority of chapter 19.27 RCW.

(d) *Accepted procedure and practice in cross-contamination control, Pacific Northwest Edition, 6th Edition, December 1995, American Waterworks Association.*

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-505 Design, construction review, and approval of plans. (1) Drawings and specifications for new construction, excluding minor alterations, must be prepared by~~((s))~~ or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW must be used for the various branches of ~~((the))~~ work where appropriate. The services of a registered ~~((professional))~~ engineer may be used in lieu of the services of an architect if work involves engineering only.

(2) A hospital ~~((must submit construction documents for proposed new construction to the department for review and approval prior to occupying the new construction, as specified in this subsection, with the exception of administration areas that do not affect fire and life safety, mechanical and electrical for patient care areas. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes. The construction documents must include:~~

~~((a))~~ will meet the following requirements:

(a) Request and attend a presubmission conference for projects with a construction value of two hundred fifty thousand dollars or more. The presubmission conference shall be scheduled to occur for the review of construction documents that are no less than fifty percent complete.

(b) Submit construction documents for proposed new construction to the department for review within ten days of submission to the local authorities. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes.

(c) The construction documents must include:

(i) A written program containing, ((at a minimum)) but not limited to the following:

((i)) (A) Information concerning services to be provided and operational methods to be used; ((and

(ii) A plan to show how they will ensure the health and safety of occupants during construction and installation of finishes. This includes taking appropriate infection control measures, keeping the surrounding area free of dust and fumes, and assuring rooms or areas are well-ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors;

(b)) (B) An interim life safety measures plan to ensure the health and safety of occupants during construction and installation of finishes.

(C) An infection control risk assessment indicating appropriate infection control measures, keeping the surrounding area free of dust and fumes, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors;

(ii) Drawings and specifications to include coordinated architectural, mechanical, and electrical work. Each room, area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided; and

((e)) (iii) Floor plan of the existing building showing the alterations and additions, and indicating((

(i)) location of any service or support areas; and

((i)) (iv) Required paths of exit serving the alterations or additions.

((3) A hospital will:

(a)) (d) The hospital will respond in writing when the department requests additional or corrected construction documents;

((b)) (e) Notify the department in writing when construction has commenced;

((e) Submit to the department for review any addenda or modifications to the construction documents;

(d) Assure construction is completed in compliance with the final "department approved" documents; and

(e) Notify the department in writing when construction is completed and include a copy of the local jurisdiction's approval for occupancy.

(4) A hospital will not use any new or remodeled areas until:

(a) The construction documents are approved by the department; and

(b) The local jurisdictions have issued an approval to occupy)) (f) Provide the department with a signed form acknowledging the risks form if starting construction before the plan review has been completed. The acknowledgment of risks form shall be signed by the:

(i) Architect; and

(ii) Hospital CEO, COO or designee; and

(iii) Hospital facilities director.

(g) Submit to the department for review any addenda or modifications to the construction documents;

(h) Assure construction is completed in compliance with the final "department approved" documents. Compliance with these standards and regulations does not relieve the hos-

pital of the need to comply with applicable state and local building and zoning codes. Where differences in interpretations occur, the hospital will follow the most stringent requirement.

(i) The hospital will allow any necessary inspections for the verification of compliance with the construction document, addenda, and modifications.

(j) Notify the department in writing when construction is completed and include a copy of the local jurisdiction's approval for occupancy.

(3) The hospital will not begin construction or use any new or remodeled areas until:

(a) The infection control risk assessment has been approved by the department;

(b) The interim life safety plan has been approved by the department;

(c) An acknowledgment of risk form has been submitted to the department as required by subsection (2)(f) of this section;

(d) The department has approved construction documents or granted authorization to begin construction; and

(e) The local jurisdictions have issued a building permit, when applicable or given approval to occupy.

(4) The department will issue an "authorization to begin construction" when subsection (3)(a), (b), and (c) are approved and the presubmission conference is concluded.

NEW SECTION

WAC 246-320-600 Washington state amendments.

This section contains the Washington state amendments to the 2006 edition of the *Guidelines for Design and Construction of Health Care Facilities* as published by the American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006.

CHAPTER 1.2 ENVIRONMENT OF CARE

2.1.3.4 This section is not adopted.

CHAPTER 1.3 SITE

2.2 Availability of Transportation

This section is not adopted.

3.3 Parking

This section is not adopted.

CHAPTER 1.4 EQUIPMENT

A1.3.1 Design should consider the placement of cables from portable equipment so that personnel circulation and safety are maintained.

CHAPTER 1.5 PLANNING, DESIGN AND CONSTRUCTION

2.1 General

2.1.1 ICRA Panel

The ICRA shall be conducted by a panel with expertise in the areas affected by the project; at a minimum this would include infection control, epidemiology and facility representation.

CHAPTER 1.6 COMMON REQUIREMENTS

2.1.1 General

Unless otherwise specified herein, all plumbing systems shall be designed and installed in accordance with the plumbing code as adopted by the state building code council.

2.1.3.2 Handwashing Stations

General handwashing stations used by medical and nursing staff, patients, and food handlers shall be trimmed with valves that can be operated without hands. Single-lever or wrist blade devices shall be permitted. Blade handles used for this purpose shall be at least 4 inches (10.2 centimeters) in length.

2.2 HVAC Air Distribution

2.2.2.1 HVAC Ductwork

(2) Humidifiers.

(a) If humidifiers are located within a ventilation system upstream of the final filters, they shall be at least 15 feet (4.57 meters) upstream of the final filters.

(b) Ductwork with duct-mounted humidifiers shall have a means of water removal.

(c) An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential for condensation inside the duct.

(d) Humidifiers shall be connected to airflow proving switches that prevent humidification unless the required volume of airflow is present or high-limit humidistats are provided.

(e) All duct takeoffs shall be sufficiently downstream of the humidifier to ensure complete moisture absorption.

(f) Steam humidifiers shall be used. Reservoir type water spray or evaporative pan humidifiers shall not be used.

A2.2.2.1(2) It is recognized that some facilities may not require humidity control within the ranges in table 2.1-2 and that the final determination of a facility's ability to control humidity will be made by that facility.

CHAPTER 2.1 GENERAL HOSPITALS

1.2.2 Swing Beds

When the concept of swing beds is part of the functional program, care shall be taken to include requirements for all intended categories. Nursing homes and long-term care units must be distinct and separate from swing bed units.

A1.2.2 Swing Beds

Every bed must be able to provide both acute care and long-term care. The concept is that the patient would not have to be moved, rather their status would change from "acute" to "swing bed" status.

2.2.1 Toilet Rooms

2.2.1.3 Toilet room doors shall swing outward or be double acting. Where local requirements permit, surface mounted sliding doors may be used, provided adequate provisions are made for acoustical and visual privacy.

2.3.5 Nourishment Area

2.3.5.1 A nourishment area shall have a sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishment between scheduled meals. This area shall include space for trays and dishes used for nonscheduled meal service. This function may be combined with a clean utility without duplication of sinks and work counters.

2.3.10 Housekeeping Room

2.3.10.1 Housekeeping rooms shall be directly accessible from the unit or floor they serve and may serve more than

one nursing unit on a floor. Housekeeping and soiled rooms may be combined.

3.1.1 Typical Patient Rooms

3.1.1.1 Capacity

(1) In new construction, the maximum number of beds per room shall be two.

(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no more than the present capacity with a maximum of four patients.

3.1.1.5 Handwashing Stations. These shall be provided to serve each patient room.

(1) A handwashing station shall be provided in the toilet room.

(2) Or, in private rooms, a handwashing station shall be provided in the patient room provided alcohol-based hand sanitizers are provided in the toilet room. The handwashing station shall be located outside the patient's cubicle curtain and convenient to staff entering and leaving the room.

(3) A hand sanitation station in patient rooms utilizing waterless cleaners shall be permitted in renovations of existing facilities where existing conditions prohibit an additional handwashing station.

3.1.2 Patient/Family Centered Care Rooms

This section is not adopted.

3.1.5 Support Areas for Medical/Surgical Nursing Units

3.1.5.5 Handwashing Stations

(1) Handwashing stations or waterless cleansing stations shall be conveniently accessible to the nurse station, medication station, and nourishment station. "Convenient" is defined as not requiring staff to access more than two spaces separated by a door.

(2) One handwashing station may serve several areas if convenient to each.

4.3.1 Labor Rooms

4.3.1.1 General

(2) Access. Labor rooms shall have controlled access with doors.

5.1.3 Definitive Emergency Care

5.1.3.7(5) Decontamination Area

(a) Location. In new construction, a decontamination room shall be provided with an outside entry door as far as practical from the closest other entrance. The internal door of this room shall open into a corridor of the emergency department, swing into the room and be lockable against ingress from the corridor.

(b) Space requirements. The room shall provide a minimum of 80 square feet (7.43 square meters) clear floor area.

(c) Facility requirements.

(i) The room shall be equipped with two hand-held shower heads with temperature controls.

(ii) Portable or hard-piped oxygen shall be provided. Portable suction shall also be available.

(d) Construction requirements. The room shall have all smooth, nonporous, scrubable, nonabsorptive, nonperforated surfaces. Fixtures shall be acid resistant. The floor of the decontamination room shall be self-coving to a height of 6 inches (15.24 centimeters).

(e) This section does not preclude decontamination capability at other locations or entrances immediately adjacent to the emergency department.

5.3.3 Pre- and Postoperative Holding Areas

5.3.3.2 Post-anesthetic Care Units (PACUs)

(4) Facility requirements. Each PACU shall contain a medication station; handwashing stations; nurse station with charting facilities; clinical sink; provisions for bedpan cleaning; and storage space for stretchers, supplies, and equipment.

(a) Handwashing station(s). At least one handwashing station with hands-free or wrist blade-operable controls shall be available for every four beds, six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

(b) Staff toilet. A staff toilet shall be located within the working area to maintain staff availability to patients.

5.3.5 Support Areas for the Surgical Suite

5.3.5.4 Scrub Facilities. Two scrub positions shall be provided near the entrance to each operating room.

(3) View windows at scrub stations not required.

5.9.3 Examination Room

This section is not adopted.

6.1. Pharmacy

Until final adoption of USP 797 by either federal or other state programs, facilities may request plan review for conformance to USP 797 with their initial submission to the Department of Health, Construction Review Services. The most current edition of USP 797 at the time of the application will be used for plan review service.

8.2.2.3 Doors

(2) Door Size.

(a) General. Where used in these Guidelines, door width and height shall be the nominal dimension of the door leaf, ignoring projections of frame and stops. Note: While these standards are intended for access by patients and patient equipment, size of office furniture, etc., shall also be considered.

(b) Inpatient bedrooms.

(i) New construction. The minimum door size for inpatient bedrooms in new work areas shall be 4 feet (1.22 meters) wide and 7 feet (2.13 meters) high to provide clearance for movement of beds and other equipment.

(ii) Renovation. Existing doors of not less than 2 feet 10 inches (86.36 centimeters) wide may be considered for acceptance where function is not adversely affected and replacement is impractical.

(c) Rooms for stretchers/wheelchairs. Doors to other rooms used for stretchers (including hospital wheeled-bed stretchers) and/or wheelchairs shall have a minimum width of 2 feet 10 inches (86.36 centimeters).

10.1.2 Plumbing and Other Piping Systems

10.1.2.5 Drainage Systems

(1) Piping.

(a) Drain lines from sinks used for acid waste disposal shall be made of acid resistant material.

(b) Drain lines serving some types of automatic blood-cell counters shall be of carefully selected material that will eliminate potential for undesirable chemical reactions (and/or explosions) between sodium azide wastes and copper, lead, brass, solder, etc.

(c) Reasonable effort shall be made to avoid installing drainage piping within the ceiling or exposed in operating and delivery rooms, nurseries, food preparation centers, food-serving facilities, food storage areas, central services, electronic data processing areas, electric closets, and other sensitive areas. Where exposed overhead drain piping in these areas is unavoidable, special provision shall be made to protect the space below from leakage, condensation or dust particles.

10.2.1 General

10.2.1.1 Mechanical System Design

(2) Air-handling systems.

(a) These shall be designed with an economizer cycle where appropriate to use outside air. (Use of mechanically circulated air does not reduce need for filtration.)

(b) VAV systems. The energy-saving potential of variable-air-volume systems is recognized and the standards herein are intended to maximize appropriate use of those systems. Any system used for occupied areas shall include provisions to avoid air stagnation in interior spaces where thermostat demands are met by temperatures of surrounding areas and air movement relationship changes if constant volume and variable volume are supplied by one air-handling system with a common pressure dependent return system.

(c) Noncentral air-handling systems (i.e., individual room units used for heating and cooling purposes, such as fan-coil units, heat pump units, etc.). These units may be used as recirculating units only. All outdoor air requirements shall be met by a separate central air-handling system with proper filtration, as noted in Table 2.1-3.

10.2.1.2 Ventilation and Space Conditioning Requirements. All rooms and areas used for patient care shall have provisions for ventilation.

(2) Air change rates. Air supply and exhaust in rooms for which no minimum total air change rate is noted may vary down to zero in response to room load. For rooms listed in Table 2.1-2, where VAV systems are used, minimum total air change shall be within limits noted, the minimum required by the Washington State Ventilation and Indoor Air Quality Code (chapter 51-13 WAC).

(3) Temperature. Space temperature shall be as indicated in Table 2.1-2.

10.2.4 HVAC Air Distribution

10.2.4.3 Exhaust Systems

(1) General.

(a) Exhaust systems may be combined.

(b) Local exhaust systems shall be used whenever possible in place of dilution ventilation to reduce exposure to hazardous gases, vapors, fumes, or mists.

(c) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable.

(d) Airborne infection isolation rooms shall not be served by exhaust systems incorporating a heat wheel.

10.2.5 HVAC Filters

10.2.5.2 Filter Bed Location. Where two filter beds are required, filter bed no. 1 shall be located upstream of the air conditioning equipment and filter bed no. 2 shall be downstream of the last component of any central air-handling unit and plenum/duct liner except: Steam injection-type humidifiers; terminal heating coils; and mixed boxes and acoustical

traps that have special covering over the lining. Terminal cooling coils and linings are permitted downstream of filter bed no. 2 with additional filtration downstream of coil meeting requirements of filter bed no. 2.

10.2.5.5 Filter Manometers. A manometer shall be installed across each filter bed having a required efficiency of 75 percent or more, including hoods requiring HEPA filters. Manometers may be omitted at HEPA-filtered ceiling diffusers if pressure-independent terminal units provide the operator a means to verify the actual airflow to the HEPA-filtered diffusers in each room. Provisions shall be made to allow access for field testing. A recognized air flow measuring device would be acceptable, in lieu of terminal units.

Table 2.1-2 Ventilation Requirements for Areas Affecting Patient Care in Hospitals and Outpatient Facilities

Footnote 8 The ranges listed are the minimum and maximum limits where control is specifically needed. The maximum and minimum limits are not intended to be independent of a space's associated temperature. See figure 2.1-1 for a graphic representation of the indicated changes on a psychometric chart. Shaded area is acceptable range.

CHAPTER 2.2 SMALL INPATIENT PRIMARY CARE HOSPITALS

1.3.2 Parking

This section not adopted.

CHAPTER 2.3 PSYCHIATRIC HOSPITALS

1.6.1 Parking

This section is not adopted.

CHAPTER 3.1 OUTPATIENT FACILITIES

1.7.2 Parking

This section is not adopted.

7.1.2 Plumbing and Other Piping Systems

7.1.2.1 General Piping and Valves

(3) To prevent food contamination, no plumbing lines shall be exposed overhead or on walls where possible accumulation of dust or soil may create a cleaning problem or where leaks would create a potential for food contamination.

CHAPTER 3.2 PRIMARY CARE OUTPATIENT CENTERS

1.3.1 Parking

This section is not being adopted.

CHAPTER 3.3 SMALL PRIMARY (NEIGHBORHOOD) OUTPATIENT FACILITIES

1.3.2 Parking

This section is not adopted.

CHAPTER 3.5 FREESTANDING URGENT CARE FACILITIES

1.2.2 Parking

This section is not adopted.

CHAPTER 3.6 FREESTANDING BIRTHING CENTERS

1.2.1 Parking

This section is not adopted.

CHAPTER 3.7 OUTPATIENT SURGICAL FACILITIES

1.6.1 Parking

This section is not adopted.

CHAPTER 3.9 GASTROINTESTINAL ENDOSCOPY FACILITIES

1.6.1 Parking

This section is not adopted.

CHAPTER 3.11 PSYCHIATRIC OUTPATIENT CENTERS

1.3.1 Parking

This section is not adopted.

AMENDATORY SECTION (Amending WSR 05-18-073, filed 9/7/05, effective 10/8/05)

WAC 246-320-990 Fees. This section establishes the licensure fee for hospitals licensed under chapter 70.41 RCW.

(1) Applicants and licensees shall:

(a) Submit an annual license fee of ninety-six dollars and ninety cents for each bed space within the licensed bed capacity of the hospital to the department;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(c) Include neonatal intensive care bassinet spaces;

(d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department;

(e) Exclude all normal infant bassinets;

(f) Limit licensed bed spaces as required under chapter 70.38 RCW;

(g) Submit an application for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the hospital licensed bed capacity;

(h) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not performed an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because the applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

(3) Construction review applicants shall submit the appropriate fee per chapter 246-314 WAC at the time of application to construction review services.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-320-515	Site and site development.
WAC 246-320-525	General design.
WAC 246-320-535	Support facilities.
WAC 246-320-545	Maintenance, engineering, mechanical, and electrical facilities.
WAC 246-320-555	Admitting, lobby, and medical records facilities.
WAC 246-320-565	Receiving, storage, and distribution facilities.
WAC 246-320-575	Central processing service facilities.
WAC 246-320-585	Environmental services facilities.
WAC 246-320-595	Laundry and/or linen handling facilities.
WAC 246-320-605	Food and nutrition facilities.
WAC 246-320-625	Laboratory and pathology facilities.
WAC 246-320-635	Surgery facilities.
WAC 246-320-645	Recovery/post anesthesia care unit (PACU).
WAC 246-320-655	Obstetrical delivery facilities.
WAC 246-320-665	Birthing/delivery rooms, labor, delivery, recovery (LDR) and labor, delivery, recovery, postpartum (LDRP).
WAC 246-320-675	Interventional service facilities.
WAC 246-320-685	Nursing unit.
WAC 246-320-695	Pediatric nursing unit.
WAC 246-320-705	Newborn nursery facilities.
WAC 246-320-715	Intermediate care nursery and neonatal intensive care nursery.
WAC 246-320-725	Critical care facilities.
WAC 246-320-735	Alcoholism and chemical dependency nursing unit.

WAC 246-320-745	Psychiatric facilities.
WAC 246-320-755	Rehabilitation facilities.
WAC 246-320-765	Long-term care and hospice unit.
WAC 246-320-775	Dialysis facilities.
WAC 246-320-785	Imaging facilities.
WAC 246-320-795	Nuclear medicine facilities.
WAC 246-320-805	Emergency facilities.
WAC 246-320-815	Outpatient care facilities.
WAC 246-320-99902	Appendix B—Dates of documents adopted by reference in chapter 246-320 WAC.

WSR 07-16-091

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 30, 2007, 3:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-086.

Title of Rule and Other Identifying Information: Chapter 388-825 WAC, Division of developmental disabilities (DDD) service rules.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on September 4, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 5, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 4, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsljl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending and repealing references to companion homes and alternative living services in chapter 388-825 WAC. These references were permanently adopted in chapters 388-829A and 388-829C WAC.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3400; Implementation and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined for this set of rules that alternative living providers are all small businesses and there will be not disproportionate impact.

DDD has analyzed these proposed rules and concludes that costs to alternative living providers will be minor, if there are any costs at all.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are amending and repealing references to companion homes and alternative living services in chapter 388-825 WAC that were permanently adopted in chapters 388-829A and 388-829C WAC. This rule making does not meet the definition of significant legislative rule under RCW 34.05.328, and a cost-benefit analysis is not required.

July 24, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-305 What service providers are governed by the qualifications in these rules? These rules govern individuals and agencies contracted with to provide:

- (1) Respite care services;
- (2) ~~((Companion home services;~~
- ~~(3)))~~ Personal care services through the Medicaid personal care program or DDD HCBS Basic, Basic Plus, or CORE waivers; or
- ~~((4) Alternative living services; or~~
- ~~(5)))~~ (3) Attendant care services.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-320 How does a person become an individual provider~~((, companion home provider or an alternative living provider))~~? In order to become an individual provider, ~~((companion home provider or an alternative living provider,))~~ a person must:

- (1) Be eighteen years of age or older.
- (2) Provide the social worker/case manager/designee with:
 - (a) Picture identification; and
 - (b) A Social Security card.
- (3) Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW.

(a) Preliminary results may require a thumbprint for identification purposes.

(b) An FBI fingerprint-based background check is required if the person has lived in the state of Washington less than three years.

(4) Provide references as requested.

(5) Complete orientation, if contracting as an individual provider.

(6) Sign a service provider contract to provide services to a DDD client.

(7) Meet additional requirements in WAC 388-825-355.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, ~~((companion home services,))~~ personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus or CORE waivers, ~~((alternative living services))~~ or attendant care services?

(1) As a provider of respite care, ~~((companion home services,))~~ personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus, or CORE waivers, ~~((alternative living services))~~ or attendant care services, you must be able to:

(a) Adequately maintain records of services performed and payments received;

(b) Read and understand the person's service plan. Translation services may be used if needed;

(c) Be kind and caring to the DSHS client for whom services are authorized;

(d) Identify problem situations and take the necessary action;

(e) Respond to emergencies without direct supervision;

(f) Understand the way your employer wants you to do things and carry out instructions;

(g) Work independently;

(h) Be dependable and responsible;

(i) Know when and how to contact the client's representative and the client's case resource manager;

(j) Participate in any quality assurance reviews required by DSHS;

(2) If you are working with an adult client of DSHS as a provider of ~~((alternative living,))~~ attendant care ~~((or companion home services,))~~, you must also:

(a) Be knowledgeable about the person's preferences regarding the care provided;

(b) Know the resources in the community the person prefers to use and enable the person to use them;

(c) Know who the person's friends are and enable the person to see those friends; and

(d) Enable the person to keep in touch with his/her family as preferred by the person.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-340 What is required for a provider to provide respite or residential service in their home? Unless you are related to the client, ~~((or the client lives in a~~

~~companion home,))~~ respite or residential services must take place in a home licensed by DSHS. Services are limited to those age-specific services contained in your license.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services(~~(, companion home services, or alternative living services))~~?) (1) If you are an individual providing personal care services for adults, you must meet the training requirements in WAC 388-71-05665 through 388-71-05909.

(2) ~~((If you are an individual contracted to provide companion homes services or alternative living services, you must:~~

- ~~(a) Have a high school diploma or GED;~~
- ~~(b) Successfully complete DDD specialty training within the first six months of beginning service; and~~
- ~~(c) Complete ten hours of continuing education related to the job responsibilities each subsequent calendar year.~~

~~(3))~~ If you provide personal care for children, or provide respite care, there is no required training but DDD retains the authority to require training of any provider.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-370 What are the responsibilities of an individual or home care agency when employed to provide respite care, attendant care, or personal care(~~(, companion home services or alternative living))~~ services to a client? An individual or home care agency employed to provide respite care, attendant care, or personal care(~~(, companion home services, or alternative living))~~ services must:

(1) Understand the client's individual service plan or plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's service plan, within the scope of practice in WAC 388-71-0215 and 388-71-0230;

(3) Accommodate client's individual preferences and differences in providing care, within the scope of the service plan;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the service plan;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department immediately when unable to staff/serve the client; and

(9) Notify the department when the individual or home care agency will no longer provide services. Notification to the client/legal guardian must:

- (a) Give at least two weeks' notice, and

(b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws, regulations and contract requirements.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, or personal care(~~(, companion home services or alternative living))~~ services? (1) The department will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care(~~(, companion home services or alternative living services))~~ who:

(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(b) Is providing services under this chapter to their natural/step/adoptive minor client aged seventeen or younger;

(c) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(d) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(e) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(f) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05909; or

(g) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

~~(2) ((The department will deny payment for the services of an individual or a home care agency providing companion home services or alternative living services to their natural/step/adoptive adult child.~~

~~(3) The department will deny payment for services of a legal representative appointed by the courts providing companion home services to the client for whom they are the legal representative.~~

~~(4))~~ In addition, the department may deny payment to or terminate the contract of an individual provider as provided under WAC 388-825-380, 388-825-381, 388-825-385 and 388-825-390.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-385 When can the department terminate or summarily suspend an individual respite care, attendant care, or personal care(~~(, companion home services or alternative living services))~~ provider's contract? The department may take action to terminate an individual

respite care, attendant care, or personal care(~~(, companion home services or alternative living services))~~) provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. The department may summarily or immediately suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client could include, without limitation:

- (1) Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult;
- (2) Using or being under the influence of alcohol or illegal drugs during working hours;
- (3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;
- (4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;
- (5) A complaint from the client or client's representative that the client is not receiving adequate care;
- (6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or
- (7) Failure to respond appropriately to emergencies.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-390 **When can the department otherwise terminate an individual's contract to provide respite care, attendant care, or personal care(~~(, companion home services or alternative living services))~~)?** The department may otherwise terminate the individual's contract to provide respite care, attendant care, or personal care(~~(, companion home services or alternative living services))~~) for default or convenience in accordance with the terms of the contract and to the extent that those terms are not inconsistent with these rules.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-395 **What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care(~~(, companion home services or alternative living services))~~)?** If the department denies, terminates, or summarily (immediately) suspends the individual's contract to provide respite care, attendant care, or personal care, (~~(companion home services or alternative living services;))~~) the client has the right to:

- (1) A fair hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120; and
- (2) Receive services from another currently contracted individual or home care agency, or other options the client is eligible for, if a contract is summarily suspended.
- (3) The hearing rights afforded under this section are those of the client, not the individual provider.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-396 **Does the provider of respite care, attendant care, or personal care(~~(, companion home services or alternative living services))~~) have a right to a fair hearing?** (1) The hearing rights afforded under WAC 388-825-395(1) are those of the client.

(2) The provider of respite care, attendant care, or personal care(~~(, companion home services or alternative living))~~) services does not have a right to a fair hearing.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-316	How do I choose a companion home or alternative living provider?
WAC 388-825-381	When can the department reject the client's choice of a companion home services or alternative living services provider?

WSR 07-16-092

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 30, 2007, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-064.

Title of Rule and Other Identifying Information: The department is amending WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 4, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 5, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 4, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsljl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending WAC 388-513-1380 as follows:

- Changing the community spouse income and family allocation to \$1,712 effective July 1, 2007, due to a federal standard change.
- Changing the community spouse excess shelter standard to \$514 effective July 1, 2007, due to a federal standard change.
- Increasing the personal needs allowance (PNA) for nongeneral assistance clients in medical institutions due to a state legislative budget increase of 3.3%.
- Making changes to the language and clarifying the rules.
- Clarifying that an unanticipated lump sum is not considered income in the month of receipt.
- Clarifying excess resources are reduced in an amount equal to necessary medical care recognized by state law.
- Clarifying the computation for the community spouse allowance.
- Clarifying the medical institution income exemption (MIIE) is allowed for residents of medical institutions only.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.500, 74.09.530.

Statute Being Implemented: Chapter 522, Laws of 2007 (SHB 1128).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

July 27, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-01-072, filed 12/18/06, effective 1/18/07)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care ~~((#))~~ the post-eligibility process. The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those

subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the Medicaid special income level (SIL) (300% of the federal benefit rate (FBR), if the client is not otherwise eligible for another non-institutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

~~(4) ((Excess resources are reduced in an amount equal to medical expenses incurred by the institutional client (for definition see WAC 388-519-0110(10)) that are not subject to third party payment and for which the client is liable, including:~~

~~(a) Health insurance and Medicare premiums, deductions, and co-insurance charges of the institutional client;~~

~~(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan with the exception of the deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty established per WAC 388-513-1363, 388-513-1364 or 388-513-1365; and~~

~~(c) The amount of excess resources is limited to the following amounts:~~

~~(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or~~

~~(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).~~

~~(5))~~ The department allocates nonexcluded income in the following order and the combined total of ~~((5))~~ (4)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving general assistance.

(iv) Effective July 1, ~~((2006))~~ 2007, ~~((fifty-three))~~ fifty-five dollars and ~~((sixty-eight))~~ forty-five cents for all other clients in a medical institution.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

~~((6))~~ (5) The department allocates nonexcluded income after deducting amounts described in subsection ~~((5))~~ (4) in the following order:

(a) Income ~~((garnished))~~ garnished for child support or withheld according to a child support order in the month of garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) ~~((Not deducted under another provision in the post-eligibility process))~~ Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2007, two thousand five hundred forty-one dollars, unless a greater amount is allocated as described in subsection ~~((8))~~ (7) of this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, <http://www.bls.gov/cpi/>). The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) ~~((An amount added to the community spouse's gross income to provide a total of one thousand six hundred fifty dollars. This standard is based on))~~ One hundred fifty percent of the two person federal poverty level ~~((and))~~. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/pov-erty/>); and

(B) Excess shelter expenses as described under subsection ~~((7))~~ (6) of this section ~~((and))~~.

(ii) Is reduced by the community spouse's gross countable income; and

~~((it))~~ (iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) In an amount equal to one-third of ~~((one thousand six hundred fifty dollars))~~ one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard ~~((is based on one hundred fifty percent of the two person federal poverty level and))~~ increases annually on July 1st (<http://aspe.os.dhhs.gov/pov-erty/>).

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) ~~((Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources with the following exceptions:~~

(i) ~~Private health insurance premiums for Medicare/Medicaid integration project (MMIP);~~

(ii) ~~Managed care health insurance premiums for program of all inclusive care for the elderly (PACE); and~~

(iii) ~~The deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty per WAC 388-513-1363, 388-513-1364 or 388-513-1365))~~ Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical

expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents ~~((initial))~~ the need for the income exemption.

~~((7))~~ (6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection ~~((7))~~ (6)(b) less the standard shelter allocation under subsection ~~((7))~~ (6)(a). For the purposes of this rule:

(a) The standard shelter allocation ~~((is four hundred ninety five dollars. This standard))~~ is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/pov-erty/>); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

~~((8))~~ (7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

~~((9))~~ (8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

WSR 07-16-093

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 30, 2007, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-064.

Title of Rule and Other Identifying Information: The department is amending WAC 388-106-0225 How do I pay for MPC?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 4, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 5, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 4, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnslj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-106-0225 as follows:

- Increasing the personal needs allowance (PNA) 3.3% due to chapter 522, Laws of 2007 (SHB 1128).
- Clarifying a supplemental security income (SSI) related client determined medicaid eligible pays available income to an alternate living facility (ALF) after allowing a PNA of \$60.78.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: Chapter 522, Laws of 2007 (SHB 1128).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kristi Knudsen, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3213.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

July 27, 2007

Stephanie E. Schiller
Rules Coordinator

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

WAC 388-106-0225 How do I pay for MPC? (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of at least ~~((thirty-eight))~~ forty dollars and ~~((eighty-four))~~ twelve cents per month;

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of at least ~~((fifty-eight))~~ sixty dollars and ~~((eighty-four))~~ seventy-eight cents per month;

(c) An SSI-related person under WAC 388-511-1105, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate. You will receive a personal allowance of ~~((fifty-eight))~~ sixty dollars and ~~((eighty-four))~~ seventy-eight cents; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

WSR 07-16-094

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 30, 2007, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-067.

Title of Rule and Other Identifying Information: The department is amending WAC 388-515-1505 Financial eligibility requirements for long-term care (LTC) under community options program entry system (COPES), New Freedom, program of all-inclusive care for the elderly (PACE), medicare/medicaid integration project (MMIP), and the Washington medicaid integration partnership (WMIP).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 4, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 5, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 4, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnslj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending WAC 388-515-1505 as follows:

- Increasing the personal needs allowance (PNA) 3.3% for clients residing in alternate living facilities. This change is due to the Washington state 2007-09 operating budget (SHB 1128).
- Making changes to the language, clarifying rules, and updating WAC references.
- Clarifying the community spouse allowance computation.
- Clarifying excess nonexcluded resources above the standard are reduced in an amount equal to necessary medical care and not incurred by a transfer penalty.
- Clarifying the allowances for a GA-X client receiving earned income in an alternate living facility (ALF) on the HCS waiver.
- Clarifying and adding hospice service eligibility for clients not in a medical institution with gross income at or below the special income level (SIL - 300% of the federal benefit rate) and not eligible for another CN or MN medicaid program.
- Clarifying that clients deemed "SSI eligible" do not participate in the cost of personal care, but may pay up to the room and board amount of the federal benefit rate (FBR) minus \$60.78 if residing in an ALF.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575.

Statute Being Implemented: Chapter 522, Laws of 2007 (SHB 1128).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

July 27, 2007

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-18-058, filed 8/31/06, effective 10/1/06)

WAC 388-515-1505 Financial eligibility requirements for long-term care services under COPES, New Freedom, PACE, MMIP, and WMIP. (1) This section describes the financial eligibility requirements and the rules used to determine a client's participation in the total cost of care for home or community-based long-term care (LTC) services provided under the following programs:

- (a) Community options program entry system (COPES);
- (b) Program of all-inclusive care for the elderly (PACE);
- (c) Medicare/Medicaid integration project (MMIP);
- (d) Washington Medicaid integration partnership (WMIP); ~~((and))~~

(e) New Freedom consumer directed services (New Freedom); and

(f) Hospice services for clients not in a medical institution with gross income at or below the SIL and not eligible for another CN or MN medicaid program.

(2) To be eligible, a client must:

(a) Meet the program and age requirements for the specific program, as follows:

(i) COPES, per WAC 388-106-0310;

(ii) PACE, per WAC 388-106-0705;

(iii) MMIP waiver services, per WAC 388-106-0725;

(iv) WMIP waiver services, per WAC 388-106-0750;

~~((or))~~

(v) New Freedom, per WAC 388-106-1410; or

(vi) Hospice, per chapter 388-551 WAC.

(b) Meet the aged, blind or disability criteria of the Supplemental Security Income (SSI) program as described in WAC ~~((388-511-1105(1)))~~ 388-475-0050(1);

(c) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;

(d) Be residing in a medical facility as defined in WAC 388-500-0005, or likely to be placed in one within the next thirty days in the absence of home or community-based LTC services provided under one of the programs listed in subsection (1) of this section;

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of home or community-based LTC services and be approved for a plan of care as described in subsection (2)(a) ~~((i), (ii), or (iii)))~~;

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(i) Meet the resource and income requirements described in subsections (3), (4), and (5) or be an SSI beneficiary not subject to a penalty period as described in subsection (2)(h).

(3) Refer to WAC 388-513-1315 for rules used to determine ~~((nonexcluded))~~ countable resources ~~((and))~~ income and eligibility standards.

(4) ~~((Nonexcluded resources above the standard described in WAC 388-513-1350(1))~~;

~~((a) Are allowed during the month of an application or eligibility review, when the combined total of excess resources and nonexcluded income does not exceed the special income level (SIL).~~

~~((b) Are reduced by medical expenses incurred by the client (for definition, see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:~~

(i) ~~Health insurance and Medicare premiums, deductions, and co-insurance charges; and~~

(ii) ~~Necessary medical care recognized under state law, but not covered under the state's Medicaid plan.~~

(c) ~~Not allocated to participation must be at or below the resource standard. If excess resources are not allocated to participation, then the client is ineligible.)~~ Excess resources are reduced in an amount equal to medical expenses incurred by the institutional client as described in WAC 388-513-1350 and:

(a) Must result in countable resources being at or below the resource standard in WAC 388-513-1350(1).

(b) If remaining resources are over the standard, the client is ineligible.

(5) Nonexcluded income must be at or below the SIL (300% of the federal benefit rate (FBR)) and is allocated in the following order:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Maintenance and personal needs allowances as described in subsection (7), (8), ~~(and)~~ (9), (10), and (11) of this section;

(c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(d) Income ~~((garnished))~~ garnished for child support or withheld according to a child support order in the month of the garnishment (for current and back support):

(i) For the time period covered by the ~~((maintenance amount))~~ PNA; and

(ii) ~~((Not deducted under another provision in the post-eligibility process))~~ Is not counted as the child's income when determining the family allocation amount.

(e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 ~~((6))~~ (5)(b) unless a greater amount is allocated as described in subsection (6) of this section. This amount:

(i) Is allowed only to the extent that the client's income is made available to the community spouse; and

(ii) Consists of a combined total of both:

(A) ~~((An amount added to the community spouse's gross income to provide the amount described in WAC 388-513-1380 (6)(b)(i)(A)))~~ One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. These expenses are:

(I) Rent;

(II) Mortgage;

(III) Taxes and insurance;

(IV) Any maintenance care for a condominium or cooperative; and

(V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;

(VI) LESS the standard shelter allocation ~~((listed in WAC 388-513-1380 (7)(a)))~~. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(VII) Is reduced by the community spouse's gross countable income.

(f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:

(i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 ~~((6))~~ (5)(b)(i)(A) that exceeds the dependent family member's income;

(ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.

(iii) Child support received from ~~((an absent))~~ a noncustodial parent is the child's income;

(g) ~~((Incurred medical expenses described in subsection (4)(b) not used to reduce excess resources, with the following exceptions:~~

Private health insurance premiums for PACE, MMIP, or WMIP)) Medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(6) The amount allocated to the community spouse may be greater than the amount in subsection (5)(e) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(7) A client who receives SSI, and lives at home as defined in WAC 388-106-0010 does not use income to participate in the cost of personal care~~(, but does use SSI income to participate in paying costs of board and room. When such a client lives:~~

(a) At home, the SSI client does not participate in the cost of personal care;

(b) In an enhanced adult residential center (EARC), adult family home (AFH), or assisted living (AL), the SSI client:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents;

(ii) Pays the facility for the cost of board and room. Board and room is the SSI federal benefit rate (FBR) minus fifty-eight dollars and eighty-four cents; and

(iii) Does not participate in the cost of personal care if any income remains).

(8) A client who receives SSI and lives in an enhanced adult residential center (EARC), adult family home (AFH) or assisted living (AL) does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty dollars and seventy-eight cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty dollars and seventy-eight cents.

(9) A client who is eligible to receive CN-P medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives at home, defined in WAC 388-106-0010, does not use income to participate in the cost of personal care.

(10) A client who is eligible to receive CN-P medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives in an EARC, AFH or AL does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty dollars and seventy-eight cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty dollars and seventy-eight cents.

~~((8))~~ (11) An institutionalized SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person FPL, if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPEs, New Freedom, PACE, MMIP, or WMIP services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPEs, New Freedom, PACE, MMIP, or WMIP.

(b) In an EARC, AFH, or AL, retains a maintenance needs amount equal to the SSI FBR and:

(i) Retains a personal needs allowance (PNA) of ~~((fifty-eight dollars and eighty-four))~~ sixty dollars and seventy-eight cents from the maintenance needs; and

(ii) Pays the remainder of the maintenance needs to the facility for the cost of ~~((board and))~~ room and board. (Refer to subsection ~~((11))~~ (14) in this section for allocation of the balance of income remaining over maintenance needs.)

~~((9))~~ (12) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program;

(b) In an AFH, the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

~~((10))~~ (13) The total of the following amounts cannot exceed the SIL:

(a) Maintenance and personal needs allowances as described in subsections (7), (8), ~~((and))~~ (9), (10), (11), and (12)(c)).

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (5)(a); and

(c) Guardianship fees and administrative costs in subsection (5)(c).

~~((11))~~ (14) The client's remaining income after the allocations described in subsections (5) through ~~((9))~~ (12) is the client's ~~((participation))~~ responsibility in the ~~((total))~~ cost of care.

WSR 07-16-096

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 30, 2007, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-05-012.

Title of Rule and Other Identifying Information: The department is amending WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services and 388-513-1395 Determining eligibility for institutional or hospice services and for facility care only under the medically needy (MN) program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on September 4, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 5, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 4, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnslj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending chapter 388-513 WAC as follows:

- Updating and clarifying language regarding when long-term care (LTC) rules are used and needed for the hospice program.
- Adding language to WAC 388-513-1395 indicating LTC medically needy rules apply to clients residing in medical institutions, including hospice elections in medical institutions.
- Clarifying language that hospice is paid as a service under noninstitutional categorically needy and medically needy programs when client is residing in a home or residential setting. Institutional medicaid rules are not used for hospice elections in noninstitutional settings unless beneficial to the client under

WAC 388-515-1505. (Those with income over the medically needy income level (MNIL) and under 300% of the federal benefit rate (FBR), or with a community spouse.)

- Amending language to be consistent with WAC 388-438-0110, regarding alien emergency medical (AEM); indicating nursing facility and hospice services under AEM must be preapproved, for clarification purposes.
- Adding language limiting medical and remedial care expenses to zero if such expenses were incurred during a transfer of asset penalty, described in WAC 388-513-1363 through 388-513-1366.
- Updating WAC references and clarifying language.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.39.010.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, 74.09.500, 74.09.530, 74.39.010.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

July 27, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for institutional, waiver, or hospice services under the categorically needy (CN) program and institutional or hospice services in a medical institution under the medically needy (MN) program. Also described are the eligibility requirements for these services under the general assistance (GA) program in subsection ~~((H))~~ (12) and the alien emergency medical programs described in subsection~~((s-10) and (12))~~ (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a) through (f);

(b) Attain institutional status as described in WAC 388-513-1320; ~~((and))~~

(c) Meet functional eligibility described in chapter 388-106 WAC for waiver and nursing facility coverage; and

(d) Not be subject to a penalty period of ineligibility as described in WAC ~~((388-513-1364 through))~~ 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050 (1), ~~(2) and (3)~~ ~~((or be approved for the general assistance expedited Medicaid disability (GA-X) program;))~~ and

~~((b))~~ meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection ~~((7))~~ (8)(a) that does not exceed the special income level (SIL); and

(ii) ~~((Nonexcluded))~~ Countable resources described in subsection ~~((6))~~ (7) that do not exceed the resource standard described in WAC 388-513-1350(1), unless subsection ~~((3))~~ (4) applies; or

(b) Be approved and receiving the general assistance expedited Medicaid disability (GA-X) described in WAC 388-505-0110(6); or

(c) Be eligible for the CN children's medical program as described in WAC ~~((388-505-0210))~~ 388-505-0230; or

(d) Be eligible for the temporary assistance for needy families (TANF) program ~~((or state family assistance (SFA) program))~~ as described in WAC 388-505-0220.

(3) The department allows a client to have ~~((nonexcluded))~~ countable resources in excess of the standard described in WAC ~~((388-513-1350(1) during the month of either an application or eligibility review if, when excess resources are added to nonexcluded income, the combined total does not exceed the SIL))~~ 388-513-1350 when meeting the conditions of reducing excess resources described in WAC 388-513-1350.

(4) To be eligible for waiver ~~((or hospice))~~ services, a client must also meet the program requirements described in:

(a) WAC 388-515-1505 for COPEs, New Freedom, Pace, MMIP and WMIP services; or

(b) WAC 388-515-1510 for DDD waivers ~~((and OBRA services)); or~~

(c) ~~((Chapter 388-551 WAC for hospice services))~~ WAC 388-515-1540 for the medically needy residential waiver (MNRW); or

(d) WAC 388-515-1550 for the medically needy in-home waiver (MNIW).

(5) To be eligible for ~~((institutional or))~~ hospice services under the ~~((MN))~~ CN program, a client must ~~((be))~~:

(a) ~~((Eligible for the MN children's medical program as described in WAC 388-505-0210; or))~~ Meet the program requirements described in chapter 388-551 WAC; and

~~((Related to the SSI program as described in WAC 388-475-0050(1) and meet all requirements described in WAC 388-513-1395))~~ Be eligible for a noninstitutional categorically needy program (CN-P) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 (SSI related clients with income over the MNIL and at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Reside in a state contracted and licensed alternate living facility and not on waiver services and receives medical assistance described in WAC 388-513-1305 as they are paying the facility privately.

(f) Be eligible for institutional CN if residing in a medical institution thirty days or more (use institutional rules for eligibility when in a medical institution thirty days or more).

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC 388-505-0230; or

(b) Related to the SSI program as described in WAC 388-478-0050(1) and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI related program described in WAC 388-475-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more (use institutional rules for eligibility when in a medical institution thirty days or more).

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource(~~s available as~~) eligibility and standards described in WAC 388-513-1350; and

(b) (~~Excludes resources described in WAC 388-513-1360 and 388-513-1364 through~~) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366(~~; and~~)

(c) ~~Compares the nonexcluded resources to the standard described in WAC 388-513-1350(1)).~~

(~~(7)~~) (8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(~~(8)~~) (9) A client who meets the requirements of the CN program is approved for a period of up to twelve months for:

(a) Institutional services in a medical facility;

(b) Waiver services at home or in an alternate living facility; or

(c) Hospice services at home or in a medical facility.

(~~(9)~~) (10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395 (~~(5)(a)(ii)~~) (6) for:

(a) Institutional services in a medical facility; or

(b) Hospice services (~~(at home or)~~) in a medical facility.

(~~(10)~~) (11) The department determines eligibility for (~~(LTC)~~) nursing facility and hospice services under the alien emergency medical (AEM) program described in WAC 388-438-0110 for a client who meets all other requirements for such services but does not meet citizenship requirements. Nursing facility and hospice services under the AEM program must be pre-approved by the department's medical consultant.

(~~(11)~~) (12) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (~~(8)~~) (9) through (~~(10)~~) (11).

(~~(12)~~) (13) A client is eligible for Medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is less than twenty-one years old (~~(or is at least sixty-five years old)~~) at application and approval; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(~~(13)~~) (14) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

(~~(14)~~) (15) The department considers the parents' income and resources available for a minor who is less than eighteen years old and is receiving or is expected to receive inpatient chemical dependency and/or inpatient mental health treatment.

(~~(15)~~) (16) The department considers the parents' income and resources available only as contributed for a client who is less than twenty-one years old and has attained institutional status as described in WAC 388-513-1320.

(~~(16)~~) (17) The department determines a client's participation in the cost of care for LTC services as described in WAC 388-513-1380 and WAC 388-515-1505 for long-term care services under COPES, New Freedom, PACE, MMIP and WMIP or WAC 388-515-1510 for DDD waivers.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of Medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505. Groups deemed to be receiving SSI and for Medicaid purposes are eligible to receive CN-P Medicaid. These groups are described in WAC 388-475-0880.

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1395 Determining eligibility for institutional or hospice services (~~(and)~~) for (~~(facility care only)~~) individuals living in a medical institution under the medically needy (MN) program. This section describes how the department determines a client's eligibility for institutional or hospice services in a medical institution and for facility care only under the MN program. In addition, this section describes rules used by the department to determine

whether a client approved for these benefits is also eligible for noninstitutional medical assistance in a medical institution under the MN program.

(1) To be eligible for institutional or hospice services under the MN program for individuals living in a medical institution, a client must meet the financial requirements described in subsection (5)((~~a~~)). In addition, a client must meet program requirements described in WAC 388-513-1315; and

(a) Be an SSI-related client with ~~((nonexcluded))~~ countable income as described in subsection (4)(a) that is more than the special income level (SIL); or

(b) Be a child not described in subsection (1)(a) with ~~((nonexcluded))~~ countable income as described in subsection (4)(b) that exceeds the categorically needy (CN) standard for the children's medical program.

(2) ~~((The department allows a client to have nonexcluded resources in excess of the standard described in WAC 388-513-1350(1) during the month of either an application or eligibility review if, when excess resources are added to nonexcluded income, the combined total is less than the:~~

(a) Private facility rate plus the amount of recurring medical expenses, for institutional services; or

(b) Private hospice rate plus the amount of recurring medical expenses, for hospice services received at home) For an SSI-related client, excess resources can be reduced by medical expenses as described in WAC 388-513-1350.

(3) The department determines a client's ~~((nonexcluded))~~ countable resources for institutional and hospice services under the MN programs ~~((in the following way))~~ as follows:

(a) For an SSI-related client, the department ~~((reduces available resources described in))~~ determines countable resources per WAC 388-513-1350 ~~((by excluding resources described in WAC 388-513-1360;)).~~

(b) For a child not described in subsection (3)(a), no determination of resource eligibility is required.

(4) The department determines a client's ~~((nonexcluded))~~ countable income for institutional and hospice services under the MN program ~~((in the following way))~~ as follows:

(a) For an SSI-related client, the department reduces available income as described in WAC 388-513-1325 and 388-513-1330 by:

(i) Excluding income described in WAC 388-513-1340;

(ii) Disregarding income described in WAC 388-513-1345; and

(iii) Subtracting previously incurred medical expenses ~~((that:~~

(A) ~~Are not subject to third-party payment;~~

(B) ~~Have not been used to satisfy a previous spenddown liability; and~~

(C) ~~Are amounts for which the client remains liable)~~ incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(b) For a child not described in subsection (4)(a), the department:

(i) Follows the income rules described in WAC 388-505-0210 for the children's medical program; and

(ii) Subtracts the medical expenses described in subsection (4)((~~a~~)(iii)).

(5) If the combined total of a client's ~~((nonexcluded))~~ countable income, ~~((which))~~ when added to ~~((nonexcluded))~~ countable resources in excess of the standard described in WAC 388-513-1350(1), is less than the department-contracted rate plus the amount of recurring medical expenses, the client:

(a) ~~((Less than the department-contracted rate plus the amount of recurring medical expenses, the client:~~

(i) ~~Is eligible for institutional and hospice services and noninstitutional medical assistance;~~

(ii) Is eligible for institutional or hospice services in a medical institution, and noninstitutional medical assistance;

(b) Is approved for ~~((a choice of three or six months as described in chapter 388-416 WAC))~~ twelve months; and

~~((iii))~~ (c) Participates in the cost of care as described in WAC 388-513-1380(~~;~~).

~~((b) Less than the private facility rate plus the amount of recurring medical expenses, but more than the department-contracted rate, the client:~~

(i) (6) If the combined total of a client's countable income, which when added to countable resources in excess of the standard described in WAC 388-513-1350(1) is less than the private nursing facility rate plus the amount of recurring medical expenses, but more than the department contracted rate, the client:

(a) Is eligible for nursing facility care only ~~((that))~~ and is approved for a ~~((choice of))~~ three or six month(s) base period as described in chapter ~~((388-416))~~ 388-519 WAC; and

(i) Pays the nursing home at the current state rate;

(ii) Participates in the cost of care as described in WAC 388-513-1380; and

(iii) Is not eligible for medical assistance or hospice services unless the requirements in (6)(b) or (c) are met.

(b) Is approved for ~~((noninstitutional))~~ medical assistance for a ~~((choice of))~~ three or six month(s) base period as described in chapter ~~((s 388-416 and))~~ 388-519 WAC, if:

(i) No income and resources remain(ing after allocations) after the post eligibility treatment of income process described in WAC 388-513-1380 ~~((are used to satisfy any spenddown liability)).~~

(ii) Medicaid certification is approved beginning with the first day of the base period.

(c) Is approved for medical assistance for up to three or six months when they incur additional medical expenses that are equal to or more than excess income and resources remaining after the post eligibility treatment of income process described in WAC 388-513-1380.

(i) This process is known as spenddown and is described in WAC 388-519-0100.

(ii) Medicaid certification is approved on the day the spenddown is met.

(7) If the combined total of a client's nonexcluded income, which when added to nonexcluded resources is above the facility monthly private rate:

(a) The client is ineligible using institutional rules.

(b) Eligibility is considered under a noninstitutional medical assistance program described in chapter 388-416 and 388-519 WAC.

WSR 07-16-097
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed July 30, 2007, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-063.

Title of Rule and Other Identifying Information: The department is amending WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 4, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 5, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 4, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending WAC 388-513-1350 as follows:

- Increasing the spousal resource maximum from \$41,943 to \$45,104 effective July 1, 2007.
- Making changes to the language, clarifying the rules and updating the spousal resource standard.
- Clarifying the reduction of excess resources by medical expenditures.
- Clarifying the reference to a sponsored immigrant receiving long-term care - how to treat resources of a sponsor.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

July 27, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-01-073, filed 12/18/06, effective 1/18/07)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and (~~(available)~~) countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (~~((a)(b))~~) (1)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

(7) For LTC services the department determines a client's (~~(nonexcluded)~~) countable resources as follows:

(a) The department determines (~~(available)~~) countable resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) Vehicles not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For a SSI-related client, the department adds together the ~~((available))~~ countable resources of both spouses if subsections (2), (5)~~((6), (7))~~ and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

(d) For an SSI-related client, excess resources are reduced ~~((in an amount equal to medical expenses incurred by the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:~~

~~(i) Health insurance and Medicare premiums, deductions, and co-insurance charges;~~

~~(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan with the exception of the deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty established per WAC 388-513-1363, 388-513-1364 or 388-515-1365; and~~

~~((iii));~~

~~(i) In an amount equal to incurred medical expenses such as:~~

~~(A) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare;~~

~~(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;~~

~~(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.~~

~~(ii) As long as the incurred medical expenses:~~

~~(A) Are not subject to third-party payment or reimbursement;~~

~~(B) Have not been used to satisfy a previous spend down liability;~~

~~(C) Have not previously been used to reduce excess resources;~~

~~(D) Have not been used to reduce client responsibility toward cost of care;~~

~~(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and~~

~~(F) Are amounts for which the client remains liable.~~

~~(e) Expenses not allowed to reduce excess resources or participation in personal care:~~

~~(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or boarding home is not a medical expense.~~

~~(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.~~

~~(f) The amount of excess resources is limited to the following amounts:~~

~~((A)) (i) For LTC services provided under the categorically needy (CN) program(~~(, the amount described in WAC 388-513-1315(3); or~~);~~

~~(A) Gross income must be at or below the special income level (SIL), 300% of the FBR.~~

~~(B) In a medical institution, excess resources and income must be under the state medicaid rate.~~

~~(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.~~

~~((B)) (ii) For LTC services provided under the medically needy (MN) program(~~(, the amount described in WAC 388-513-1395 (2)(a) or (b))~~) when excess resources are added to nonexcluded income, the combined total is less than the:~~

~~(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or~~

~~(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.~~

~~(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.~~

~~((e)) (g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.~~

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of ~~((nonexcluded))~~ countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining ~~((nonexcluded))~~ countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ninety-nine thousand five hundred forty dollars effective January 1, 2006. Effective January 1, 2007, the maximum

allocation is one hundred and one thousand six hundred and forty dollars. (This standard increases annually on January 1st based on the consumer price index); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined (~~nonexcluded~~) countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of (~~forty-one~~) forty-five thousand (~~nine~~) one hundred (~~forty-three~~) four dollars effective July 1, (~~2005~~) 2007 (this standard increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsections (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's (~~nonexcluded~~) countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

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 07-16-109
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed July 31, 2007, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-097.

Title of Rule and Other Identifying Information: Amendment of chapter 51-50 WAC, further amendment of the 2006 Edition of the International Building Code (IBC).

Hearing Location(s): Spokane City Council Chambers, West 808 Spokane Falls Boulevard, Spokane, WA, on September 14, 2007, at 10:00 a.m.; and at the Tukwila Community Center, 12424 42nd Avenue South, Tukwila, WA, on October 12, 2007, at 10:00 a.m.

Date of Intended Adoption: November 9, 2007.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail sbcc@cted.wa.gov, fax (360) 586-9383, by October 12, 2006 [2007].

Assistance for Persons with Disabilities: Contact Sue Mathers by August 31, 2007, TTY (360) 586-0772 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: An amendment is proposed to Section R403.1.6.1 to reinstate the requirement that bearing walls be anchored to the foundation in certain seismic design categories.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council is seeking comments on the issues proposed in the rules below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Nogler, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2969; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No disproportionate impact on small business was identified. This rule will modify the adoption of model codes to stay current with national standards for the benefit of industry and Washington state

interests. New state amendments clarify and simplify the code.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this section as one of the agencies required to comply with this statute.

June 8, 2007
John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0403 Section R403—Footings.

R403.1 General. All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, wood foundations, or other approved structural systems which shall be of sufficient design to accommodate all loads specified in Section R301 and to transmit the resulting loads to the supporting soil within the limitations determined from the characteristics of the soil. Footings shall be supported on undisturbed natural soil or engineered fill. Foundation walls complying with Section R404 or stem walls complying with Section R403.1.3 shall be permitted to support exterior walls, exterior braced wall lines and exterior braced wall panels provided they are supported by continuous footings.

R403.1.2 Braced Wall Panels in Seismic Design Categories D₀, D₁ and D₂. The braced wall panels at exterior and interior walls of buildings located in Seismic Design Categories D₀, D₁ and D₂ shall be supported by foundations.

EXCEPTIONS: 1. In buildings in Seismic Design Categories D₀ and D₁, and in one-story buildings in Seismic Design Category D₂, interior braced wall panels are not required to be supported by foundations, provided no building plan dimension perpendicular to the interior braced wall lines is greater than 50 feet.

2. In two-story buildings in Seismic Design Category D₂, interior braced wall panels are not required to be supported by foundations, provided all of the following conditions are met:

2.1. No building plan dimension perpendicular to the interior braced wall lines exceeds 50 feet;

2.2. The distances between braced wall lines do not exceed twice the building width measured parallel to the braced wall lines;

2.3. The braced wall panels at the first story are continuously supported by floor joists, blocking or floor beams; and

2.4. The heights of braced wall panels in under-floor spaces do not exceed 48 inches (1219 mm).

R403.1.2.1 Foundations. Foundations at braced wall panels shall be constructed of masonry or concrete foundation walls in accordance with Sections R402 and R404, and masonry or concrete footings in accordance with Sections R402 and R403.

EXCEPTIONS: 1. In under-floor spaces, cripple walls shall be permitted to substitute for masonry or concrete foundation walls provided they comply with the following:

a. They are located directly below the interior braced wall panels above;

b. They are braced in accordance with Sections R602.10.2 and R602.10.11.4 for cripple wall bracing; and

c. They are supported by footings complying with Sections R402 and R403, except that the footing of a foundation supporting an interior braced wall panel is not required to be continuous.

2. Footings of foundations supporting interior braced wall panels are not required to be continuous but shall be constructed beyond the ends of foundation walls, stem walls and cripple walls supporting braced wall panels for a minimum distance of 4 inches and a maximum distance of the footing thickness. The footing extension is not required at intersections with other footings.

R403.1.3 Seismic reinforcing in Seismic Design Categories D₀, D₁ and D₂. Concrete footings of buildings assigned to Seismic Design Categories D₀, D₁ and D₂ shall comply with this section and have minimum reinforcement as specified by Section R403.1.3.1 or R403.1.3.2. Bottom reinforcement shall be located a minimum of 3 inches (76 mm) from the bottom of the footing.

Where a construction joint is created between a concrete footing and a concrete stem wall, minimum vertical reinforcement of one No. 4 bar shall be provided at not more than 4 feet (1219 mm) on center. The bars shall extend to 3 inches (76 mm) clear of the bottom of the footing, have a standard hook, and extend into the stem wall the lesser of 2 inches (49 mm) clear of the top of the wall and 14 inches (357 mm).

Where a solidly grouted masonry stem wall is supported on a concrete footing, minimum vertical reinforcement of one No. 4 bar shall be provided at not more than 4 feet (1219 mm) on center. The bars shall extend to 3 inches (76 mm) clear of the bottom of the footing, have a standard hook, and extend into the stem wall to 2 inches (49 mm) clear of the top of the wall.

Masonry stem walls without solid grout and vertical reinforcing are not permitted.

Concrete and masonry stem walls shall comply with the requirements of Section R404 for foundation walls.

EXCEPTION: In detached one- and two-family dwellings of light-framed construction and three stories or less above grade, plain concrete footings supporting walls, columns or pedestals are permitted.

R403.1.3.1 Foundation stem walls. Foundation stem walls shall have installed a minimum of one No. 4 bar within 12 inches (305 mm) of the top of the stem wall and one No. 4 bar located 3 inches (76 mm) to 4 inches (102 mm) from the bottom of the footing.

R403.1.4 Minimum depth. All exterior footings shall be placed at least 12 inches (305 mm) below the undisturbed ground surface. Where applicable, the depth of footings shall also comply with Sections R403.1.4.1 through R403.1.4.2.

R403.1.4.1 Frost protection. Except where otherwise protected from frost, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

1. Extend below the frost line specified in Table R301.2(1);
2. Construct in accordance with Section R403.3;
3. Construct in accordance with ASCE 32; or
4. Erect on solid rock.

EXCEPTIONS: 1. Protection of freestanding accessory structures with an area of 600 square feet (56 m²) or less and an eave height of 10 feet (3048 mm) or less shall not be required.

2. Protection of freestanding accessory structures with an area of 400 square feet (37 m²) or less, of other than light-framed construction, with an eave height of 10 feet (3048 mm) or less shall not be required.
3. Decks not supported by a dwelling need not be provided with footings that extend below the frost line.

Footings shall not bear on frozen soil unless such frozen condition is of a permanent character.

R403.1.6 Anchorage at braced wall panels. Where braced wall panels are supported by monolithic slabs, footings or foundations, the wood sole plates, wood sill plates or cold-formed steel bottom tracks shall be anchored to the slab cast monolithically with a footing, footing or foundation in accordance with ~~((this))~~ Section **R403.1.6**.

The wood sole or sill plate shall be anchored to the monolithic slab, footing or foundation with anchor bolts spaced a maximum of 6 feet (1829 mm) on center. There shall be a minimum of two bolts per plate section with one bolt located not more than 12 inches (305 mm) and not less than seven bolt diameters from each end of the plate section. Bolts shall be at least 1/2 inch (13 mm) in diameter and shall extend a minimum of 7 inches (178 mm) into masonry or concrete. A nut and washer shall be tightened to a snug-tight condition on each bolt to the plate.

Cold-formed steel framing systems shall be fastened to wood sill plates or anchored directly to the foundation in accordance with Section R505.3.1 or R603.3.1.

- EXCEPTIONS:
1. Foundation anchorage, spaced as required to provide equivalent anchorage to 1/2-inch-diameter (13 mm) anchor bolts.
 2. Walls 24 inches (610 mm) in total length or shorter connecting offset braced wall panels shall be anchored to the footing or foundation with a minimum of one anchor bolt located in the center third of the plate section and shall be attached to adjacent braced wall panels as specified in Figure R602.10.5 at the corners.
 3. Walls 12 inches (305 mm) in total length or shorter connecting offset braced wall panels shall be permitted to be connected to the footing or foundation without anchor bolts. The wall shall be attached to adjacent braced wall panels as specified in Figure R602.10.5 at the corners.

R403.1.6.1 Foundation anchorage in Seismic Design Categories C, D₀, D₁ and D₂. In addition to the requirements of Section R403.1.6, the following requirements shall apply to wood light-frame structures in Seismic Design Categories D₀, D₁ and D₂ and wood light-frame townhouses in Seismic Design Category C.

1. Bearing walls and interior braced wall sill plates shall be anchored to footings or foundations with anchor bolts spaced at not more than 6 feet (1829 mm) on center and located within 12 inches (305 mm) from the ends of each plate section when supported on a continuous foundation.
2. The maximum anchor bolt spacing shall be 4 feet (1219 mm) for buildings over two stories in height.
3. Plate washers complying with Section R602.11.1 shall be provided for all anchor bolts over the full length of required braced wall lines. Properly sized cut washers shall be permitted for anchor bolts in wall lines not containing braced wall panels or in braced wall lines.
4. Stepped cripple walls shall conform to Section R602.11.3.

5. Where wood foundations in accordance with Sections R402.1 and R404.2 are used, the force transfer shall have a capacity equal to or greater than the connections required by Section R602.11.1 or the braced wall panel shall be connected to the wood foundations in accordance with the braced wall panel-to-floor fastening requirements of Table 602.3(1).

WSR 07-16-114

PROPOSED RULES

DEPARTMENT OF LABOR AND INDUSTRIES

(Apprenticeship and Training Council)

[Filed July 31, 2007, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-008.

Title of Rule and Other Identifying Information: Chapter 296-05 WAC, Apprenticeship rules.

Hearing Location(s): Department of Labor and Industries, Tukwila Service Location, 12806 Gateway Drive, Tukwila, WA, on September 6, 2007, at 9:00 a.m.

Date of Intended Adoption: November 6, 2007.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by September 6, 2007.

Assistance for Persons with Disabilities: Contact Sally Elliott by August 15, 2007, at yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to amend rules regarding the demonstration of need for programs seeking geographical expansion, in WAC 296-05-316. Amendments need to be made in order for the rules to be consistent throughout the section as well as with the federal government's apprenticeship rules and regulations.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 49.04 RCW.

Statute Being Implemented: Chapter 49.04 RCW.

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

Name of Proponent: Washington state apprenticeship and training council (department of labor and industries), governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Smith, Tumwater, Washington, (360) 902-5320; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Washington state apprenticeship and training council (WSATC) has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined they do not require a small business economic impact statement because the proposed rules are clarifying the rules without changing their effect (see RCW 19.85.025 referencing exemptions listed under RCW 34.05.310 (4)(d)).

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared under chapter 19.85 RCW. The WSATC considered whether these proposed are subject to the Regulatory Fairness Act and has determined they do not require a cost-benefit analysis because the proposed rules are clarifying the rules without changing their effect (see exemptions, RCW 34.05.328 (5)(b)).

July 31, 2007
Lawrence Crow, Chair
Apprenticeship and Training Council

AMENDATORY SECTION (Amending WSR 05-10-087, filed 5/4/05, effective 6/15/05)

WAC 296-05-316 Apprenticeship agreements—Standards requirements. The WSATC shall have the authority to develop, administer, and enforce program standards for the operation and success of an apprenticeship and training program.

The sponsor's proposed program standards must include a list of duties and responsibilities of the program sponsor reasonably consistent with other approved program standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which must not be less than two thousand hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee.

EXCEPTION: This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be at least three times per year, be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Conference call meetings may be conducted in lieu of regular meetings but must not exceed the number of attended meetings and no disciplinary action shall be taken at conference call meetings.

~~(c) ((Determine the program sponsor's need for apprentices in the area covered by the apprenticeship standards established under these rules.~~

~~The following are some examples of ways the program sponsor can demonstrate that the need for apprentices exists:~~

- ~~• Statistical analysis of workload projections;~~
- ~~• Demographics;~~
- ~~• Information relating to expected workload growth.))~~

Explain the program sponsor's request for apprentices in the area covered by the apprenticeship standards established

under these rules and a plan to include reasonable continuous employment.

(d) Establish minimum standards of education and skilled occupational experience required of apprentices.

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker.

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards.

EXCEPTION: This does not apply to plant programs.

(g) Recommend competent instructors and related/supplemental instruction in accordance with local vocational requirements.

(h) Recommend a course outline for related/supplemental instruction, as well as coordinate related/supplemental instruction with on-the-job work experience.

(i) Hear and adjust all complaints of violations of apprenticeship agreements.

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules.

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period.

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules. (See WAC 296-05-318.)

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex, color, religion, national origin, age, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an affirmative action plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in collective bargaining agreement, if any. The ratio must be described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, hours of study per year (which shall be a minimum of one hundred forty-four hours per year).

(7) An attendance policy which includes a provision that if the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the

apprenticeship agreement. A provision that time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not paid for the classroom time. A provision that the hours of actual attendance by the apprentice in related supplemental instruction classes must be reported to the department on a quarterly basis for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the department.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including:

- Certificate of completion;
- Additional credit;
- Suspension;
- Military service;
- Reinstatement;
- Cancellation; and
- Corrections.

(11) A provision for advancing an apprentice's standing based on previous experience in the skilled trade or in some other related capacity.

(12) A provision for the transfer of an apprentice from one training agent to another training agent or the sponsor in order to provide as much as possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04, 34.05 RCW, and these rules.

(15) A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related/supplemental instruction which instruction shall be not less than one hundred forty-four hours per year.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than sixteen years of age. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established trade procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement, it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.

(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

- Withhold periodic wage advancements;
- Suspend or cancel the apprenticeship agreement;
- Take further disciplinary action; or
- The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal, of the committee's action, to the WSATC.

(22) A provision for an initial probation which the WSATC or the supervisor of apprenticeship may terminate an apprenticeship agreement at the written request by any affected party. The initial probation must not exceed twenty percent of the term of apprenticeship unless an exemption has been granted for longer probationary periods as specified by Civil Service or law. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause. An appeal process is available to apprentices who have completed the initial probationary period.

(23) Provisions prohibiting discrimination on the race, sex, color, religion, national origin, age, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure adequate records of the selection process are kept for a period of at least five years and are available to the WSATC or its representative on request. ("Adequate records" means at least a brief summary of any interviews and the conclusions reached on each of the specific factors which are part of the total judgment concerning each applicant.)

(25) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

(26) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry, craft or trade in question (~~((taking into account the WSATC's determination of the apprenticeship needs of the trade and geographic area. (Statistical analysis of workload projections, demographics, and information relating to expected workload growth are examples of ways the sponsor may demonstrate that the need for apprentices exists.)))).~~ The goal is to achieve general statewide uniformity of standards in each industry, trade or craft. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the United States Department of Labor for a trade, craft, or occupation. If the United States Department of Labor has not established a minimum number of hours for a trade, craft, or occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must be achieved. In addition, the course content and delivery method must be designed to achieve the same levels of skills as existing standards within the state for that industry, trade, or craft.

(27) A provision to ensure that the progressively increasing wage scales based on specified percentages of journey-level wage, which must be submitted, at least annually, to the

WSATC. These may be submitted on a form provided by the department.

A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

WSR 07-16-115
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed July 31, 2007, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-05-059.

Title of Rule and Other Identifying Information: The department is amending WAC 388-310-2100 WorkFirst—WorkFirst career services program and 388-418-0005 How will I know what changes I must report?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions area available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on September 4, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 5, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 4, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to create new WAC 388-310-2100 WorkFirst career services program and amend WAC 388-418-0005 How will I know what changes I must report? These changes are necessary to implement the new WorkFirst career services program. This program provides cash payments and employment services to eligible parents who choose to enroll. The program went into effect July 1, 2007, and is supported by WACs that went into effect via an emergency rule filing (WSR 07-14-080).

Reasons Supporting Proposal: DSHS is required to establish a post-temporary assistance to needy families (TANF) work transition program, as stated in chapter 522, Laws of 2007 (SHB 1128). The WorkFirst career services program was implemented statewide on July 1, 2007, and provides cash payments and employment services to working adults to help them transition from assistance to work.

Statutory Authority for Adoption: RCW 74.04.050 and 74.04.055.

Statute Being Implemented: RCW 74.04.050 and 74.04.055.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by providing services (cash payments and employment services) to parents who choose to enroll and who have left TANF/state family assistance (SFA) and are working at least thirty hours per week.

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

July 27, 2007

Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-310-2100 WorkFirst career services program. (1) What is the WorkFirst career services program?

The WorkFirst career services program is available to employed adults who leave temporary assistance for needy families (TANF) or state family assistance (SFA) and are working thirty hours or more per week. The employment security department administers the program.

WorkFirst career services provide up to six months of:

- Basic needs payments;
- Wage progression services; and
- Job retention services.

(2) Who is eligible for the WorkFirst career services program?

(a) To qualify for the program, you must enroll with the employment security department within the first two months after your TANF/SFA ends.

(b) You must also meet the following conditions:

- (i) You are working thirty hours or more per week in a paid unsubsidized job; and
- (ii) You are a custodial parent or caretaker relative who received TANF/SFA within the past two months; and
- (iii) You did not leave TANF/SFA in sanction status.

(c) Each adult in your family who meets these conditions and enrolls in the program will receive their own basic needs payments and services.

(3) What services and basic needs payments are available while I am enrolled in the WorkFirst career services program?

The WorkFirst career services program provides wage progression services, job retention services and basic needs payments.

(a) Services include employment planning that will help you keep your job and increase your wages.

(b) As shown in the chart below, cash payments and bonuses are made monthly, for up to six consecutive months after leaving TANF/SFA.

(c) You may receive up to six hundred fifty dollars in cash payments and bonuses over the six-month period following your TANF/SFA case closing.

Eligible Month	Payments & Bonus Amounts	Description of Payments and Bonuses
Month 1-6 After TANF/SFA	\$50.00 a month	Monthly payments begin once you enroll. If you enroll during Month 2, then you are not eligible for the Month 1 payment.
Month 1 or 2	\$150.00	One-time enrollment bonus when you sign up for the program.
Month 4 and 6	\$100.00 month 4 \$100.00 month 6	Bonus for completing the WorkFirst career services assessment and employment planning interview.

(4) How long can I receive WorkFirst Career Services and basic needs payments?

(a) WorkFirst career services and basic needs payments are available for a maximum of six consecutive months. Month one begins the calendar month after your TANF/SFA assistance ends.

(b) Your WorkFirst career services and basic needs payments will stop when:

- (i) We learn you are no longer working thirty hours a week in unsubsidized employment; or
- (ii) You begin receiving TANF/SFA assistance again; or
- (iii) We do not have your current mailing address; or
- (iv) You are not living in Washington; or
- (v) It has been more than six months since you stopped receiving TANF/SFA.

(5) What happens if the employment security department learns I am no longer working thirty hours or more per week?

(a) The employment security department will provide you with a letter giving you at least ten days advance notice that your WorkFirst career services will close. This means that your WorkFirst career services basic needs payments will stop at the end of the month in which your ten days notice expires. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(b) If you find a new job or increase your hours back up to thirty hours before the end of the month, you will remain eligible.

(c) Employment Security staff can help you find new employment or work with you to increase your hours of employment.

(6) What happens if I am approved for TANF/SFA assistance while I am receiving WorkFirst career services?

If you start receiving TANF/SFA assistance, the employment security department will provide you with a letter and close your WorkFirst career services case at the end of the month. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(7) What happens if I request an administrative hearing?

(a) You have the right to request an administrative hearing if you disagree with a decision or action regarding the WorkFirst career services Program. For more information, see chapter 388-02 WAC and RCW 74.08.080.

(b) If you receive continued benefits, they will still end when you reach your benefit maximum as outlined under (3)(c) regardless of any other pending administrative hearing.

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

WAC 388-418-0005 How will I know what changes I must report? You must report changes to the department based on the kinds of assistance you receive. The set of changes you must report for people in your assistance unit under chapter 388-408 WAC is based on the benefits you receive that require you to report the most changes. It is the first program that you receive benefits from in the list below.

For example:

If you receive long term care and Basic Food benefits, you tell us about changes based on the long term care requirements because it is the first program in the list below you receive benefits from.

(1) If you receive long term care benefits such as Basic, Basic Plus, chore, community protection, COPES, nursing home, Hospice, or medically needy waiver, you must tell us if you have a change of:

- (a) Address;
- (b) Marital status;
- (c) Living arrangement;
- (d) Income;
- (e) Resources;
- (f) Medical expenses; and

(g) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.

(2) If you receive medical benefits based on age, blindness, or disability (SSI-related medical), or ADATSA benefits, you need to tell us if:

- (a) You move;
- (b) A family member moves into or out of your home;
- (c) Your resources change; or
- (d) Your income changes. This includes the income of you, your spouse or your child living with you.

(3) If you receive Basic Food and all adults in your assistance unit are elderly persons or individuals with disabilities and have no earned income, you need to tell us if:

- (a) You move;

- (b) You start getting money from a new source;
 - (c) Your income changes by more than fifty dollars;
 - (d) Your liquid resources, such as your cash on hand or bank accounts, are more than two thousand dollars; or
 - (e) Someone moves into or out of your home.
- (4) If you receive cash benefits other than WorkFirst career services benefits, you need to tell us if:
- (a) You move;
 - (b) Someone moves out of your home;
 - (c) Your total gross monthly income goes over the:
 - (i) Payment standard under WAC 388-478-0030 if you receive general assistance; or
 - (ii) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;
 - (d) You have liquid resources more than four thousand dollars; or
 - (e) You have a change in employment. Tell us if you:
 - (i) Get a job or change employers;
 - (ii) Change from part-time to full-time or full-time to part-time;
 - (iii) Have a change in your hourly wage rate or salary; or
 - (iv) Stop working.
- (5) If you receive family medical benefits, you need to tell us if:
- (a) You move;
 - (b) A family member moves out of your home; or
 - (c) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.
- (6) If you receive Basic Food benefits, you need to tell us if:
- (a) You move;
 - (b) Your total gross monthly income is more than the gross monthly income limit under WAC 388-478-0060; or
 - (c) Anyone who receives food benefits in your assistance unit must meet work requirements under WAC 388-444-0030 and their hours at work go below twenty hours per week.
- (7) If you receive children's medical benefits, you need to tell us if:
- (a) You move; or
 - (b) A family member moves out of the house.
- (8) If you receive pregnancy medical benefits, you need to tell us if:
- (a) You move; or
 - (b) You are no longer pregnant.
- (9) If you receive other medical benefits, you need to tell us if:
- (a) You move; or
 - (b) A family member moves out of the home.
- (10) If you receive transitional food assistance or Work-First career services benefits, you do not have to report any changes in your circumstances.

WSR 07-16-116**PROPOSED RULES****HEALTH CARE AUTHORITY**

(Public Employees Benefits Board)

[Order 07-01—Filed July 31, 2007, 11:07 a.m.]

Continuance of WSR 07-14-135.

Preproposal statement of inquiry was filed as WSR 07-09-034.

Title of Rule and Other Identifying Information: PEBB rules related to enrollment in chapter 182-08 WAC; eligibility in chapter 182-12 WAC; and appeals in chapter 182-16 WAC.

Hearing Location(s): Health Care Authority, The Sue Crystal Center, 676 Woodland Square Loop S.E., Olympia, WA, on September 25, 2007, at 3:30 p.m.

Date of Intended Adoption: September 28, 2007.

Submit Written Comments to: Barbara Scott or Ashley DeMoss, PEBB Benefits Services Program, P.O. Box 42684, Olympia, WA 98504-2684, e-mail Barbara.scott@hca.wa.gov, fax (360) 923-2606, by September 25, 2007.

Assistance for Persons with Disabilities: Contact Nikki Johnson by September 20, 2007, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The public hearing date and the end of the public comment period for the proposal filed on July 3, 2007, under WSR 07-14-135, are being continued. This will allow the health care authority to file a supplemental notice and notify interested parties of further proposed rule amendments.

Statutory Authority for Adoption: RCW 41.05.160.

Statute Being Implemented: Chapter 41.05 RCW, chapters 156, 302, and 488, Laws of 2007.

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

Name of Agency Personnel Responsible for Drafting: Barbara Scott, 676 Woodland Square Loop, Lacey, WA, (360) 923-2642; Implementation; Ashley DeMoss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2644; and Enforcement: Mary Fliss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2640.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has no [not] requested the filing of a small business economic impact statement, and there will be no costs to small business.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

July 31, 2007

Jason Siems

Rules Coordinator

WSR 07-16-118
PROPOSED RULES
DEPARTMENT OF CORRECTIONS

[Filed July 31, 2007, 12:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-016.

Title of Rule and Other Identifying Information: Chapter 137-78 WAC, Employee assault benefits.

Hearing Location(s): Department of Corrections, 7345 Linderson Way S.W., Adams Conference Room, #3023, Tumwater, WA 98504, on September 4, 2007, at 1:30 p.m.

Date of Intended Adoption: September 5, 2007.

Submit Written Comments to: John R. Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail JRNISPEL@DOC1.WA.GOV, fax (360) 664-2009, by September 3, 2007.

Assistance for Persons with Disabilities: Contact Kim French by September 3, 2007, (360) 725-8367.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these amendments are to update the WAC to reflect current department structure and make clear the procedure for approval of assault benefits.

Reasons Supporting Proposal: The WAC should accurately reflect the organizational structure of the department.

Statutory Authority for Adoption: RCW 72.01.090.

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

Name of Proponent: Department of corrections, administrative services division, governmental.

Name of Agency Personnel Responsible for Drafting: John R. Nispel, P.O. Box 41114, Olympia, WA 98504-1114, (360) 725-8365; and Implementation: Kathy Gastreich, P.O. Box 41103, Olympia, WA 98504-1103, (360) 725-8587.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This WAC has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

July 31, 2007

H. W. Clarke

Secretary

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-78-010 Definitions. For the purposes of this chapter the following words shall have the following meanings:

(1) "Assault" means an intentional touching, striking, cutting, or shooting of a person or the body of another.

(2) "Assault benefits" means reimbursement to employees of some of their costs attributable to being the victim of an offender assault.

(3) "Administrator, (~~safety and~~) risk management" means the individual who is appointed by the secretary to

head the safety and risk management section or his/her designee.

(4) "Department" means the department of corrections.

(5) "Employee" means any individual who is appointed by the secretary, and who serves under the supervision and authority of the department. The term "employee" shall not include an individual performing personal services under contract or offenders.

(6) "Deputy secretary" is the deputy secretary for (~~the office of correctional operations~~) prisons division or his/her designee.

(7) "Doctor" means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic; chiropractic; drugless therapeutics; podiatry; dentistry; optometry.

(8) "Offender" means any person in the custody of or subject to the jurisdiction of the department of corrections.

(9) "Secretary" means the secretary of the department of corrections or the secretary's designee.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-78-030 Application process. Employees who meet the requirements of WAC 137-78-020 and elect to apply for assault benefits shall submit a signed application for assault benefits and a properly completed report of personal injury form (DOC (~~(3-133)~~) 03-133), together with the certificate of the doctor that attended him or her, to his or her locally designated representative or human resource office within ten working days of the occurrence of the assault or, if the application could not be reasonably submitted within that period, within ten working days of the time when application could reasonably have been made. Applications shall be reviewed through the employee's chain of command. The deputy secretary or head of the employee's chain of command shall forward the application, with appropriate recommendations, to the (~~safety and~~) risk management (~~(section)~~) department. The risk management administrator (~~(- safety and risk management)~~) shall grant or deny the request for assault benefits within ten working days after written notification from the employee or the department of labor and industries that the employee's application for compensation under Title 51 RCW has been approved, but may extend that time to gather additional information.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-78-060 Denial of application for assault benefits. If the employee's request for assault benefits is denied by the (~~safety and~~) risk management administrator, the employee may, within ten working days from the date of denial, file a petition with (~~the office of~~) administrative services division (~~(OAS)~~) ASD deputy secretary for reconsideration, stating the specific grounds upon which the application should be granted. The (~~OAS~~) ASD deputy secretary shall respond within twenty working days from the date the petition was received; provided that the time may be extended to gather additional information.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-78-070 Appeal from denial of assault benefits/overpayments. (1) If the employee's petition for assault benefits to the ((office of)) administrative services division deputy secretary is denied, the employee may appeal that decision to the secretary ((in accordance with chapter 34.05 RCW and this section)). The employee shall file a written petition with the Office of the Secretary at ((410 W. 5th)) 7345 Linderson Way, Tumwater, Washington 98501, P.O. Box 41101, Olympia, Washington 98504-1101, within thirty days after the denial of assault benefits.

(2) If a dispute exists between the employee and department concerning the amount of any overpayment to be repaid the department, the employee may request a hearing in accordance with chapter 34.05 RCW and this section. The employee shall file a written petition with the Office of the Secretary at ((410 W. 5th)) 7345 Linderson Way, Tumwater, Washington 98501, P.O. Box 41101, Olympia, Washington 98504-1101, within thirty days after the dispute arises.

WSR 07-16-125

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 1, 2007, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-125.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licensing; WAC 308-96A-065 Personalized license plates and 308-96A-560 Special vehicle license plates—Criteria for continued issuance.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on September 18, 2007, at 1:30 p.m.

Date of Intended Adoption: October 2, 2007.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822, by September 17, 2007.

Assistance for Persons with Disabilities: Contact Dale R. Brown by September 17, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 308-96A-065, rule making is required to explain the issuance and restrictions of personalized special plates.

WAC 308-96A-560, rule making is required to explain the continuing requirements for organizations to maintain the issuance of special plates.

Reasons Supporting Proposal: Clarifying language to make the rules more understandable.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.16.313.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: 1125 Washington Street S.E., Olympia, WA.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

August 1, 2007

Julie Knittle

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 01-10-069, filed 4/30/01, effective 5/31/01)

WAC 308-96A-065 Personalized license plates. (1) **What is a personalized license plate?** Personalized license plates are plates reflecting the registered owner's chosen format or designation and are limited to those described in RCW 46.16.560, 46.16.570 and 46.16.580.

(2) **Are there any restrictions on the use of letters and numbers on personalized license plates?** Personalized license plates may be issued with one to seven characters. Motorcycles and motorcycle trailers can have up to six characters. The letters "I" and "O" and the numbers "1" (one) and "0" (zero) may not be issued as single-digit plates.

(3) **When may the department deny an application for or cancel personalized plates?**

(a) The department may deny an application for personalized license plates or cancel personalized license plates previously issued if it determines the plate configuration to be:

- (i) Offensive to good taste and decency;
- (ii) Potentially misleading;
- (iii) Vulgar, profane or sexually suggestive in nature;
- (iv) A racial, ethnic, lifestyle or gender slur;
- (v) Related to alcohol or to illegal activities or substances;

(vi) Blasphemous;

(vii) Derogatory;

(viii) Slanderous;

(ix) A duplication of license plate or decal numbers provided in chapter 46.09, 46.10 or 46.16 RCW; or

(x) The personalized message appears to replicate the standard configuration for a special license plate; or

(xi) Contrary to the department's mission to promote highway safety.

(b) If the personalized license plates are canceled due to one or more reasons specified in subsection (3) of this section, the vehicle owner may:

(i) Apply for a refund for the fee paid under RCW 46.16.585 and 46.16.606 for such license plates; or

(ii) Instead of a refund, apply for and upon approval be issued personalized license plates with a different configuration without payment of additional personalized license plate fees.

(c) The department may cancel personalized license plates if they are:

- (i) Not renewed by the owner within forty-five days of the vehicle expiration; or
- (ii) Removed from a vehicle and not transferred to a replacement vehicle within thirty days; or
- (iii) Transferred to a new owner who does not make proper application for the plates within twenty-five days.

(4) What special plates cannot be personalized?

- (a) Medal of honor;
- (b) Horseless carriage;
- (c) Restored;
- (d) Collector vehicle;
- (e) Ham and Mars license plates;
- (f) Former prisoner of war;
- (g) Pearl Harbor survivor;
- (h) Disabled veteran;
- (i) Exempt license plates.

(5) If my registration for personalized license plates has elapsed, how do I get them reinstated or reissued?

(a) If you are an owner of a personalized license plate and do not renew it within forty-five days, you must reapply and pay the original personalized license plate fee in order to reinstate the plate.

(b) If you purchase a vehicle with a personalized plate and do not transfer the ownership of the personalized plate within twenty-five days, you forfeit ownership of the plate. The department will make that personalized plate available to the first applicant for that plate configuration.

(c) If you are the owner of a personalized license plate who does not transfer the plate as described in ~~((subsection (4)))~~(b) of this ~~((section))~~ subsection, you must reapply and pay the original personalized license plate fee in order to reinstate the plate.

~~((5))~~ **(6) Can I transfer my personalized license plate?** Yes, if you are the owner(s) of a vehicle with personalized license plates and sell, trade or otherwise transfer ownership of the vehicle, you may transfer the plates to another vehicle within thirty days; (the personalized license plates may be transferred at any vehicle licensing office or through a vehicle dealer if the owner wishes to transfer a plate to a dealer-purchased vehicle) or transfer the plates to a new owner. If the plates are transferred to a new owner, the current owner must provide the new owner with a notarized/certified release of interest for the plates. The new owner must make application to the department within twenty-five days, including payment of the original personalized license plate fee.

~~((6))~~ **(7) How do I dispose of my personalized vehicle license plates?**

(a) You may turn the plates in to the department with a notarized release of interest from the owner(s) relinquishing the right to that personalized license plate configuration; or

(b) If your vehicle has personalized license plates and is sold to a wrecker or you accept a total loss claim from your insurance company and you choose not to retain the salvage, you must either transfer the plates to another vehicle within thirty days or turn the plates in to the department with a notarized release of interest from all registered owner(s) relinquishing the right to that personalized license plate.

~~((7))~~ **(8) Will I ever have to replace my personalized vehicle license plate?** Yes, the personalized license plates are subject to the seven-year vehicle license plate replacement schedule.

AMENDATORY SECTION (Amending WSR 04-08-079, filed 4/6/04, effective 5/7/04)

WAC 308-96A-560 Special ~~((vehicle))~~ license plates—Criteria for creation or continued issuance. (1) What is a special license plate series? For the purpose of this rule a special license plate series is one license plate design with a range of numbers and letter combinations to be determined by the department.

(2) What criteria are used to discontinue issuing special ~~((vehicle))~~ license plates? A special license plate series may be canceled if:

~~((+))~~ **(a)** The department determines that fewer than five hundred special license plates in the approved configuration are purchased annually and no less than one thousand five hundred special license plates are purchased in any continuous three-year period. (Except those license plates issued under RCW 46.16.301, 46.16.305, and 46.16.324); or

~~((2))~~ **(b) If the sponsoring organization does not submit an annual financial statement required by RCW 46.16.765 and certified by an accountant; or**

(c) The legislature concurs with a recommendation from the special license plate review board to discontinue a plate series created after January 1, 2003; or

~~((3))~~ **(d)** The state legislature changes the law allowing that plate series.

(3) Can an organization have more than one special license plate series? No. Organizations cannot have more than one special license plate series except those issued before January 1, 2006. Those organizations that already have multiple special license plate series may not have more.

An updated design of the current special license plates does not constitute more than one special license plate series. The newest design supersedes the prior design.

WSR 07-16-126

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 1, 2007, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-034.

Title of Rule and Other Identifying Information: Chapter 308-56A WAC, Certificates of title—Motor vehicles, etc.; WAC 308-56A-115 Vehicles from a state or country other than Washington.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on September 7, 2007, at 10:00 a.m.

Date of Intended Adoption: October 2, 2007.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olym-

pia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822.

Assistance for Persons with Disabilities: Contact Dale R. Brown by September 6, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to bring this rule in sync with other rules concerning ownership in doubt.

Reasons Supporting Proposal: Sync rules concerning ownership in doubt.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Gary VanCamp, 1125 Washington Street S.E., Olympia, WA, (360) 902-0122.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

August 1, 2007

Julie Knittle

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 06-22-025, filed 10/25/06, effective 11/25/06)

WAC 308-56A-115 Vehicles from a state or country other than Washington. (1) **What ownership documents are required to title and license a vehicle not currently titled or licensed in the state of Washington?**

(a) If a vehicle is titled in another state, the application for certificate of ownership must be accompanied by the ~~((most))~~ current ~~((title issued by that state))~~ ownership documents.

(b) If the vehicle was acquired from an agency of the United States government, the federal ownership document issued by the United States government must accompany the application for certificate of ownership. When a bill of sale covers more than one vehicle, a photocopy may be accepted when:

(i) United States federal government ~~((already))~~ either registered ~~((and/))~~ or titled in Washington with ~~((an))~~ a federal (FED) use class, the purchaser needs a bill of sale ~~((and the current registration))~~ for ~~((an))~~ a no title issued (NTI), or when title is issued in Washington, need title properly released.

(ii) A secure odometer disclosure completed only by the transferee~~(/)~~ and buyer if the vehicle falls within the federal odometer disclosure criteria.

(c) If a vehicle is titled in another country, the application for certificate of ownership must be accompanied by the ~~((most))~~ current ownership document issued by that country.

If the country from which the vehicle is imported cancels the vehicle ~~((title and/or registration))~~ ownership document for export, the application for certificate of ownership must be accompanied by documents showing proof of ownership and evidence of the cancellation if available. If evidence of cancellation is not available, then a statement of fact by the owner is required.

(d) If a member of the United States armed forces owns the vehicle and the vehicle has been registered by a United States government military entity, the application for certificate of ownership must be accompanied by the registration certificate as proof of ownership. If there is a lien holder, the armed forces member must provide the lien holder information at the time of application.

(2) What ownership documents are required to obtain a certificate of ownership for a vehicle from a non-titling state or country?

(a) If the vehicle is from a state or country that by policy or law does not title a specific vehicle, but does register it, the department will accept the registration as an ownership document. If the applicant is not the owner shown on the registration, a bill of sale or release of interest is also required.

(b) If the vehicle is from a state or country that neither registers nor titles, ~~((the department will accept a statement from the applicant certifying when and where they purchased the vehicle, and that the previous state or country does not title or register this type of vehicle. A bill of sale is required for vehicles brought in from any state or country. A statement certifying how the vehicle was acquired must be submitted at the time of application. The Washington certificate of ownership may contain a special notation if issued under these circumstances. If the bill of sale is not available,))~~ follow the ownership in doubt procedures from WAC 308-56A-210 ((apply)). The applicant must submit a statement indicating when and where they acquired the vehicle.

(3) What if I am unable to locate a record of my vehicle in any state or country? If there is no indication that your vehicle is from a nontitle or nonregistration state or country, and no record of your vehicle is found, you may follow ownership in doubt procedures in WAC 308-56A-210.

(4) What is required to title a vehicle from a titling state or country that has refused to issue a title document for a specific vehicle? If the state or country has refused to issue title, Washington may require the customer to comply with ownership in doubt procedures from WAC 308-56A-210 ~~((except those in WAC 308-56A-210(2)))~~. In those cases where a title was refused for reasons not applicable to Washington, the department may consider issuing a title with the appropriate documentation.

(5) What documentation is required in addition to the ownership document if my vehicle is from a foreign country? In addition to the ownership document, the application for certificate of ownership must be accompanied by:

(a) An approved ~~((United States Department of Treasury Customs Service))~~ Department of Homeland Security U.S. Customs and Border Protection Entry Summary form properly executed authorizing the vehicle entry into this country. Applications for certificate of ownership for vehicles imported from Puerto Rico need not be accompanied by a customs document;

(b) An English translation for any document provided which is not in the English language. The translator (~~shall~~) must provide a notarized(~~ed~~) or certified affidavit attesting to the accuracy of the translation;

(c) A release of interest from the owners shown on the ownership documents, as provided in WAC (~~308-56A-210~~) 308-56A-265, if the applicant is not the owner shown.

WSR 07-16-127
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed August 1, 2007, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-126.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licenses; WAC 308-96A-070 Amateur radio operator special license plates.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on September 6, 2007 [2007], at 10:00 a.m.

Date of Intended Adoption: October 2, 2007.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822.

Assistance for Persons with Disabilities: Contact Dale R. Brown by September 5, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required as a service to the Washington state patrol to not allow the use of WSP in the call sign of the amateur radio rules.

Reasons Supporting Proposal: So that license plates will not get confused with Washington state patrol license plates.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.16.316.

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

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation: Toni Wilson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3811; and Enforcement: Jennifer Dana, 1125 Washington Street S.E., Olympia, WA, (360) 902-3710.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

August 1, 2007
Julie Knittle
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 04-18-023, filed 8/24/04, effective 9/24/04)

WAC 308-96A-070 Amateur radio operator special license plates. (1) **Who may apply for amateur radio operator vehicle special license plate(s)?** Any person having a valid amateur radio operator's license may apply to the department for license plates bearing the official amateur radio call letters assigned by the Federal Communications Commission (FCC). These plates are in lieu of regular issue license plates. The department will issue only one set of plates at any one time carrying these call letters.

(2) **What documents are required to receive an amateur radio operator vehicle special license plate?** In addition to all other license fees required by law, the amateur radio operator must attach a copy of the current FCC license to the application. The operator must notify the department when the FCC license is canceled or expires and whether or not the operator has renewed the license. If the license has been renewed, the operator must send a copy of the new FCC license to the department.

(3) **How will the amateur radio operator license plates be displayed?** The amateur radio operator license plates must be displayed on a motor vehicle owned by the amateur radio operator unless the plates were issued and assigned to a vehicle prior to January 1, 1991. Prior to the January 1, 1991, date, the amateur radio operator license plates are allowed to be installed on any motor vehicle qualified under RCW 46.16.305.

(4) **Are there any special fees required to obtain the amateur radio operator license plates?** In addition to all other license fees required by law, each applicant for amateur radio operator license plates must pay an additional license plate fee of five dollars for the plate and applicable fees as stated in RCW 46.16.316 any time the plates are transferred to another vehicle.

(5) **When are the amateur radio operator special license plates canceled?** The effective date of the plate cancellation is the date the FCC license becomes invalid. Reinstatement of the plates requires the amateur radio operator to reapply for the plates, providing a copy of the valid FCC license and paying the five-dollar fee for a new plate and applicable fees as stated in RCW 46.16.316.

(6) **Are there any FCC operator special license plates that will not be issued? Yes, if the call sign has WSP as part of the number letter combination.**

(7) **Will I ever have to exchange my amateur radio operator special license plates?** Yes, the department has determined that all license plates be replaced on a seven-year vehicle license rotation schedule; however, your amateur radio operator special license plates will be issued with your official call letters and numbers assigned to you by the F.C.C.

WSR 07-16-129
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed August 1, 2007, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-127.

Title of Rule and Other Identifying Information: Chapter 308-96B WAC, Individuals with disabilities vehicle license privileges; WAC 308-96B-010 Definitions and 308-96B-020 General provisions.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on September 5, 2007, at 10:00 a.m.

Date of Intended Adoption: October 2, 2007.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822.

Assistance for Persons with Disabilities: Contact Dale R. Brown by September 4, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to meet the requirements of HB 10000 [1000] and 1505 passed during the 60th legislature 2007 regular session, signed by the governor and effective July 22, 2007.

Reasons Supporting Proposal: Change rule to comply with law.

Statutory Authority for Adoption: RCW 46.12.381.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Toni Wilson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

August 1, 2007

Julie Knittle

Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 06-19-079, filed 9/19/06, effective 10/20/06)

WAC 308-96B-010 Definitions—Individual with disabilities special parking privileges. For the purposes of determining eligibility under RCW 46.16.381, for individual with disabilities special parking placards and license plates, the following definitions apply:

(1) "Application for individual" means the form provided by the department that must be completed by the individual and physician.

(2) "Application for organization" means the form provided by the department that must be completed by the organization.

(3) "Identification card" means the identification card bearing the name and date of birth of the person to whom the placard/plate/tab is issued.

(4) "Licensed physician" is a health care provider to include: Chiropractor (DC), naturopath (ND), physician or surgeon (MD or DO), podiatrist (DPM), advanced registered nurse practitioner (ARNP), physician's assistant (PA). Licensed physician does not include persons licensed in the professions of dentistry and optometry.

(5) "Permanent" means a licensed physician has certified the qualifying disability condition is expected to last at least five years.

(6) "Permit" means the eligibility for the temporary or permanent placard or special license plate(s), individual with disability license tab, and identification card.

(7) "Private carriers" means those entities contracting with public transportation authorities to transport persons with disabilities.

(8) "Privilege" means the right to utilize the benefits associated with the individuals with disabilities, parking placards, identification card, license plate(s) and tabs.

(9) "Public transportation authorities" means those entities operating motor vehicles owned or leased by Washington state, or a town, city, county, municipality, or metropolitan or municipal corporation within the state, or United States government agencies or Indian nations used for the primary purpose of transporting persons with disabilities.

(10) "Signature" means any memorandum, mark, stamp, or sign made with intent to authenticate an application for a placard/plate, or the subscription of any person.

AMENDATORY SECTION (Amending WSR 06-19-079, filed 9/19/06, effective 10/20/06)

WAC 308-96B-020 General provisions. (1) How do I qualify for an individual with disabilities parking privilege? To qualify for temporary or permanent individual with disabilities parking privilege, a licensed physician as defined in WAC 308-96B-010(4) must certify, on a department approved application form, that you have a disability that limits or impairs your ability to walk and that you meet the requirements listed in RCW 46.16.381(1). The physician must sign a declaration under penalty of perjury that you have a disability that limits or impairs the ability to walk and that you meet one of the following criteria:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Are severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Have such a severe disability that you cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Use portable oxygen;

(e) Are restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry, is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Are impaired by cardiovascular disease or cardiac condition to the extent that your functional limitations are classified as class III or IV under standards accepted by the American Heart Association;

(g) Have a disability resulting from an acute sensitivity to automobile emissions which limits or impairs your ability to walk. Your personal physician as described in WAC 308-96B-010(4) must document that your disability is comparable in severity to the others listed in this subsection; or

(h) Is legally blind and has limited mobility;

(i) Limited by porphyria (acute sensitivity to light as defined in RCW 46.16.381).

The medical declaration is required on all original applications for permanent and temporary disability privileges and for permanent disability privileges that have been expired more than thirty days. A declaration is not required for renewal of existing Washington privileges for an individual with disabilities.

(2) How do I apply for an individual with disabilities parking privilege? You must complete and sign your portion of the application. Once the licensed physician portion of the application is completed, you submit it to most vehicle licensing offices or the department as noted on the application.

(3) Who may sign the application for an individual with disabilities who is unable to sign or is a minor? An authorized representative of the individual with disabilities may sign the application. The application must be accompanied by a copy of one of the following:

(a) A power of attorney;

(b) A Washington state court order or certification from the clerk of court confirming the court's action; or

(c) A declaration under penalty of perjury explaining why the applicant is unable to sign and explaining the signing person's association with the applicant. Example: Signature, Jane Doe, daughter.

(4) When is the individual with disabilities parking privilege no longer valid?

(a) The plates expire;

(b) The privilege expires;

(c) Upon death of the individual with disabilities;

(d) If the disability no longer exists;

(e) The special license plates have been canceled by department administrative action;

(f) If the privilege was issued in error; or

(g) If the individual with disability is no longer shown on the department's record as being a registered owner of the vehicle.

(5) What do I receive when my application is approved for an individual with disabilities parking privilege? An individual with disabilities identification card and:

(a) If you have a temporary disability, you will receive one temporary placard;

(b) If you have a permanent disability, you receive up to two privileges. You may choose to receive:

(i) Up to two permanent placards; or

(ii) One permanent placard and one set of individual with disabilities license plates or individual with disabilities year tab. The year tab may only be displayed on qualifying plates. The individual with disabilities must be a registered owner of the vehicle to receive these plates or tab.

(6) When can the individual with disabilities parking privileges be used? When transporting the person to whom the plate or placard is issued.

(7) Why is the individual with disabilities identification card issued? The identification card is issued to identify the individual with disabilities and to ensure that only those who qualify use the parking privilege. The identification card must be available for law enforcement or parking enforcement officials.

If you have just applied for and not yet received an individual with disabilities identification card, show the receipt you received at the time of application.

(8) How do I display the individual with disabilities parking placard?

(a) The placard is hung from the rearview mirror post; or

(b) The placard may be placed on the dashboard, (in the absence of the rearview mirror post).

The entire placard must be visible through the vehicle windshield.

(9) How long is the individuals with disabilities parking privilege valid?

(a) Temporary privileges are valid for up to six months from the date of issuance by the department.

(b) Permanent privileges are issued for five years and expire on the last day of the month of issuance. The expiration date can be located on the identification card or as marked on the placard. For example: If your expiration date is May 2008, your privilege will expire on May 31, 2008.

Note: License plates carry the expiration date of your vehicle registration and must be renewed annually.

(10) How do I renew or extend my individual with disabilities parking privilege?

(a) You cannot renew a temporary privilege. If your condition continues beyond the expiration date, you can obtain a new temporary individual with disabilities parking placard and identification card by submitting a new application completed and certified by a licensed physician (~~(or ARNP)~~), an advanced registered nurse practitioner, or a physician's assistant, as described in WAC 308-96B-010(4).

(b) You can renew a permanent privilege. The department will mail you a renewal notice before your privilege expires. Submit the completed renewal notice or a new application to most vehicle licensing offices to renew. You will receive your new parking placard(s) and new identification card through the mail.

(c) If permanent privilege has been expired more than thirty days you must submit a new application completed and certified by a licensed physician (~~(or ARNP)~~), an advanced registered nurse practitioner, or a physician's assistant, as described in WAC 308-96B-010.

(11) What if the individual with disabilities parking placard or identification card is lost, mutilated, destroyed, or stolen? To replace your individual with disabilities parking placard or identification card, complete and sign a statement explaining what happened to the placard or identification card. A new individual with disabilities parking placard or identification card will be issued, indicating the original expiration date. The placard or identification card being replaced are no longer valid and should be destroyed if located.

(12) What should I do with my placard and identification card when they are no longer valid? When your

placard and identification card are no longer valid, they should be destroyed.

Note: If the vehicle has been reported stolen or if the department record indicates the vehicle has been stolen, the same number/letter combination will not be used. This is a law enforcement issue and is for the protection of the public.