

Title 240 WAC

GOVERNOR, OFFICE OF THE

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Chapter 240-06 WAC

INSPECTION AND COPYING OF PUBLIC RECORDS OF THE OFFICE OF THE GOVERNOR

WAC

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WAC 240-06-010 Purpose. The purpose of this chapter shall be to ensure compliance by the office of the governor with the provisions of chapter 1, Laws of 1973 (Initiative 276), Disclosure—Campaign finances—Lobbying—Records; and in particular with sections 25-32 of the act, dealing with public records.

[Order 73-1, § 240-06-010, filed 8/31/73.]

WAC 240-06-020 Definitions. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

[Order 73-1, § 240-06-020, filed 8/31/73.]

WAC 240-06-030 Description of organization of the office of the governor. (1) The office of the governor is an administrative and staff support agency consisting of the

governor and the governor's personal professional staff, whose mission is to assist the governor in the exercise of his duties, responsibilities, and authority as provided in the constitution and the laws of the state of Washington. The office of the governor shall hereinafter be referred to as the "office." Where appropriate, the term "office" shall also refer to the staff and employees of the office of the governor.

(2) The office is located in the legislative building in Olympia, Washington. It also maintains an office facility in Spokane, Washington, and a part-time facility at 306 North 1st Avenue in Seattle, Washington. For purposes of this chapter, the term "administrative office" shall refer to the Olympia location.

(3) The head of the office is the governor of the state of Washington who is elected by the people pursuant to Article III of the constitution of the state of Washington. The governor is charged by constitution and statutes with a broad range of implicit and explicit authority, duties, and responsibilities, among which, but not exclusively, are those related to the execution of laws, management of the executive branch, representation of the state and the state's interests within and beyond its borders, submission of messages and proposals to the legislature, approval of legislation, review and alteration of sentences of convicted persons, and various and sundry appointments to public positions.

(4) The structure of the office under the governor consists of an administrative assistant responsible for overall management of the office, a number of professional staff assistants generally responsible for executive agency affairs, legal affairs, legislative affairs, public information, appointments, correspondence, and business management of the office, and supportive services personnel. In addition, a number of agencies, task forces, commissions, and similar entities may be created from time to time by executive order and are ultimately responsible to the governor and may be designated as part of the office of the governor. While such entities are not specifically included under the provisions of this chapter, general information and assistance regarding such entities may be obtained at the office. For purposes of this chapter, the term "office of the governor" is to be strictly construed in accordance with the intent of this section.

[Order 73-1, § 240-06-030, filed 8/31/73.]

WAC 240-06-040 Operations and procedures. The governor is ultimately responsible for decisions, policies and operations of the office. Procedures of the office are both formal and informal and may or may not directly involve the governor at any one time. Staff personnel operate in generally defined spheres of activity, but lines of responsibility and operational procedures are flexible in order to more effectively respond to situational requirements.

[Order 73-1, § 240-06-040, filed 8/31/73.]

WAC 240-06-050 Public records available. All public records of the office as defined in WAC 240-06-020 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973 and WAC 240-06-100.

[Order 73-1, § 240-06-050, filed 8/31/73.]

WAC 240-06-060 Public records officer. The office's public records shall be in charge of the public records officer designated by the office. The public records officer shall be responsible for the following: The implementation of the office's rules and regulations regarding release of public records, coordinating the staff of the office in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973. In the absence of the public records officer, the responsibilities of such officer may be delegated to or assumed by another member of the staff and such responsibilities shall be deemed to be properly exercised by such officer.

[Order 73-1, § 240-06-060, filed 8/31/73.]

WAC 240-06-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the office. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

[Order 73-1, § 240-06-070, filed 8/31/73.]

WAC 240-06-080 Requests for public records. In accordance with requirements of chapter 1, Laws of 1973, that agencies prevent unreasonable invasions of privacy, protect the public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the office which shall be available at its administrative office. The form shall be presented to the public records officer, or to any member of the office's staff if the public records officer is not available, at the administrative office of the office during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request; and
- (d) An appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request for a public record of the office, it shall be the obligation of the public records officer or staff member to whom the request was made, to assist the member of the public by making available the public record requested with reasonable promptness.

[Order 73-1, § 240-06-080, filed 8/31/73.]

WAC 240-06-090 Copying. No fee shall be charged for the inspection of public records. The office may charge a fee for providing copies of public records and for use of the office copy equipment. This charge shall be the amount necessary to reimburse the office for its actual equipment and manpower costs incident to such copying.

[Order 73-1, § 240-06-090, filed 8/31/73.]

WAC 240-06-100 Exemptions. (1) The office reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 240-06-050 is exempt under the provisions of section 31, chapter 1, Laws of 1973.

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973, the office reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer shall fully justify such deletion in writing.

(3) Each denial of a request for a public record must be accompanied by a written statement specifying the reason for the denial, including if appropriate a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

[Order 73-1, § 240-06-100, filed 8/31/73.]

WAC 240-06-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the public records officer. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer shall refer it to the administrative assistant to the governor. The administrative assistant, or such member of the staff designated to so act in the absence of the administrative assistant, shall promptly consider the matter and either affirm or reverse such denial or refer the matter to the governor to review the denial. In any case, if possible, the request shall be returned with a final decision within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the office has returned the petition with a decision or until the close of the second business day following the denial of inspection, whichever occurs first.

[Order 73-1, § 240-06-110, filed 8/31/73.]

WAC 240-06-120 Protection of public records. The public records officer shall take all reasonable steps and impose appropriate conditions on the inspection and copying of public records so as to protect such records and to preserve the integrity of other proper activities of the office. Inspection or copying shall be denied and records shall be withdrawn if the person inspecting or copying the records is engaging in conduct likely to damage or substantially

disorganize them or so as to interfere excessively with other essential functions of the office or in disregard of conditions imposed by the public records officer.

[Order 73-1, § 240-06-120, filed 8/31/73.]

WAC 240-06-130 Exemption from requirement to maintain a current records index. (1) As authorized by section 26(3) of chapter 1, Laws of 1973 (Initiative 276), the office claims an exemption from the requirement to maintain an index of current records. The scope of constitutional and statutory responsibilities of the governor may embrace the complete range of public policy, including certain aspects of national, international, interstate, and local policy, and the activities of all agencies and organs of state government. To maintain an index covering the appropriate records as defined in sections 2(24) and 26(2) of chapter 1, Laws of 1973, would impose an undue burden on the office.

(2) All indexes maintained for use of the office shall be made available for public inspection according to the provisions of this chapter.

[Order 73-1, § 240-06-130, filed 8/31/73.]

Chapter 240-10 WAC

STATE EMPLOYEE COMBINED CHARITABLE CONTRIBUTIONS PROGRAM

WAC

240-10-010	Committee established.
240-10-020	Purposes.
240-10-030	Definitions.
240-10-040	Basic standards and criteria for agency membership applicable to all agencies.
240-10-050	Required characteristics of eligible federations (umbrella organizations).
240-10-055	Determination of eligibility—Procedure for reconsideration.
240-10-057	Decertification and disqualification.
240-10-060	Qualifications for local campaign manager.

WAC 240-10-010 Committee established. (1) In accordance with RCW 41.04.035, 41.04.036 and 41.04.230 and in order to implement Executive Orders EO 84-13 and EO 84-15 a committee is established to conduct a single, annual, consolidated effort to secure funds for distribution to agencies engaged in charitable and public health, welfare and service purposes.

(2) The committee shall be known as the Washington state employee combined fund drive committee.

(3) The committee shall be composed of not more than eight state employees appointed by the governor for three year terms, except that the terms of those first appointed shall be staggered with two persons appointed for one year, three persons appointed for two years, and three persons appointed for three years, as determined by the governor. The members shall be selected from the following groups:

- One member from an employee organization;
- One member from the legislative branch;
- One member from the judicial branch;
- Three members from state agencies;
- Two members from higher education.

(4) The committee shall elect a chairperson annually, and such other officers as may be needed.

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(5) Members of the committee shall serve without additional salary, but shall be reimbursed by their employing agencies for travel, lodging and meals in accordance with state law and regulations.

(6) The committee shall be a policy committee which shall organize and effect one solicitation effort each year.

(7) The committee shall establish standards and criteria for participation in the fund drive. (WAC 240-10-040 and 240-10-050.)

(8) The committee shall annually print and distribute an application form which agencies shall use to apply for participation in the fund drive.

(9) The committee shall evaluate each application, based on its criteria, and determine which agencies engaged in charitable and public health, welfare and social service purposes shall participate in one annual combined effort to secure funds from state employees through payroll deduction or other payment method.

(10) The committee may establish departmental combined fund drive coordinators, local combined fund drive coordinators, local campaign steering committees and local campaign managers to assist in the fund drive.

(11) The department of personnel shall provide the administrative support for the operation of the committee.

(12) All costs such as printing of brochures, preparation of slide presentations, and other promotional costs shall be the responsibility of those organizations designated to participate in the distribution of all funds collected. In circumstances where promotional costs cannot be associated with an individual charitable service organization, the costs shall be shared in a percentage relating to the total funds distributed.

[Statutory Authority: RCW 41.04.035, 41.04.036 and 41.04.230. 86-08-070 (Order 86-1), § 240-10-010, filed 4/1/86; 86-02-015 (Order 85-2), § 240-10-010, filed 12/23/85.]

WAC 240-10-020 Purposes. (1) The following rules are promulgated to implement a payroll deduction plan for the efficient, long-term collection of voluntary employee contributions to qualifying charitable, human health and welfare organizations. By establishing a uniform policy toward charitable fund raising efforts among state employees, the state hopes to encourage generosity in voluntary financial support for the charitable services of the qualified organizations.

(2) The intent of these regulations is to:

(a) Lessen the burdens of government and of local communities in meeting the needs of human health and welfare;

(b) Provide a convenient channel through which state employees may contribute to the efforts of the qualifying voluntary health and welfare organizations providing services in the community or region where the employees live and work and overseas;

(c) Minimize both the disruption of the state work place and the costs to taxpayers that multiple charitable fund drives have caused; and

(d) Ensure that recipient agencies are fiscally responsible in the uses of the moneys so raised.

[Statutory Authority: RCW 41.04.035, 41.04.036 and 41.04.230. 86-02-015 (Order 85-2), § 240-10-020, filed 12/23/85.]

WAC 240-10-030 Definitions. (1) Committee - The Washington state employee combined fund drive committee described in WAC 240-10-010.

(2) State employee combined fund drive campaign - An arrangement by which the committee provides one or more other participating organizations with the opportunity to receive funds contributed to them in the annual campaign, based on their compliance with the regulations herein.

(3) Participating organization - A health and welfare agency whose application has been accepted by the committee.

(4) Annual campaign - The once-a-year period of organized solicitation of state employees conducted annually to obtain voluntary contributions from state employees for charitable commitments to be allocated during the ensuing year of contributions.

(5) Year of contributions - The annual calendar year for collection of the voluntary payroll deductions for charitable contributions authorized by state employees pursuant to these regulations. The normal, full annual calendar year shall begin with January and end with the ensuing December.

(6) Health and welfare agency - The terms "voluntary agency," "voluntary health and welfare agency," "voluntary charitable agency," and "voluntary charitable health and welfare agency" mean an organization that is organized and operated for the purpose of rendering, or of materially or financially supporting the rendering of, one or more of the following services directly to, and for the direct benefit of, human beings:

(a) Delivery of health care to ill or infirm individuals;

(b) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(c) Health research for the benefit of ill or infirm individuals;

(d) Delivery of education, training, and care to physically and mentally handicapped individuals;

(e) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(f) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(g) Neighborhood and community-wide social services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, educational opportunities, and job training;

(h) Protection of families that, on account of economic or other need, poverty, indigence, or emergency, are in long-term or short-term need of family, child-care, and maternity services, child and marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

(i) Relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(j) Relief of needy, poor, and indigent adults and of the elderly.

(7) Local presence - Demonstration of direct and substantial presence in the local campaign community:

(a) The availability of services, such as examinations, treatments, inoculations, preventive care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, shelter, and clothing to persons working or residing in the local campaign community.

(b) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider, or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof.

(c) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.

(8) Overseas - Areas outside of the District of Columbia and the fifty states of the United States.

[Statutory Authority: RCW 41.04.035, 41.04.036 and 41.04.230. 87-18-003 (Order 87-1), § 240-10-030, filed 8/20/87; 86-08-070 (Order 86-1), § 240-10-030, filed 4/1/86; 86-02-015 (Order 85-2), § 240-10-030, filed 12/23/85.]

WAC 240-10-040 Basic standards and criteria for agency membership applicable to all agencies. (1) Basic standards.

(a) Federal exemption. Each charitable organization must submit a copy of the Internal Revenue Service determination letter indicating that it is an exempt organization under Internal Revenue Code Section 501(c)(3), or is a governmental entity receiving charitable contributions which are entitled to a deduction under Internal Revenue Code Section 170(c)(1). An advance ruling on its exempt status shall meet this requirement.

(b) Registration and reporting. Each charitable organization shall have registered as a charitable organization with the secretary of state under the provisions of chapter 19.09 RCW (charitable solicitations) and with the attorney general under the provisions of chapter 11.110 RCW (charitable trusts) unless specifically exempt from registration by state law, and shall have filed all required reports within any established time limits.

(c) Integrity of operations. Each charitable organization must have at least a minimal history of service and demonstrate a real capability to serve. Funds contributed to charitable organizations by state employees must be used for their announced purposes. There shall be no payment of commissions for fund-raising, no mailing of commercial merchandise, and no paid general telephone solicitors.

(d) Finances. The charitable organization must use standards of accounting and a financial system based on generally accepted accounting principles which includes accounting procedures that would be acceptable to the American Institute of Certified Public Accountants. The committee may require an independent audit by a certified public accountant. The charitable organization must conduct its fiscal operations in accordance with a detailed annual program budget which is prepared and approved at the

beginning of each fiscal year by the board of directors. Prior authorizations by the board of directors shall be required for any significant variation from the approved budget. The committee may require that the charitable organization prepare and make available to the general public an annual financial report.

(e) Nondiscrimination. The charitable organization shall have a policy and procedure of nondiscrimination in regard to race, color, religion, national origin, handicap, age, or sex applicable to persons served by the charitable organization.

(f) Annual reports. The charitable organization shall prepare an annual report available to the general public which includes a full description of the charitable organization's activities including types of solicitation for contributions, the names of its chief administrative personnel, and a full disclosure of the source and use of contributions.

(g) Agency organization. The charitable organization must maintain an active local volunteer board of directors, serving without compensation through regular meetings and exercising satisfactory administrative controls in accordance with the agency's articles of incorporation, bylaws, and, preferably, standards adopted by its national or state affiliate: *Provided*, That the "local volunteer board" is exempted for those voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and which meet all the criteria set forth except for the requirement of direct and substantial presence in the local campaign community.

(h) Fund-raising costs. Each organization shall disclose to the committee the estimated percentages of the money collected which will be applied to the cost of solicitation and to the charitable purpose. The information thus provided will be disclosed to state employees during the campaign.

(i) Application deadline. Completed applications must be received before the closing date established annually by the committee.

(2) Criteria.

(a) Service programs. Each charitable agency must have a substantial local presence in a Washington state community with a history of providing programs aimed toward direct services, research, and education in an effort to meet human health, welfare, or social service needs within a Washington state community: *Provided*, That voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the criteria set forth except for the requirement of direct and substantial presence in the local campaign community, shall be eligible for agency membership; and each must be able to comply with integrity and other applicable standards that such services are indeed provided.

(b) Participation in eligible federations.

(i) No charitable organization may participate in more than one eligible federation (umbrella organization) in a county.

(ii) No charitable organization may participate both individually and as a member of an eligible federation (umbrella organization) within a county.

(iii) Applications submitted on behalf of eligible federations (umbrella organizations) shall include a certification that all participating constituent agencies meet the basic

standards and criteria, and agree to comply with rules and regulations as set forth by the committee.

[Statutory Authority: WAC 240-10-010(7) and Executive Order 84-13. 92-19-082, § 240-10-040, filed 9/15/92, effective 10/16/92. Statutory Authority: RCW 41.04.035, 41.04.036 and 41.04.230. 87-18-003 (Order 87-1), § 240-10-040, filed 8/20/87; 86-08-070 (Order 86-1), § 240-10-040, filed 4/1/86; 86-02-015 (Order 85-2), § 240-10-040, filed 12/23/85.]

WAC 240-10-050 Required characteristics of eligible federations (umbrella organizations). In addition to meeting the requirements set out in WAC 240-10-040, each federated organization (umbrella organization) must demonstrate the following:

(1) Scope. It is representative of its constituent parts. While it may not accept responsibility for the exact nature of program objectives and administrative and financial procedures of its affiliates, it must be in a position to affirm that the operations and fund-raising of its affiliates comply with the standards and criteria set out in WAC 240-10-040.

(2) It has good will and acceptability within this state, including ability to demonstrate a well recognized service to or in behalf of citizens of this state: *Provided*, That voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the criteria set forth except for the requirement of direct and substantial presence in the local campaign community, shall be eligible for agency membership.

(3) It has sufficient volunteers or staff, or both, to contribute to the organization and conduct of the Washington state employee combined fund drive and has at least six months of prior operation within this state.

(4) It has registered and been approved under chapter 19.09 RCW (Charitable solicitations).

(5) It has at least five organizational members.

(6) It adheres to high standards in services, management and public accountability as required by the standards and criteria set out in WAC 240-10-040.

[Statutory Authority: RCW 41.04.035, 41.04.036 and 41.04.230. 86-02-015 (Order 85-2), § 240-10-050, filed 12/23/85.]

WAC 240-10-055 Determination of eligibility—Procedure for reconsideration. Using the information supplied under this chapter and the standards set forth in WAC 240-10-040 and 240-10-050, the committee will determine which agencies and which federated organizations are eligible to participate in annual state employee combined fund drive campaigns. Any agency or federated organization determined not to be eligible may, within fifteen days after receiving notice of noneligibility, request reconsideration in writing, submitting responsive materials relating to the noneligibility notice in support of the request at the same time. The committee will duly reconsider the eligibility of the requesting agency or federated organization and will issue written notice of its final decision on eligibility within thirty days of receiving the request. Any decision on reconsideration will be a final determination of eligibility.

For the purposes of this section, any written requests or notices will be presumed to be received no more than three business days after mailing.

[Statutory Authority: RCW 41.04.035, 41.04.036 and 41.04.230. 86-08-070 (Order 86-1), § 240-10-055, filed 4/1/86.]

WAC 240-10-057 Decertification and disqualification. (1) Once approved for participation, any health and welfare agency or federated organization may be decertified and disqualified from participation in the state employee combined fund drive campaign by majority vote of the committee for any one or more of the following reasons:

(a) Failure to comply with the rules contained in this chapter;

(b) Filing an application to participate in the state employee combined fund drive campaign which contains false or intentionally misleading information;

(c) An annual contribution pledge from an annual campaign of two hundred fifty dollars or less.

(2) Any decertified health and welfare agency or federated organization shall be disqualified from participating in the next state employee combined fund drive campaign.

(3) The committee may order that the annual net estimated contribution for any health and welfare agency or federated organization receiving an annual pledge of two hundred fifty dollars or less in an annual campaign may be made in a lump sum at the end of the year of contributions.

(4) Any health and welfare agency or federated organization decertified under subsection (1)(a) or (b) of this section shall have any further payment of contributions terminated. The committee shall determine the method of disbursement of any future payments originally pledged in an annual campaign to such health and welfare agency or federated organization.

(5) Any decertified health and welfare agency or federated organization may request reconsideration of the committee's action using the procedures described under WAC 240-10-055.

[Statutory Authority: RCW 41.04.035, 41.04.036 and 41.04.230. 87-18-003 (Order 87-1), § 240-10-057, filed 8/20/87.]

WAC 240-10-060 Qualifications for local campaign manager. In selecting a local campaign manager, the local steering committee must assess the following qualities of an applicant to determine the applicant's capability to manage a successful charitable campaign:

(1) The local manager shall demonstrate the administrative and financial capability to manage and operate a fund-raising campaign with integrity and in an efficient manner yielding contributions comparable to those made by state employees in the past.

(2) The local manager shall demonstrate that a broad base of community support has been established within the state and demonstrate continuing positive relationships with a significant number of the state's charitable organizations.

(3) The local manager shall demonstrate the ability to effectively promote and publicize a charitable fund-raising campaign among the state employee work force.

(4) The local manager shall demonstrate the ability to give guidance to, train, and supervise volunteer solicitors and other state employee volunteers in the campaign.

(5) The local manager shall demonstrate the ability to publish and distribute informational literature and other

material relative to the programs of participating agencies in a fair and equitable manner.

(6) The local manager shall demonstrate a history of integrity, and a direct and substantial presence in the local (or regional) community.

(7) The local manager shall demonstrate the intent to cooperate fully with the local steering committee and with state officials.

[Statutory Authority: RCW 41.04.035, 41.04.036 and 41.04.230. 86-02-015 (Order 85-2), § 240-10-060, filed 12/23/85.]

Chapter 240-15 WAC LOG EXPORT RESTRICTIONS

Reviser's note: The following chapter was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was filed for publication in the Washington Administrative Code by Governor Booth Gardner. It is shown below exactly as filed with history notes added by the Code Reviser's Office.

WAC

GENERAL

240-15-005	Purposes and implementation.
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240-15-030	Enforcement.
240-15-035	Requirements applicable to the department of revenue.

GENERAL

WAC 240-15-005 Purposes and implementation. The Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382). The Act directs the governor to promulgate rules for its implementation consistent with Section 553, of title 5, United States Code. These rules have been promulgated in accordance with the directives of the Act rather than Chapter 34.05 RCW.

[92-11-017, § 240-15-005, filed 5/12/92, effective 7/1/92; 91-14-040, § 240-15-005, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. 91-02-111, § 240-15-005, filed 1/2/91, effective 1/2/91; 90-22-105, § 240-15-005, filed 11/7/90, effective 1/1/91.]

WAC 240-15-010 Authority and definitions. (1) Applicability. This chapter shall apply to the sale of timber originating from public lands in the State of Washington, when such timber is subject to an order issued by the Secretary of Commerce of the United States under section 491(a) of the Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382). Western Red Cedar is exempt from these rules. The prohibition on the export of Western Red Cedar is covered by section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406 (i)).

(2) Presidential action. This chapter shall not apply to the extent that an order referred to under WAC 240-15-010(1) is suspended, removed, or modified by the President of the United States under the authority of section 491(e) or 491(f) of the Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382).

(3) Surplus timber. Timber which has been determined to be surplus to the needs of timber manufacturing facilities in the United States by the Secretary of Agriculture or the Secretary of the Interior of the United States is not subject to regulation under this chapter.

(4) Definitions. As used in this chapter:

(a) "Agency" means any state or local public entity which owns or manages land from which timber is harvested in the State of Washington.

(b) "Export" means either to load on a conveyance or vessel or put in a log raft with the intent to ship to a foreign destination, or to place at a facility such as a port, yard, pond, or dock with the intent to load on a conveyance or vessel or put in a log raft for shipment to a foreign destination.

(c) "Export restricted timber" means unprocessed timber originating from a sale of timber from public lands which has been designated as export restricted under WAC 240-15-015 (1)(a), and includes both logs and stumpage originating from such a sale.

(d) "Person" means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company and business affiliates where one affiliate controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(e) "Processing facility" means a facility for converting unprocessed timber into any of the items of processed timber listed in WAC 240-015-010(i). Chip plants, pulp mills and facilities that process only Western Red Cedar Products are not considered processing facilities.

(f) "Public lands" means lands in the State of Washington that are held or owned by the State of Washington, or a political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is:

(i) held by the United States,

(ii) held in trust by the United States for the benefit of any Indian tribe or individual, or

(iii) held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(g) "Purchaser" means a person who has been awarded a timber sale contract to harvest or acquire export restricted timber from public lands in the State of Washington.

(h)(i) "Substitution" means the purchase of export restricted timber or possession of an active sale contract for export restricted timber by (A) a person who owns and operates a processing facility (B) where the person owning the processing facility also exports or sells for export from the United States unprocessed timber originating from private lands in the State of Washington and (C) where such lands are owned by the person, or the person has exclusive rights to harvest timber from such lands, where such rights may be exercised at any time during a period of more than 7 years. Substitution can occur only when all three above noted conditions are met. Exceptions to this 7 year restriction may be considered on a case by case basis by the Department of Revenue in exceptional circumstances.

(ii) The reference in WAC 240-15-010 (4)(h)(i) to the export from the United States of unprocessed timber originating from private lands shall mean exports which occur at any time:

(A) after that date which is 12 months prior to the award date of the sale of the export restricted timber, except that it shall not refer to any exports which occur prior to January 1, 1991; and

(B) prior to that date which is 24 months after the award date of the sale of the export restricted timber, or the end of the term of the timber sale contract for the export restricted timber, whichever is later.

(i) "Unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. As used in this chapter, the term "unprocessed timber" does not include timber processed into any one of the following:

(i) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standards grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture.

(ii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness.

(iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause 2 and are sawn on 4 sides, with wane less than 1/4 of any face, not exceeding 8 3/4 inches in thickness.

(iv) Chips, pulp or pulp products.

(v) Veneer or plywood.

(vi) Poles, posts, or piling cut or treated with preservatives for use as such.

(vii) Shakes or shingles.

(viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(ix) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

[92-11-017, § 240-15-010, filed 5/12/92, effective 7/1/92; 91-14-040, § 240-15-010, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. 91-02-111, § 240-15-010, filed 1/2/91, effective 1/2/91; 90-22-105, § 240-15-010, filed 11/7/90, effective 1/1/91.]

WAC 240-15-015 Prohibitions. (1) Prohibition on export. Except as specifically provided under this chapter, no person may:

(a) export from the United States export restricted timber; or

(b) sell, trade, exchange, or otherwise convey to any other person, for the purpose of export from the United States, export restricted timber.

(2) Prohibition on substitution. Except as specifically provided under this chapter, no person may purchase or possess an active contract for export restricted timber from any agency if such person owns and operates a processing facility and the processing of export restricted timber at such facility by such person would constitute substitution.

(3) Prohibition on certain indirect transactions. Except as specifically provided under this chapter, no person may purchase from any other person export restricted timber if such person is prohibited under WAC 240-15-015(2) (relating to substitution) from purchasing such timber

directly from the agency managing the public lands from which such timber originated.

(4) Exemptions. Notwithstanding any other provisions of this chapter;

(a) The prohibition in WAC 240-15-015(2) (relating to substitution) shall not apply to the use of timber originating from public lands which is either (i) hardwood timber, or (ii) Western Red Cedar.

(b) The prohibitions in WAC 240-15-015(3) (relating to certain indirect purchases) shall not prohibit the sale of up to 33 1/3 percent of the volume (not including hardwoods and western red cedar) in any sale purchased in calendar year 1991 to a person or persons who are otherwise ineligible under WAC 240-15-015(3) to purchase such timber, provided the timber is processed at a domestic facility. For timber sales sold in calendar year 1992, the volume that may be sold to such persons shall be reduced to 20 percent of the total volume (not including hardwoods and western red cedar). For timber sales sold in calendar year 1993 and after, the volume that may be sold to such persons shall be reduced to 10 percent of the total volume (not including hardwoods and western red cedar). The transferor shall notify the Department of Revenue, in writing, of any such transaction prior to physically transferring the timber to the transferee. Rights to purchase export restricted timber under this paragraph may be used on a sale by sale basis and may not be accumulated or transferred to other sales. The advertised volume or volume specified in the sale agreement shall serve as the basis for determining the sale volume to which the percentage applies.

(c) The prohibition in WAC 240-15-015(2) (relating to substitution) shall not prohibit the purchase by any person of export restricted timber originating from public lands in Ferry County or any other county in the State of Washington partially or entirely east of the Columbia River if such person does not export or sell for export timber from private lands in that geographic area.

(d) The prohibition in WAC 240-15-015(2) (relating to substitution) shall not apply to any log, regardless of gross scale, sold to a domestic processing facility for the purpose of conversion into chips, pulp or pulp products.

[92-11-017, § 240-15-015, filed 5/12/92, effective 7/1/92; 91-14-040, § 240-15-015, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. 91-02-111, § 240-15-015, filed 1/2/91, effective 1/2/91; 90-22-105, § 240-15-015, filed 11/7/90, effective 1/1/91.]

WAC 240-15-020 Agency requirements. (1) Designation of export restricted timber.

(a) Each agency managing public lands subject to this chapter shall designate timber sales to be sold as export restricted and as exportable. Pursuant to an order issued by the Secretary of Commerce of the United States for calendar years 1992 and 1993, each agency shall designate as export restricted, sales that include 75 per cent of the volume of unprocessed timber from such agency's annual sales program, excluding Western Red Cedar. This percentage shall remain in effect until revised by order of the Secretary of Commerce of the United States under section 491(a) of the Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382). Sales designated as export restricted shall be distributed proportionately throughout the geographical area of land owned or managed by the agency.

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Timber originating from sales designated as export restricted shall be representative of the species and grade distribution of the agency's sale program.

(b) Designation of timber sales as export restricted and as exportable shall be on a sale by sale basis and shall apply to the entire sale being considered; except that a sale shall be subdivided into portions that are export restricted and exportable if there are insufficient sales in the annual sales program to insure that designation on a sale by sale basis meets the applicable requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382).

(2) Report to the Governor. By March 31 of each year, each agency selling timber from public lands shall report to the Governor on the results of its sales program in compliance with the Forest Resources Conservation and Shortage Relief Act (Public Law 101-382) for the preceding calendar year. The report shall include information on the volume, species, grade, and geographical distribution of sales sold as export restricted and not export restricted.

(3) Reports on the purchase of timber. Not later than 5 days after the receipt of a Purchaser Certification furnished to an agency under WAC 240-15-025, the agency shall submit a copy of such certification to the Washington Department of Revenue. The agency shall make copies of such reports available to the public at reasonable times and locations.

(4) Contract provisions. Agencies contracting for the sale of export restricted timber from public lands shall include in such contracts clauses incorporating the applicable requirements of WAC 240-15-015 (relating to the prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement). In addition, such contracts shall include clauses which provide that a violation by the purchaser of the prohibitions under WAC 240-15-025 (relating to the prohibitions on export and substitution) shall be sufficient cause for the agency to cancel the contract.

(5) Prohibition on accepting bids from ineligible purchasers. Agencies shall not accept bids for sales of export restricted timber from persons included on the List of Ineligible Purchasers published by the Department of Revenue under this chapter.

(6) List of ineligible purchasers. Agencies contracting for the sale of export restricted timber from public lands shall attach to such contracts a copy of the most recent List of Ineligible Purchasers published by the Department of Revenue.

[92-11-017, § 240-15-020, filed 5/12/92, effective 7/1/92; 91-14-040, § 240-15-020, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. 91-02-111, § 240-15-020, filed 1/2/91, effective 1/2/91; 90-22-105, § 240-15-020, filed 11/7/90, effective 1/1/91.]

WAC 240-15-025 Reporting requirements. (1) Purchaser certification. Prior to issuing a contract for the sale of export restricted timber, an agency which has offered such timber for sale shall require that the purchaser submit 2 signed copies of a Purchaser Certification, in such form as the Department of Revenue may require, which affirms, under penalty of law, the truth of each of the following:

(a) That such timber, while still in unprocessed form, will not be:

- (i) exported by the purchaser or used in substitution by the purchaser; or
- (ii) transferred to any other person for the purpose either of export or to be used in substitution.

(b) That hammer brands and red paint applied to such timber as required by this chapter shall remain on such timber until it is domestically processed.

(c) That prior to selling, trading, exchanging, or otherwise conveying any timber which is export restricted timber to any other person, the purchaser (transferor) shall require the transferee to provide to the purchaser (transferor) 2 signed copies of a completed Transferee Certification, in such form as the Department of Revenue shall require; and that the purchaser (transferor) shall provide the department with one copy not later than 5 days after receipt from the transferee.

(d) That the purchaser (transferor) shall not sell, trade, exchange, or otherwise convey export restricted timber to any person identified on the List of Ineligible Purchasers published by the Department of Revenue under this chapter.

(2) Transferee certification. Any person possessing export restricted timber shall, prior to selling, trading, exchanging, or otherwise conveying such timber to any other person, require the transferee to provide to the transferor 2 signed copies of a completed Transferee Certification, in such form as the Department of Revenue shall require. The Transferee Certification shall include an affirmation, under penalty of law, as to the truth of each of the items required to be affirmed in a Purchaser Certification, (except insofar as the transfer is pursuant to WAC 240-15-015 (4)(b) (relating to certain indirect transactions)[]) as well as the quantity of export restricted timber which is being transferred. The transferor shall provide to the Department of Revenue one signed copy of the Transferee Certification not later than 5 days after the receipt from the transferee.

(3) Reporting requirements for certain purchasers of export restricted timber. Any person who:

- (a) processes export restricted timber, and
- (b) either owns forest lands the State of Washington, or has the exclusive right to harvest timber from lands in the State of Washington for a period of more than 7 years, shall, for purposes of the reporting requirements under this section, treat any timber harvested from lands referred to in WAC 240-15-025 (3)(b) during the period of time referred to under WAC 240-15-010 (4)(g)(ii)(B) as though it were export restricted timber originating from public lands. However, nothing in this section shall require painting or branding of timber originating on private lands.

(4) Every person who purchases export restricted timber or who comes into possession of export restricted timber shall keep and preserve for a period of five years, suitable records as may be necessary to determine the final distribution and use of such export restricted timber, and the final distribution and use of timber which is subject to the prohibition against substitution in WAC 240-15-015(2).

[92-11-017, § 240-15-025, filed 5/12/92, effective 7/1/92; 91-14-040, § 240-15-025, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. 91-02-111, § 240-15-025, filed 1/2/91, effective 1/2/91; 90-22-105, § 240-15-025, filed 11/7/90, effective 1/1/91.]

WAC 240-15-030 Enforcement. (1) Debarment.

(a) Any person who knowingly violates any of the prohibitions in WAC 240-15-015(1) (relating to exports), WAC 240-15-015(2) (relating to substitution), or WAC 240-15-015(3) (relating to certain indirect transactions) shall be debarred, by an order issued by the Department of Revenue from bidding on or purchasing export restricted timber originating from any public lands covered by this chapter for a period of two years.

(b) A second debarment of any person under this section which is for a violation by the same person committed after the first debarment of such person under this section shall result in a permanent debarment of such person from bidding on or purchasing export restricted timber originating from any public lands covered by this chapter.

(c) The Washington Administrative Procedures Act shall apply to the issuance of any order by a state agency under this subsection. Agencies other than state agencies shall follow appropriate procedures in issuing any order under this subsection.

(d) For purposes of this section, the term "person" shall include any previously formed but no longer existing entity which would be included in WAC 240-15-010 (4)(d) if existing now.

(2) Log branding and marking requirements.

(a)(i) All log ends 10 inches or greater in diameter from sales of unprocessed timber by a public agency covered by this chapter shall, prior to removal from the sale area, be hammer branded with a brand registered under chapter 76.36 RCW, as amended.

(ii) In addition to the branding requirements of WAC 240-15-030 (2)(a)(i), both ends of all logs from those sales designated as export restricted under WAC 240-15-020 (1)(a) shall, prior to removal from the sale area, be painted with durable red paint.

(b) If timber that has been properly marked and branded, as required under WAC 240-15-030 (2)(a), is subdivided into smaller pieces for any purpose other than immediate processing, each piece shall be marked in the same manner as the original timber.

[92-11-017, § 240-15-030, filed 5/12/92, effective 7/1/92; 91-14-040, § 240-15-030, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. 91-02-111, § 240-15-030, filed 1/2/91, effective 1/2/91; 90-22-105, § 240-15-030, filed 11/7/90, effective 1/1/91.]

WAC 240-15-035 Requirements applicable to the department of revenue. (1) Administration. Administration of this chapter shall be the responsibility of the Washington Department of Revenue.

(2) Referrals of violations. Whenever the Department of Revenue becomes aware of a violation, or possible violation, of the prohibitions in WAC 240-15-015(1) (relating to export), WAC 240-15-015(2) (relating to substitution), or WAC 240-15-015(3) (relating to certain indirect transactions) it shall notify the managing agency so that such agency may promptly take appropriate action, as provided in this chapter.

(3) Monitoring.

(a) The Department of Revenue shall develop and implement a program for the monitoring of export restricted timber in transit and at ports and other facilities for the purpose of ensuring that

(i) export restricted timber is not exported from the United States or used in substitution, and

(ii) timber harvested from lands referred to in WAC 240-15-025 (3)(b) (relating to reporting requirements for certain purchasers of export restricted timber) at any time during the period of time referred to in WAC 240-15-010 (4)(g)(ii), is not exported from the United States.

(b) The Department of Revenue may enter into contracts or agreements with other appropriate state or federal authorities for the purpose of meeting the requirements of WAC 240-15-035 (3)(a).

(4) Certifications.

(a) The Department of Revenue shall issue uniform forms which shall be used as Purchaser Certifications required to be submitted under WAC 240-15-025(1), and Transferee Certifications required to be submitted under WAC 240-15-025(2). Each such form shall include a notification, conspicuously placed, that the making of a false statement on such certification is punishable as a gross misdemeanor under RCW 9A.72.040.

(b) Copies of all certifications received by the Department of Revenue shall be available for public inspection at reasonable hours and locations.

(c) The Department of Revenue may audit certifications submitted by any person under WAC 240-15-025 (relating to reporting requirements) in order to assure that such person is able to account for the disposition of all export restricted timber which such person has purchased from a public agency or received by means of transfer from any other person.

(d) The Department of Revenue shall develop and implement a program to audit certifications submitted under WAC 240-15-025 (relating to reporting requirements) in order to assure that persons who acquire export restricted timber are able to account for the disposition of all export restricted timber which they have purchased from a public agency or received by means of transfer from any other person.

(5) List of ineligible purchasers.

(a) The Department of Revenue shall establish and maintain a list of persons who, due to violations of this chapter, are ineligible to purchase export restricted timber.

(b) The Department of Revenue shall add a person to the list referred to in WAC 240-15-035 (5)(a) whenever:

(i) it finds under WAC 240-15-030(1) (relating to debarment) that such person has violated WAC 240-15-015(1) (relating to the prohibition on exports), WAC 240-15-015(2) (relating to the prohibition on substitution), or WAC 240-15-015(3) (relating to certain indirect transactions); or

(ii) it receives notification from an agency which sells export restricted timber that such agency has made a finding, under WAC 240-15-030(1) (relating to debarment) that such person has violated WAC 240-15-015(1) (relating to the prohibition on exports) WAC 240-15-015(2) (relating to the prohibition on substitution), or WAC 240-15-015(3) (relating to certain indirect transactions).

(c) The Department of Revenue shall remove a person from the list referred to in WAC 240-15-035 (5)(a) after such period of time has elapsed as is required under the order debaring such person under WAC 240-15-030(1) (relating to debarment). No person who is placed on the list as the result of being debarred for a violation which occurred

subsequent to the first debarment of such person under WAC 240-15-030(1) shall be removed from the list.

(d) The Department of Revenue shall provide a copy of the list of ineligible purchasers referred to in WAC 240-15-035 (5)(a)(i) to each agency which sells export restricted timber, and (ii) each person who requests to receive copies of the list. The Department of Revenue shall provide revised copies of the list to all such agencies and persons whenever a person is added to or removed from the list.

[92-11-017, § 240-15-035, filed 5/12/92, effective 7/1/92; 91-14-040, § 240-15-035, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. 91-02-111, § 240-15-035, filed 1/2/91, effective 1/2/91; 90-22-105, § 240-15-035, filed 11/7/90, effective 1/1/91.]