



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Columbia River Gorge Commission	<input checked="" type="checkbox"/> Permanent Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Expedited Rule Making
(1) Date of adoption: October 8, 2002	

(2) Purpose: The amendments bring the rule into compliance with the more restrictive statutory provisions of the states of Washington or Oregon.

(3) Citation of existing rules affected by this order:
 Repealed:
 Amended: 350-12
 Suspended:

(4) Statutory authority for adoption: RCW 43.97.015
 Other Authority: U.S.C. 544c; ORS 197.150

PERMANENT RULE ONLY (Including Expedited Rule Making)
 Adopted under notice filed as WSR 02-17-075 on August 19, 2002
 Describe any changes other than editing from proposed to adopted version: None

EMERGENCY RULE ONLY
 Under RCW 34.05.350 the agency for good cause finds:
 (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

 Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:
 Yes No If Yes, explain:

(6) Effective date of rule:

Permanent Rules <input checked="" type="checkbox"/> 31 days after filing <input type="checkbox"/> Other (specify) _____*	Emergency Rules <input type="checkbox"/> Immediately <input type="checkbox"/> Later (specify) _____
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*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON

OCT 17 2002

1228

02-21-075

(PM)

Name (Type or Print)
Robert K. McIntyre

Signature
Robert K. McIntyre

Title
Rules Coordinator

Date
October 15, 2002

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>1</u>	Amended	3	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>1</u>	Amended	3	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>1</u>	Amended	3	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	<u>1</u>	Amended	3	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION

350-12-002. Right to inspect public records.

Every person has a right to inspect any public record of the commission, except as otherwise expressly provided by 350-12-0068.

AMENDATORY SECTION

350-12-005. Certified copies ~~Forms~~ of public records; fees.

(1) The custodian of any public record which a person has a right to inspect shall give the person, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) If a public record is maintained in a machine readable or electronic form, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained. ORS 192.440(2)

~~(2) — The Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media. This applies to both regular and certified copies of records.~~

AMENDATORY SECTION

350-12-006. Fees.

The Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media, and for routine notices and agendas. This applies to both regular and certified copies of records.

NEW SECTION

350-12-007. Prompt response required

The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond; or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the

information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial. RCW 42.17.320

AMENDATORY SECTION

350-12-0068. Public records exempt from disclosure.

(1) The following public records are exempt from disclosure under 350-12-001 to 350-12-0068 unless the public interest requires disclosure in the particular instance:

- (a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;
- (b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;
- (c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:
 - (A) The arrested person's name, age, residence, employment, marital status and similar biographical information;
 - (B) The offense with which the arrested person is charged;

- (C) The conditions of release;
 - (D) The identity of and biographical information concerning both complaining party and victim;
 - (E) The identity of the investigation and arresting agency and the length of the investigation;
 - (F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;
 - (G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.
- (d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;
 - (e) Information relating to the appraisal of real estate prior to its acquisition;
 - (f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;
 - (g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complain is resolved, or a final administrative determination is made;
 - (h) Investigatory information relating to any complaint filed relating to unfair labor practices;
 - (i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and
 - (j) A personnel discipline action, or materials or documents supporting that action.
 - (k) Sensitive fish, wildlife, and plant data obtained by or created by the Gorge Commission. However, sensitive fish, wildlife and plant data may be

released to government agencies concerned with the management of fish and wildlife resources. Sensitive fish, wildlife, and plant data includes:

- (1) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;
- (2) Radio frequencies used in or locational data generated by telemetry studies;
- (3) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:
 - (A) The species has a known commercial or black market value
 - (B) There is a history of malicious take of that species; or
 - (C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

ORS 192.501(13) and RCW 42.17.310 Note that under Oregon law this is a conditional exemption, but that under Washington law, the exemption is absolute. Also, Oregon law exempts plant information from disclosure, but Washington law does not.

- (2) The following public records are exempt from disclosure under 350-12-001 to 350-12-0068:
 - (a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the commission clearly outweighs the public interest in disclosure;
 - (b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

- (c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;
- (d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;
- (e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;
- (f) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

~~(4) — Student records required by state or federal law are exempt from disclosure.~~

(4) — An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(a) — A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.

(b) — A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(c) — A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized

release of a home address or personal telephone number granted an exemption from disclosure under this section.

ORS 192.445

(5) Notwithstanding the exemptions in 350-12-008(1) and (2), public records that are more than 25 years old shall be available for inspection. ORS 192.495

(6) Notwithstanding 350-12-001 through 350-12-008, the Commission shall not disclose records in violation of a user agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.

(7) Disclosure of information in violation of Rule 350-12-006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.