

**WSR 06-06-014**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed February 17, 2006, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-191.

Title of Rule and Other Identifying Information: Chapter 388-805 WAC, Certification requirements for chemical dependency service providers.

Purpose: These rules are being revised to establish the level of quality and patient care standards for chemical dependency service providers seeking certification by DSHS/division of alcohol and substance abuse (DASA).

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 April 25, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 26, 2006.

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 [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., April 25, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by April 21, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To meet the requirements of chapters 70 and 504, Laws of 2005 and chapter 166, Laws of 2004, the department is amending the sections that refer to clinical manual content, administrative manual, assessment requirements, patient record content, and education, referral, and application criteria for opiate substitution treatment programs, and adding new language as appropriate.

Reasons Supporting Proposal: 1. DASA is proposing amendments to chapter 388-805 WAC. The key new rules amendments proposed will implement:

a. RCW 70.96A.142, effective July 1, 2004 (chapter 166, Laws of 2004), amended by the 2004 Washington state legislature.

b. RCW 70.96A.090, effective July 24, 2005 (chapter 70, Laws of 2005), amended by the 2005 Washington state legislature.

c. RCW 70.96A.157, effective July 1, 2005 (chapter 504, Laws of 2005), amended by the 2005 Washington state legislature.

2. In addition, DASA stakeholders recommended language clarifying the federal requirements of 42 Code of Federal Regulation, Part 2 and federal requirements regarding court ordered release of patient confidential information listed in 42 Code of Federal Regulations, Part 2.s 2.63

through 2.67 prior to the release of any patient identifying information. Other revisions included:

a. Language to clarify requirement of agencies to report critical incidents to the division of alcohol and substance abuse.

b. Language to clarify definitions for change of ownership, community relations plan, county coordinator, critical incident, determination of need, established ratio and opiate substitution treatment program.

c. Language is proposed to synchronize the term "client" to "patient" throughout the chapter.

d. Language is proposed to clarify for opiate substitution treatment programs:

- Application and relocation process.
- The state methadone authority must authorize exception to the take-home regulations as defined in 42 Code of Federal Regulations, Part 8.12.
- Treatment plan reviews every six months after two years of continued care of a patient.
- The administrator must formally appoint a medical director. The medical director is responsible for all medical services and compliance with state and federal regulations.

3. In addition, other sections of this chapter were subject to review and amendment deemed appropriate as required by Executive Order 97-02 on regulatory improvement.

Amending WAC 388-805-005 What definitions are important throughout this chapter?, 388-805-010 What chemical dependency services are certified by the department?, 388-805-030 What are the requirements for opiate substitution treatment program certification?, 388-805-035 What are the responsibilities for the department when an applicant applies for approval of an opiate substitution treatment program?, 388-805-040 How does the department determine there is a need in the community for opiate substitution treatment?, 388-805-085 What are the fees for agency certification?, 388-805-090 May certification fees be waived?, 388-805-100 What do I need to do to maintain agency certification?, 388-805-110 What do I do to relocate or remodel a facility?, 388-805-145 What are the key responsibilities required of an agency administrator?, 388-805150 What must be included in an agency administrative manual?, 388-805-300 What must be included in the agency clinical manual?, 388-805-310 What are the requirements for chemical dependency assessments?, 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?, 388-805-325 What are the requirements for patient record content?, 388-805-330 What are the requirements for reporting patient noncompliance?, 388-805-620 What are the requirements for outpatient services?, 388-805-625 What are the requirements for outpatient services for persons subject to RCW 46.61.5056?, 388-805-640 What are the requirements for providing off-site chemical dependency treatment services?, 388-805-710 What are the requirements for opiate substitution medical management?, 388-805-715 What are the requirements for opiate substitution medication management?, 388-805-740 What are the requirements for opiate substitution treatment counseling?, 388-805-750 What are the requirements for opiate substitution treatment take-home medications?, 388-805-800 What are the requirements

for ADATSA assessment services?, 388-805-810 What are the requirements for DUI assessment providers?, 388-805-815 What are the requirements for DUI assessment services? and 388-805-820 What are the requirements for alcohol and other drug information school?; and repealing WAC 388-805-850 What are the requirements for treatment accountability for safer communities (TASC) providers and services?

Statutory Authority for Adoption: Chapter 70.96A RCW.

Statute Being Implemented: Chapter 70.96A 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, Implementation and Enforcement: Deb Cummins, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-3716, toll free (877) 301-4557.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules cause only a minor cost, if any, to small businesses that are required to comply.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Deb Cummins, Certification Policy Manager, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-3716, fax (360) 438-8057, e-mail cummida@dshs.wa.gov.

February 13, 2006

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-005 What definitions are important throughout this chapter? "Added service"** means the adding of certification for chemical dependency levels of care to an existing certified agency at an approved location.

**"Addiction counseling competencies"** means the knowledge, skills, and attitudes of chemical dependency counselor professional practice as described in Technical Assistance Publication No. 21, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services 1998.

**"Administrator"** means the person designated responsible for the operation of the certified treatment service.

**"Adult"** means a person eighteen years of age or older.

**"Alcoholic"** means a person who has the disease of alcoholism.

**"Alcoholism"** means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

**"Approved supervisor"** means a person who meets the education and experience requirements described in WAC 246-811-030 and 246-811-045 through 246-811-049 and who is available to the person being supervised.

**"Authenticated"** means written, permanent verification of an entry in a patient treatment record by an individual, by means of an original signature including first initial, last name, and professional designation or job title, or initials of the name if the file includes an authentication record, and the date of the entry. If patient records are maintained electronically, unique electronic passwords, biophysical or passcard equipment are acceptable methods of authentication.

**"Authentication record"** means a document that is part of a patient's treatment record, with legible identification of all persons initialing entries in the treatment record, and includes:

- (1) Full printed name;
- (2) Signature including the first initial and last name; and
- (3) Initials and abbreviations indicating professional designation or job title.

**"Bloodborne pathogens"** means pathogenic microorganisms that are present in human blood and can cause disease in humans. The pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

**"Branch site"** means a physically separate certified site where qualified staff provides a certified treatment service, governed by a parent organization. The branch site is an extension of a certified provider's services to one or more sites.

**"Certified treatment service"** means a discrete program of chemical dependency treatment offered by a service provider who has a certificate of approval from the department of social and health services, as evidence the provider meets the standards of chapter 388-805 WAC.

**"Change in ownership"** means one of the following conditions:

- (1) When the ownership of a certified chemical dependency treatment provider changes from one distinct legal (~~(entity)~~) owner (~~(s)~~) to (~~(a)~~) another distinct (~~(other)~~) legal owner;
- (2) When the type of business changes from one type to another such as, from a sole proprietorship to a corporation; or
- (3) When the current ownership takes on a new owner of five percent or more of the organizational assets.

**"Chemical dependency"** means a person's alcoholism or drug addiction or both.

**"Chemical dependency counseling"** means face-to-face individual or group contact using therapeutic techniques that are:

- (1) Led by a chemical dependency professional (CDP), or CDP trainee under supervision of a CDP;
- (2) Directed toward patients and others who are harmfully affected by the use of mood-altering chemicals or are chemically dependent; and
- (3) Directed toward a goal of abstinence for chemically dependent persons.

**"Chemical dependency professional"** means a person certified as a chemical dependency professional by the Washington state department of health under chapter 18.205 RCW.

**"Child"** means a person less than eighteen years of age, also known as adolescent, juvenile, or minor.

**"Clinical indicators"** include, but are not limited to, inability to maintain abstinence from alcohol or other nonprescribed drugs, positive drug screens, patient report of a subsequent alcohol/drug arrest, patient leaves program against program advice, unexcused absences from treatment, lack of participation in self-help groups, and lack of patient progress in any part of the treatment plan.

**"Community relations plan"** means a plan to minimize the impact of an opiate substitution treatment program as ~~((required))~~ defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section XVIII.

**"County coordinator"** means the person designated by the ~~((chief executive officer))~~ legislative authority of a county to carry out administrative and oversight responsibilities of the county chemical dependency program.

**"Criminal background check"** means a search by the Washington state patrol for any record of convictions or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults, per RCW 43.43.830 through 43.43.842 relating to the Washington state patrol.

**"Critical incidents"** includes:

(1) Death of a patient;

(2) Serious injury ~~((or))~~;

(3) Sexual assault of patients, staff members, or public citizens on the facility premises;

(4) Abuse or neglect of an adolescent or vulnerable adult patient by another patient or agency staff member on facility premises;

(5) A natural disaster presenting a threat to facility operation or patient safety;

(6) A bomb threat; a break in or ~~((a burglary))~~ theft of patient identifying information;

(7) Suicide attempt at the facility ~~((; or, a case alleging abuse or neglect of an adult patient by an agency staff member that was not resolved by the agency's grievance procedure))~~.

**"CSAT"** means the Federal Center For Substance Abuse Treatment, a Substance Abuse Service Center of the Substance Abuse and Mental Health Services Administration.

**"Danger to self or others,"** for purposes of WAC 388-805-520, means a youth who resides in a chemical dependency treatment agency and creates a risk of serious harm to the health, safety, or welfare to self or others. Behaviors considered a danger to self or others include:

(1) Suicide threat or attempt;

(2) Assault or threat of assault; or

(3) Attempt to run from treatment, potentially resulting in a dangerous or life-threatening situation.

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

**"Determination of need"** means a process used by the department for opiate substitution treatment program ~~((certi-~~

~~fication applications))~~ slots within a county area as described in WAC 388-805-040.

**"Detoxification"** or **"detox"** means care and treatment of a person while the person recovers from the transitory effects of acute or chronic intoxication or withdrawal from alcohol or other drugs.

**"Disability, a person with"** means a person whom:

(1) Has a physical or mental impairment that substantially limits one or more major life activities of the person;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

**"Discrete treatment service"** means a chemical dependency treatment service that:

(1) Provides distinct chemical dependency supervision and treatment separate from any other services provided within the facility;

(2) Provides a separate treatment area for ensuring confidentiality of chemical dependency treatment services; and

(3) Has separate accounting records and documents identifying the provider's funding sources and expenditures of all funds received for the provision of chemical dependency treatment services.

**"Domestic violence"** means:

(1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members;

(2) Sexual assault of one family or household member by another;

(3) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member; or

(4) As defined in RCW 10.99.020, 26.50.010, or other Washington state statutes.

**"Drug addiction"** means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. Drug addiction is characterized by impaired control over use of drugs, preoccupation with drugs, use of a drug despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

**"Essential requirement"** means a critical element of chemical dependency treatment services that must be present in order to provide effective treatment.

**"Established ratio"** means using 0.7 percent (.007) of a designated county's adult population to determine an estimate for the number of potential ~~((clients))~~ patients with an opiate diagnosis in need of treatment services as described in WAC 388-805-040.

**"Faith-based organization"** means an agency or organization such as a church, religiously affiliated entity, or religious organization.

**"First steps"** means a program available across the state for low-income pregnant women and their infants. First steps provides maternity care for pregnant and postpartum women and health care for infants and young children.

**"Governing body"** means the legal entity responsible for the operation of the chemical dependency treatment service.

**"HIV/AIDS brief risk intervention (BRI)"** means an individual face-to-face interview with a ~~((client or))~~ patient, to help that person assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

**"HIV/AIDS education"** means education, in addition to the brief risk intervention, designed to provide a person with information regarding HIV/AIDS risk factors, HIV antibody testing, HIV infection prevention techniques, the impact of alcohol and other drug use on risks and the disease process, and trends in the spread of the disease.

**"Medical practitioner"** means a physician, advanced registered nurse practitioner (ARNP), or certified physician's assistant. ARNPs and midwives with prescriptive authority may perform practitioner functions related only to indicated specialty services.

**"Off-site treatment"** means provision of chemical dependency treatment by a certified provider at a location where treatment is not the primary purpose of the site; such as in schools, hospitals, or correctional facilities.

**"Opiate substitution treatment program"** means an organization that administers or dispenses an approved ~~((drug))~~ medication as specified in 212 CFR Part 291 for treatment or detoxification of opiate ~~((substitution))~~ dependence. The agency is:

- (1) Certified as an opioid treatment program by the Federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration;
- (2) Licensed by the Federal Drug Enforcement Administration;
- (3) Registered by the state board of pharmacy;
- (4) Accredited by an opioid treatment program accreditation body approved by the Federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration; and
- (5) Certified as an opiate substitution treatment program by the department.

**"Outcomes evaluation"** means a system for determining the effectiveness of results achieved by patients during or following service delivery, and patient satisfaction with those results for the purpose of program improvement.

**"Patient"** is a person receiving chemical dependency treatment services from a certified program.

**"Patient contact"** means time spent with a ~~((client or))~~ patient to do assessments, individual or group counseling, or education.

**"Patient placement criteria (PPC)"** means admission, continued service, and discharge criteria found in the patient placement criteria for the treatment of substance-related disorders as published by the American Society of Addiction Medicine (ASAM).

**"Probation assessment officer (PAO)"** means a person employed at a certified district or municipal court probation assessment service that meets the PAO requirements of WAC 388-805-220.

**"Probation assessment service"** means a certified assessment service offered by a misdemeanor probation department or unit within a county or municipality.

**"Progress notes"** are a permanent record of ongoing assessments of a patient's participation in and response to treatment, and progress in recovery.

**"Qualified personnel"** means trained, qualified staff, consultants, trainees, and volunteers who meet appropriate legal, licensing, certification, and registration requirements.

**"Registered counselor"** means a person registered ~~((or certified))~~ by the state department of health as required by chapter 18.19 RCW.

**"Relocation"** means change in location from one office space to a new office space, or moving from one office building to another.

**"Remodeling"** means expansion of existing office space to additional office space at the same address, or remodeling of interior walls and space within existing office space.

**"SAMHSA"** means the Federal Substance Abuse and Mental Health Services Administration.

**"Self-help group"** means community based support groups that address chemical dependency.

**"Service provider"** or **"provider"** means a legally operated entity certified by the department to provide chemical dependency services. The components of a service provider are:

- (1) Legal entity/owner;
- (2) Facility; and
- (3) Staff and services.

**"Sexual abuse"** means:

- (1) Sexual assault~~((s))~~;
- (2) Incest~~((s))~~; or
- (3) Sexual exploitation.

**"Sexual harassment"** means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment or treatment; or
- (2) Such conduct interferes with work performance or creates an intimidating, hostile, or offensive work or treatment environment.

**"Substance abuse"** means a recurring pattern of alcohol or other drug use that substantially impairs a person's functioning in one or more important life areas, such as familial, vocational, psychological, physical, or social.

**"Summary suspension"** means an immediate suspension of certification, per RCW 34.05.422(4), by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

**"Supervision"** means:

- (1) Regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give directions and require change; and
- (2) **"Direct supervision"** means the supervisor is on the premises and available for immediate consultation.

**"Suspend"** means termination of the department's certification of a provider's treatment services for a specified period or until specific conditions have been met and the department notifies the provider of reinstatement.

**"TARGET"** means the treatment and assessment report generation tool.

**"Treatment plan review"** means a review of active problems on the patient's individualized treatment plan, the need to address new problems, and patient placement.

**"Treatment services"** means the broad range of emergency, detoxification, residential, and outpatient services and care. Treatment services include diagnostic evaluation, chemical dependency education, individual and group counseling, medical, psychiatric, psychological, and social services, vocational rehabilitation and career counseling that may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other drugs, and intoxicated persons.

**"Urinalysis"** means analysis of a patient's urine sample for the presence of alcohol or controlled substances by a licensed laboratory or a provider who is exempted from licensure by the department of health:

(1) **"Negative urine"** is a urine sample in which the lab does not detect specific levels of alcohol or other specified drugs; and

(2) **"Positive urine"** is a urine sample in which the lab confirms specific levels of alcohol or other specified drugs.

**"Vulnerable adult"** means a person who lacks the functional, mental, or physical ability to care for oneself.

**"Young adult"** means an adult who is eighteen, nineteen, or twenty years old.

**"Youth"** means a person seventeen years of age or younger.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-010 What chemical dependency services are certified by the department?** (1) The department certifies the following types of chemical dependency services:

(a) **Detoxification services**, which assist patients in withdrawing from alcohol and other drugs including:

(i) **Acute detox**, which provides medical care and physician supervision for withdrawal from alcohol or other drugs; and

(ii) **Subacute detox**, which is nonmedical detoxification or patient self-administration of withdrawal medications ordered by a physician, provided in a home-like environment.

(b) **Residential treatment services**, which provide chemical dependency treatment for patients and include room and board in a twenty-four-hour-a-day supervised facility, including:

(i) **Intensive inpatient**, a concentrated program of individual and group counseling, education, and activities for detoxified alcoholics and addicts, and their families;

(ii) **Recovery house**, a program of care and treatment with social, vocational, and recreational activities to aid in patient adjustment to abstinence and to aid in job training, employment, or other types of community activities; and

(iii) **Long-term treatment**, a program of treatment with personal care services for chronically impaired alcoholics and addicts with impaired self-maintenance capabilities. These patients need personal guidance to maintain abstinence and good health.

(c) **Outpatient treatment services**, which provide chemical dependency treatment to patients less than twenty-four hours a day, including:

(i) **Intensive outpatient**, a concentrated program of individual and group counseling, education, and activities for detoxified alcoholics and addicts and their families;

(ii) **Outpatient**, individual and group treatment services of varying duration and intensity according to a prescribed plan; and

(iii) **Opiate substitution outpatient treatment**, which meets both outpatient and opiate substitution treatment program service requirements.

(d) **Assessment services**, which include:

(i) **ADATSA assessments**, alcohol and other drug assessments of ~~((clients))~~ patients seeking financial assistance from the department due to the incapacity of chemical dependency. Services include assessment, referral, case monitoring, and assistance with employment; and

(ii) **DUI assessments**, diagnostic services requested by the courts to determine a ~~((client's))~~ person's involvement with alcohol and other drugs and to recommend a course of action.

(e) **Information and assistance services**, which include:

(i) **Alcohol and drug information school**, an education program about the use and abuse of alcohol and other drugs, for persons referred by the courts and others, who may have been assessed and do not present a significant chemical dependency problem, to help those persons make informed decisions about the use of alcohol and other drugs;

(ii) **Information and crisis services**, response to persons having chemical dependency needs, by phone or in person;

(iii) **Emergency service patrol**, assistance provided to intoxicated persons in the streets and other public places;

~~((iv) Treatment accountability for safer communities (TASC), is a referral and case management service. TASC providers furnish a link between the criminal justice system and the treatment system. TASC identifies, assesses, and refers appropriate alcohol and other drug dependent offenders to community-based substance abuse treatment and monitors the outcome for the criminal justice system.))~~

(2) The department may certify a provider for more than one of the services listed under subsection (1) of this section when the provider complies with the specific requirements of the selected services.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-030 What are the requirements for opiate substitution treatment program certification?** Certification as an opiate substitution treatment program is contingent on the concurrent approval by applicable state regulatory authorities; certification as an opioid treatment program by the Federal CSAT SAMHSA; accreditation by an opioid treatment program accreditation body approved by the Federal CSAT SAMSHA; and licensure by the Federal Drug Enforcement Administration. In addition to WAC 388-805-015 or 388-805-020 requirements, a potential opiate substitu-

tion treatment program provider must submit to the department:

(1) Documentation the provider has communicated with the county legislative authority and if applicable, the city legislative authority or tribal legislative authority, in order to secure a location for the new opiate substitution treatment program that(~~(-~~

~~(a))~~ meets county, tribal or city land use ordinances~~(;~~ and

~~(b) Includes a))~~.

(2) A completed community relations plan developed in consultation with the legislative authority or their designee to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located. The plan must include documentation of strategies used to:

~~((i))~~ (a) Obtain ~~((and document))~~ stakeholder input regarding the proposed location;

~~((ii))~~ (b) Address any concerns identified by stakeholders; and

~~((iii))~~ (c) Develop an ongoing community relations plan to address new concerns expressed by stakeholders as they arise.

~~((2))~~ (3) A copy of the application for a registration certificate from the Washington state board of pharmacy.

~~((3))~~ (4) A copy of the application for licensure to the Federal Drug Enforcement Administration.

~~((4))~~ (5) A copy of the application for certification to the Federal CSAT SAMHSA.

~~((5))~~ (6) A copy of the application for accreditation by an accreditation body approved as an opioid treatment program accreditation body by the Federal CSAT SAMHSA.

~~((6))~~ (7) Policies and procedures identified under WAC 388-805-700 through 388-805-750.

~~((7))~~ (8) Documentation that transportation systems will provide reasonable opportunities to persons in need of treatment to access the services of the program.

~~((8))~~ (9) At least three letters of support from the administrator or their designee of other health care providers within the existing health care system in the area the applicant proposes to establish a new opiate substitution treatment program ~~((to))~~. The letters must demonstrate ~~((an appropriate))~~ a relationship to the service area's existing health care system.

~~((9))~~ (10) A declaration to limit the number of individual program participants to three hundred fifty as specified in RCW 70.96A.410 (1)(e).

~~((10))~~ (11) For new applicants, who operate opiate substitution treatment programs in another state, copies of national and state certification/accreditation documentation, and copies of all survey reports written by national and/or state certification or accreditation organizations for each site they have operated an opiate substitution program in over the past six years.

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

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-035 What are the responsibilities for the department when an applicant applies for approval of an opiate substitution treatment program?** For purposes of this section, "area" means the county in which an opiate substitution treatment program applicant proposes to locate a certified program, and counties adjacent or near to the county in which the program is proposed to be located. When making a decision on an application for certification of a program, the department must:

(1) Consult with the county legislative authority in the area in which an applicant proposes to locate a program and the city legislative authority ~~((in any city))~~ or tribal legislative authority applicable to the site in which an applicant proposes to locate a program. The department will request the county and city or tribal legislative authority to notify the department of any applicable requirements or other issues that the department should consider in order to fulfill the requirements of WAC 388-805-030(7), or 388-805-040 (1) through (5);

(2) Not discriminate in its certification decision on the basis of the corporate structure of the applicant;

(3) Consider the size of the population in need of treatment in the area in which the program would be located and certify only applicants whose programs meet the necessary treatment needs of the population;

(4) Determine there is a need in the community for opiate substitution treatment and not certify more programs ~~((slots))~~ than justified by the need in that community as described in WAC 388-805-040;

(5) Consider whether the applicant has the capability, or has in the past demonstrated the capability to provide appropriate treatment services to assist persons in meeting legislative goals of abstinence from opiates and opiate substitutes, obtaining mental health treatment, improving economic independence, and reducing adverse consequences associated with illegal use of controlled substances;

(6) Hold at least one public hearing in the county in which the facility is proposed to be located and one public hearing in the area in which the facility is proposed to be located. After consultation with the county legislative authority, the department may have the public hearing in the adjacent county with the largest population, the adjacent county with the largest underserved population, or the county nearest to the proposed location. The hearing must be held at a time and location most likely to permit the largest number of interested persons to attend and present testimony. The department must notify appropriate media outlets of the time, date, and location of the hearing at least three weeks in advance of the hearing.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-040 How does the department determine there is a need in the community for opiate substitution treatment?** The department will determine whether or not there is a demonstrated need in the community for opiate substitution treatment from information provided to the

department by the applicant and through department consultation with the city or tribal and county legislative authority, and other appropriate community resources. A "determination of need" for a proposed program will include a review and evaluation of the following criteria:

(1) For the number of potential ~~((clients))~~ patients in an area, the department will consider the size of the population in need of treatment in the area in which the program would be located using adult population statistics from the most recent area population trend reports. The department will use the established ratio of .7 percent of the adult population as an estimate for the number of potential ~~((clients))~~ patients with an opiate diagnosis in need of treatment services.

(2) For the number of anticipated program slots in an area, the department will multiply the sum of the established ratio of .7 percent of the adult population in subsection (1) of this section by thirty-five percent to determine an estimate of the anticipated need for the number of opiate substitution treatment program slots in the area in which the program would be located.

(3) Demographic and trend data from the area in which the program would be located including the most recent department county trend data, TARGET admission data for opiate substitution treatment from the county, hospital and emergency department admission data from the county, needle exchange data from the county, and other relevant reports and data from county health organizations demonstrating the need for opiate substitution treatment program services.

(4) Availability of other opiate substitution treatment programs near the area of the applicant's proposed program. The department will determine the number of patients, capacity, and accessibility of existing opiate substitution treatment programs near the area of the applicant's proposed program and whether existing programs have the capacity to assume additional patients for treatment services.

(5) Whether the population served or to be served has need for the proposed program and whether other existing services and facilities of the type proposed are available or accessible to meet that need. The assessment will include, but not limited to, consideration of the following:

(a) The extent to which the proposed program meets the need of the population presently served;

(b) The extent to which the underserved need will be met adequately by the proposed program; and

(c) The impact of the service on the ability of low-income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups to obtain needed health care.

(6) The department will review agency policies and procedures that describe the cost of services to ~~((clients))~~ patients, sliding fee scales, and charity care policies, procedures, and goals.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-085 What are the fees for agency certification?** (1) Application fees:

- (a) New agency \$500
- (b) Branch agency \$500

(c) Application for adding one or more services \$200

(d) Change in ownership \$500

(2) Initial and annual certification fees:

(a) For detoxification and residential services: \$26 per licensed bed

(b) For nonresidential services:

(i) Large size agencies: 3,000 or more ~~((clients))~~ patients served per year \$1,125 per year

(ii) Medium size agencies: 1,000-2,999 ~~((clients))~~ patients served per year \$750 per year

(iii) Small size agencies: 0-999 ~~((clients))~~ patients served per year \$375 per year

(c) For agencies certified through deeming per WAC 388-805-115 \$200 per year

(3) Each year providers must complete a declaration form provided by the department indicating the number of patients served annually, the provider's national accreditation status, and other information necessary for establishing fees and updating certification information.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-090 May certification fees be waived?**

(1) Certification fees may be waived when:

(a) The fees would not be in the interest of public health and safety; or

(b) The fees would be to the financial disadvantage of the state; or

(c) The department determines that the cost of processing the application is so small that it warrants granting an application fee waiver.

(2) Providers may submit a letter requesting a waiver of fees to the Supervisor, Certification Section, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, Washington, 98504-5330.

(3) Fee waivers may be granted to qualified providers who receive funding from tribal, federal, state or county government resources as follows:

(a) For residential providers: The twenty-six dollar per bed annual fee will be assessed only for those beds not funded by a governmental source;

(b) For nonresidential providers: The amount of the fee waiver must be determined by the percent of the provider's revenues that come from governmental sources, according to the following schedule:

|                             | 90-100% | 75-89% | 50-74% | 0-49%   |
|-----------------------------|---------|--------|--------|---------|
| Percent Government Revenues |         |        |        |         |
| Small agency                | No fee  | \$90   | \$185  | \$375   |
| Medium agency               | No fee  | \$185  | \$375  | \$750   |
| Large agency                | No fee  | \$285  | \$565  | \$1,125 |

(4) Requests for fee waiver must be mailed to the department and include the following:

- (a) The reason for the request;
- (b) For residential providers:
  - (i) Documentation of the number of beds currently licensed by the department of health;
  - (ii) Documentation showing the number of beds funded by a government entity including, tribal, federal, state or county government sources.
- (c) For nonresidential providers:
  - (i) Documentation of the number of ~~((clients))~~ patients served during the previous twelve-month period;
  - (ii) Documentation showing the amount of government revenues received during the previous twelve-month period;
  - (iii) Documentation showing the amount of private revenues received during the previous twelve-month period.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-100 What do I need to do to maintain agency certification?** (1) A service provider's continued certification and renewal is contingent upon:

- (a) Completion of an annual declaration of certification; and
- (b) Payment of certification fees, if applicable.
- (2) Providing the essential requirements for chemical dependency treatment, including the following elements:
  - (a) Treatment process:
    - (i) Assessments, as described in WAC 388-805-310;
    - (ii) Treatment planning, as described in WAC 388-805-315 (2)(a) and ~~((388-805-325(10)))~~ 388-805-325(11);
    - (iii) Documenting patient progress, as described in WAC 388-805-315 (1)(b) and ~~((388-805-325(12)))~~ 388-805-325(13);
    - (iv) Treatment plan reviews and updates, as described in WAC 388-805-315 (2)(a), ~~((388-805-325(10)))~~ 388-805-325(11) and ~~((388-805-325(12)(e)))~~ 388-805-325 (13)(c);
    - (v) Patient compliance reports, as described in WAC 388-805-315 (4)(b), ~~((388-805-325(16)))~~ 388-805-325(17), and 388-805-330;
    - (vi) Continuing care, and discharge planning, as described in WAC 388-805-315 (2)(c) and (d) and (7)(a), and ~~((388-805-325(17)))~~ 388-805-325(18) and ~~((18))~~ (19); and
    - (vii) Conducting individual and group counseling, as described in WAC 388-805-315 (2)(b) and ~~((388-805-325(12)))~~ 388-805-325(13).
  - (b) Staffing: Provide sufficient qualified personnel for the care of patients as described in WAC 388-805-140(5) and 388-805-145(5);
  - (c) Facility:
    - (i) Provide sufficient facilities, equipment, and supplies for the care and safety of patients as described in WAC 388-805-140 (5) and (6);
    - (ii) If a residential provider, be licensed by the department of health as described by WAC 388-805-015 (1)(b).
- (3) Findings during periodic on-site surveys and complaint investigations to determine the provider's compliance with this chapter. During on-site surveys and complaint

investigations, provider representatives must cooperate with department representatives to:

- (a) Examine any part of the facility at reasonable times and as needed;
- (b) Review and evaluate records, including patient clinical records, personnel files, policies, procedures, fiscal records, data, and other documents as the department requires to determine compliance; and
- (c) Conduct individual interviews with patients and staff members.
- (4) The provider must post the notice of a scheduled department on-site survey in a conspicuous place accessible to patients and staff.
- (5) The provider must correct compliance deficiencies found at such surveys immediately or as agreed by a plan of correction approved by the department.

AMENDATORY SECTION (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-110 What do I do to relocate or remodel a facility?** (1) When a certified chemical dependency service provider plans to relocate or change the physical structure of a facility in a manner that affects patient care, the provider must:

- ~~((1))~~ (a) Submit a completed agency relocation approval request form, or a request for approval in writing if remodeling, sixty or more days before the proposed date of relocation or change.
- ~~((2))~~ (b) Submit a sample floor plan that includes information identified under WAC 388-805-015 (2)(f) through (k).
- ~~((3))~~ (c) Submit a completed facility accessibility self-evaluation form.
- ~~((4))~~ (d) Provide for department examination of non-residential premises before approval, as described under WAC 388-805-060.
- ~~((5))~~ (e) Contact the department of health for approval before relocation or remodel if a residential treatment facility.
- (2) Opiate substitution treatment provider must complete WAC 388-805-030, 388-805-035, and 388-805-040 requirements for a facility relocation.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-145 What are the key responsibilities required of an agency administrator?** (1) The administrator is responsible for the day-to-day operation of the certified treatment service, including:

- (a) All administrative matters;
- (b) Patient care services; and
- (c) Meeting all applicable rules and ethical standards.
- (2) When the administrator is not on duty or on call, a staff person must be delegated the authority and responsibility to act in the administrator's behalf.
- (3) The administrator must ensure administrative, personnel, and clinical policy and procedure manuals:
  - (a) Are developed and adhered to; and
  - (b) Are reviewed and revised as necessary, and at least annually.



(4) The administrator must employ sufficient qualified personnel to provide adequate chemical dependency treatment, facility security, patient safety and other special needs of patients.

(5) The administrator must ensure all persons providing counseling services are registered, certified or licensed by the department of health.

(6) The administrator must ensure full-time chemical dependency professionals (CDPs), CDP trainees, or other licensed or registered counselors in training to become a CDP do not exceed one hundred twenty hours of patient contact per month.

(7) The administrator must assign the responsibilities for a clinical supervisor to at least one person within the organization.

(8) The administrator of a certified opiate substitution treatment program must ensure that the number of patients will not exceed three hundred and fifty unless authorized by the county in which the program is located.

(9) The administrator or program sponsor of a certified opiate substitution treatment program must ensure that treatment is provided to patients in compliance with 42 Code of Federal Regulations, Part 8.12.

(10) The administrator or program sponsor of a certified opiate substitution treatment program shall formally designate a medical director who shall assume responsibility for:

(a) All medical services performed;

(b) Ensuring the program is in compliance with all applicable Federal, State and local laws and regulations.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-150 What must be included in an agency administrative manual?** Each service provider must have and adhere to an administrative manual that contains at a minimum:

(1) The organization's:

(a) Articles and certificate of incorporation if the owner is a corporation;

(b) Partnership agreement if the owner is a partnership;

or  
(c) Statement of sole proprietorship.

(2) The agency's bylaws if the owner is a corporation.

(3) Copies of a current master license and state business licenses or a current declaration statement that they are updated as required.

(4) The provider's philosophy on and objectives of chemical dependency treatment with a goal of total abstinence, consistent with RCW 70.96A.011.

(5) A policy and procedures describing how services will be made sensitive to the needs of each patient, including assurance that:

(a) Certified interpreters or other acceptable alternatives are available for persons with limited English-speaking proficiency and persons having a sensory impairment; and

(b) Assistance will be provided to persons with disabilities in case of an emergency.

(6) A policy addressing special needs and protection for youth and young adults, and for determining whether a youth

or young adult can fully participate in treatment, before admission of:

(a) A youth to a treatment service caring for adults; or

(b) A young adult to a treatment service caring for youth.

(7) An organization chart specifying:

(a) The governing body;

(b) Each staff position by job title, including volunteers, students, and persons on contract; and

(c) The number of full- or part-time persons for each position.

(8) A delegation of authority policy.

(9) A copy of current fee schedules.

(10) A policy and procedures implementing state and federal regulations on patient confidentiality, including provision of a summary of 42 CFR Part 2.22 (a)(1) and (2) to each patient.

(11) A policy and procedures for reporting suspected child abuse and neglect.

(12) A policy and procedures for reporting the death of a patient to the ((department)) division of alcohol and substance abuse within one business day when:

(a) The patient is in residence; or

(b) An outpatient dies on the premises.

(13) Patient grievance policy and procedures.

(14) A policy and procedures on reporting of critical incidents and actions taken to the ((department)) division of alcohol and substance abuse within two business days when an unexpected event occurs.

(15) A smoking policy consistent with the Washington Clean Indoor Air Act, chapter 70.160 RCW.

(16) For a residential provider, a facility security policy and procedures, including:

(a) Preventing entry of unauthorized visitors; and

(b) Use of passes for leaves of patients.

(17) For a nonresidential provider, an evacuation plan for use in the event of a disaster, addressing:

(a) Communication methods for patients, staff, and visitors including persons with a visual or hearing impairment or limitation;

(b) Evacuation of mobility-impaired persons;

(c) Evacuation of children if child care is offered;

(d) Different types of disasters;

(e) Placement of posters showing routes of exit; and

(f) The need to mention evacuation routes at public meetings.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-300 What must be included in the agency clinical manual?** Each chemical dependency service provider must have and adhere to a clinical manual containing patient care policies and procedures, including:

(1) How the provider meets WAC 388-805-305 through 388-805-350 requirements.

(2) How the provider will meet applicable certified service standards for the level of program service requirements:

Allowance of up to twenty percent of education time to consist of film or video presentations.

(3) Identification of resources and referral options so staff can make referrals required by law and as indicated by patient needs.

(4) Assurance that there is an identified clinical supervisor who:

(a) Is a chemical dependency professional (CDP);

(b) Reviews a sample of patient records of each CDP quarterly; and

(c) Ensures implementation of assessment, treatment, continuing care, transfer and discharge plans in accord with WAC 388-805-315.

(5) Patient admission, continued service, and discharge criteria using PPC.

(6) Policies and procedures to implement the following requirements:

(a) The administrator must not admit or retain a person unless the person's treatment needs can be met;

(b) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must assess and refer each patient to the appropriate treatment service; and

(c) A person needing detoxification must immediately be referred to a detoxification provider, unless the person needs acute care in a hospital.

(7) Additional requirements for opiate substitution treatment programs:

(a) A program physician must ensure that a person is currently addicted to an opioid drug and that the person became addicted at least one year before admission to treatment;

(b) A program physician must ensure that each patient voluntarily chooses maintenance treatment and provides informed written consent to treatment;

(c) A program physician must ensure that all relevant facts concerning the use of the opioid drug are clearly and adequately explained to the patient;

(d) A person under eighteen years of age needing opiate substitution treatment is required to have had two documented attempts at short-term detoxification or drug-free treatment within a twelve-month period. A waiting period of no less than seven days is required between the first and second short-term detoxification treatment;

(e) No person under eighteen years of age may be admitted to maintenance treatment unless a parent, legal guardian, or responsible adult designated by the relevant state authority consents in writing to treatment;

(f) A program physician may waive the requirement of a one year history of addiction under subsection (7)(a) of this section, for patients released from penal institutions (within six months after release), for pregnant patients (program physician must certify pregnancy), and for previously treated patients (up to two years after discharge);

(g) Documentation in each patient's record that the service provider made a good faith effort to review if the patient is enrolled in any other opiate substitution treatment service;

(h) When the medical director or program physician of an opiate substitution treatment program provider in which the patient is enrolled determines that exceptional circumstances exist, the patient may be granted permission to seek concurrent treatment at another opiate substitution treatment program provider. The justification for finding exceptional

circumstances for double enrollment must be documented in the patient's record at both treatment program providers.

(8) Tuberculosis screening for prevention and control of TB in all detox, residential, and outpatient programs, including:

(a) Obtaining a history of preventive or curative therapy;

(b) Screening and related procedures for coordinating with the local health department; and

(c) Implementing TB control as provided by the department of health TB control program.

(9) HIV/AIDS information, brief risk intervention, and referral.

(10) Limitation of group counseling sessions to twelve or fewer patients.

(11) Counseling sessions with nine to twelve youths to include a second adult staff member.

(12) Provision of education to each patient on:

(a) Alcohol, other drugs, and chemical dependency;

(b) Relapse prevention; and

(c) HIV/AIDS, hepatitis, and TB.

(13) Provision of education or information to each patient on:

(a) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy;

(b) Emotional, physical, and sexual abuse; and

(c) Nicotine addiction.

(14) An outline of each lecture and education session included in the service, sufficient in detail for another trained staff person to deliver the session in the absence of the regular instructor.

(15) Assigning of work to a patient by a CDP when the assignment:

(a) Is part of the treatment program; and

(b) Has therapeutic value.

(16) Use of self-help groups.

(17) Patient rules and responsibilities, including disciplinary sanctions for noncomplying patients.

(18) If youth are admitted, a policy and procedure for assessing the need for referral to child welfare services.

(19) Implementation of the deferred prosecution program.

(20) ~~((Policy and procedures for))~~ Reporting status of persons convicted under chapter 46.61 RCW to the department of licensing.

(21) Asking at intake or next counseling session if the patient has been court ordered to chemical dependency or mental health treatment and is under supervision by the department of corrections, and documenting the patient's response in the clinical record.

(22) For patients that are court ordered to receive chemical dependency or mental health treatment and under department of corrections supervision, the provider must request:

(a) Authorizations to share information with the department of corrections, the county designated chemical dependency specialist and any other court ordered treatment provider; or

(b) A copy of the court order that exempts the patient from the reporting requirements with the department of corrections and mental health provider.

(c) If a patient refuses to sign a release, document attempt in the patient record.

(23) Nonresidential providers must have policies and procedures on:

- (a) Medical emergencies;
- (b) Suicidal and mentally ill patients;
- (c) Laboratory tests, including UA's and drug testing;
- (d) Services and resources for pregnant women:
  - (i) A pregnant woman who is not seen by a private physician must be referred to a physician or the local first steps maternity care program for determination of prenatal care needs; and
  - (ii) Services include discussion of pregnancy specific issues and resources.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-310 What are the requirements for chemical dependency assessments?** A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must conduct and document an assessment of each ~~((client's))~~ patient's involvement with alcohol and other drugs. The CDP's assessment must include:

(1) A face-to-face diagnostic interview with each ~~((client))~~ patient to obtain, review, evaluate, and document the following:

- (a) A history of the ~~((client's))~~ patient's involvement with alcohol and other drugs, including:
  - (i) The type of substances used;
  - (ii) The route of administration; and
  - (iii) Amount, frequency, and duration of use.
- (b) History of alcohol or other drug treatment or education;
- (c) The ~~((client's))~~ patient's self-assessment of use of alcohol and other drugs;
- (d) A relapse history; and
- (e) A legal history.

(2) If the ~~((client))~~ patient is in need of treatment, a CDP or CDP trainee under supervision of a CDP must evaluate the assessment using PPC dimensions for the patient placement decision.

(3) If an assessment is conducted on a youth, and the ~~((client))~~ patient is in need of treatment, the CDP, or CDP trainee under supervision of a CDP, must also obtain the following information:

- (a) Parental and sibling use of drugs;
- (b) History of school assessments for learning disabilities or other problems, which may affect ability to understand written materials;
- (c) Past and present parent/guardian custodial status, including running away and out-of-home placements;
- (d) History of emotional or psychological problems;
- (e) History of child or adolescent developmental problems; and
- (f) Ability of parents/guardians to participate in treatment.

(4) Documentation of the information collected, including:

(a) A diagnostic assessment statement including sufficient data to determine a patient diagnosis supported by criteria of substance abuse or substance dependence;

(b) A written summary of the data gathered in subsections (1), (2), and (3) of this section that supports the treatment recommendation;

(c) A statement regarding provision of an HIV/AIDS brief risk intervention, and referrals made; and

(d) Evidence the ~~((client))~~ patient:

(i) Was notified of the assessment results; and

(ii) Documentation of treatment options provided, and the ~~((client's))~~ patient's choice; or

(iii) If the ~~((client))~~ patient was not notified of the results and advised of referral options, the reason must be documented.

(5) Completion and submission of all reports required by the courts, department of corrections, department of licensing, and department of social and health services in a timely manner.

(6) Referral of an adult or minor who requires assessment for involuntary chemical dependency treatment to the county-designated chemical dependency specialist.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?** (1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must be responsible for the overall treatment plan for each patient, including:

(a) Patient involvement in treatment planning;

(b) Documentation of progress toward patient attainment of goals; and

(c) Completeness of patient records.

(2) A CDP or a CDP trainee under supervision of a CDP must:

(a) Develop the individualized treatment plan based upon the assessment and update the treatment plan based upon achievement of goals, or when new problems are identified;

(b) Conduct individual and group counseling;

(c) Develop the continuing care plan; and

(d) Complete the discharge summary.

(3) A CDP, or CDP trainee under supervision of a CDP, must also include in the treatment plan for youth problems identified in specific youth assessment, including any referrals to school and community support services.

(4) A CDP, or CDP trainee under supervision of a CDP, must follow up when a patient misses an appointment to:

(a) Try to motivate the patient to stay in treatment; and

(b) Report a noncompliant patient to the committing authority as appropriate.

(5) A CDP, or CDP trainee under supervision of a CDP, must involve each patient's family or other support persons, when the patient gives written consent:

(a) In the treatment program; and

(b) In self-help groups.

(6) When transferring a patient from one certified treatment service to another within the same agency, at the same

location, a CDP, or a CDP trainee under supervision of a CDP, must:

(a) Update the patient assessment and treatment plan; and

(b) Provide a summary report of the patient's treatment and progress, in the patient's record.

(7) A CDP, or CDP trainee under supervision of a CDP, must meet with each patient at the time of discharge from any treatment agency, unless in detox or when a patient leaves treatment without notice, to:

(a) Finalize a continuing care plan to assist in determining appropriate recommendation for care;

(b) Assist the patient in making contact with necessary agencies or services; and

(c) Provide the patient a copy of the plan.

(8) When transferring a patient to another treatment provider, the current provider must forward copies of the following information to the receiving provider when a release of confidential information is signed by the patient:

(a) Patient demographic information;

(b) Diagnostic assessment statement and other assessment information, including:

(i) Documentation of the HIV/AIDS intervention;

(ii) TB test result;

(iii) A record of the patient's detox and treatment history;

(iv) The reason for the transfer; and

(v) Court mandated, department of correction supervision status or agency recommended follow-up treatment.

(c) Discharge summary; and

(d) The plan for continuing care or treatment.

(9) A CDP, or CDP trainee under supervision of a CDP, must complete a discharge summary, within seven days of each patient's discharge from the agency, which includes:

(a) The date of discharge or transfer; and

(b) A summary of the patient's progress toward each treatment goal, except in detox.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-325 What are the requirements for patient record content?** The service provider must ensure patient record content includes:

(1) Demographic information;

(2) A chemical dependency assessment and history of involvement with alcohol and other drugs;

(3) Documentation of the patient's response when asked if the patient is under:

(a) Department of corrections supervision; and

(b) Civil or criminal court ordered mental health or chemical dependency treatment; or

(c) A copy of the court order exempting patient from reporting requirements.

(4) Documentation the patient was informed of the diagnostic assessment and options for referral or the reason not informed;

~~((4))~~ (5) Documentation the patient was informed of federal confidentiality requirements and received a copy of the patient notice required under 42 CFR, Part 2 and 45 CFR, Part 160 through 164;

~~((5))~~ (6) Documentation the patient was informed of treatment service rules, translated when needed, signed and dated by the patient before beginning treatment;

~~((6))~~ (7) Voluntary consent to treatment signed and dated by the patient, parent or legal guardian, except as authorized by law for protective custody, involuntary treatment, or the department of corrections;

~~((7))~~ (8) Documentation the patient received counselor disclosure information, acknowledged by the provider and patient by signature and date;

~~((8))~~ (9) Documentation of the patient's tuberculosis test and results;

~~((9))~~ (10) Documentation the patient received the HIV/AIDS brief risk intervention;

~~((10))~~ (11) Initial and updated individual treatment plans, including results of the initial assessment and periodic reviews, addressing:

(a) Patient biopsychosocial problems;

(b) Treatment goals;

(c) Estimated dates or conditions for completion of each treatment goal;

(d) Approaches to resolve the problems;

(e) Identification of persons responsible for implementing the approaches;

(f) Medical orders, if appropriate.

~~((11))~~ (12) Documentation of referrals made for specialized care or services;

~~((12))~~ (13) At least weekly individualized documentation of ongoing services in residential services, and as required in intensive outpatient and outpatient services, including:

(a) Date, duration, and content of counseling and other treatment sessions;

(b) Ongoing assessments of each patient's participation in and response to treatment and other activities;

(c) Progress notes as events occur, and treatment plan reviews as specified under each treatment service of chapter 388-805 WAC; and

(d) Documentation of missed appointments.

~~((13))~~ (14) Medication records, if applicable;

~~((14))~~ (15) Laboratory reports, if applicable;

~~((15))~~ (16) Properly completed authorizations for release of information;

~~((16))~~ (17) Copies of all correspondence related to the patient, including any court orders and reports of noncompliance;

~~((17))~~ (18) A copy of the continuing care plan signed and dated by the CDP and the patient; and

~~((18))~~ (19) The discharge summary.

AMENDATORY SECTION (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-330 What are the requirements for reporting patient noncompliance?** The following standards define patient noncompliance behaviors and set minimum time lines for reporting these behaviors to the appropriate court(-), community corrections officer, or county designated chemical dependency specialist.

(1) Reporting patient noncompliance is contingent upon obtaining a properly completed authorization to release confidential information form meeting the requirements of 42 CFR Part 2 and 45 CFR Parts 160 and 164 or through a court order authorizing the disclosure pursuant to 42 CFR Part 2, Section 2.63 through 2.67.

(2) Chemical dependency service providers failing to report patient noncompliance with court ordered or deferred prosecution treatment requirements may be considered in violation of chapters 46.61, 70.96A, 142 or 10.05 RCW reporting requirements and be subject to penalties specified in WAC 388-805-120, 388-805-125, and 388-805-130.

(3) For patients under the department of corrections supervision and court ordered to treatment, the provider must notify the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revocation of the patient's conditional release.

~~((4))~~ (4) For emergent noncompliance: The following noncompliance is considered emergent noncompliance and must be reported to the appropriate court within three working days from obtaining the information:

(a) Patient failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by patient self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test;

(b) Patient reports a subsequent alcohol/drug related arrest;

(c) Patient leaves program against program advice or is discharged for rule violation.

~~((2))~~ (5) For nonemergent noncompliance: The following noncompliance is considered nonemergent noncompliance and must be reported to the appropriate court as required by subsection ~~((3))~~ (6) and ~~((4))~~ (7) of this section:

(a) Patient has unexcused absences or failure to report. Agencies must report all patient unexcused absences, including failure to attend self-help groups. Report failure of patient to provide agency with documentation of attendance at self-help groups if under a deferred prosecution order or required by the treatment plan. In providing this report, include the agency's recommendation for action.

(b) Patient failure to make acceptable progress in any part of the treatment plan. Report details of the patient's non-compliance behavior along with a recommendation for action.

~~((3))~~ (6) If a court accepts monthly progress reports, nonemergent noncompliance may be reported in monthly progress reports, which must be mailed to the court within ten working days from the end of each reporting period.

~~((4))~~ (7) If a court does not wish to receive monthly reports and only requests notification of noncompliance or other significant changes in patient status, the reports should be transmitted as soon as possible, but in no event longer than ten working days from the date of the noncompliance.

AMENDATORY SECTION (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-620 What are the requirements for outpatient services?** A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:

(1) Complete admission assessments within ten calendar days of admission, or by the second visit, unless participation in this outpatient treatment service is part of the same provider's continuum of care.

(2) Conduct group or individual chemical dependency counseling sessions for each patient, each month, according to an individual treatment plan.

~~((Assess and document the adequacy of each patient's treatment and attainment of goals))~~ Conduct and document a treatment plan review for each patient:

(a) Once a month for the first three months; and

(b) Quarterly thereafter or sooner if required by other laws.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-625 What are the requirements for outpatient services for persons subject to RCW 46.61-5056?** (1) Patients admitted to outpatient treatment subject to RCW 46.61.5056, must complete outpatient treatment as described in subsection (2) of this section.

(2) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:

(a) For the first sixty days of treatment:

(i) Conduct group or individual chemical dependency counseling sessions for each patient, each week, according to an individual treatment plan.

(ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration excluding a chemical dependency assessment for each patient, according to an individual treatment plan.

(iii) Conduct alcohol and drug basic education for each patient.

(iv) Document patient participation in self-help groups described in WAC 388-805-300(16) for patients with a diagnosis of substance dependence.

(v) For patients with a diagnosis of substance dependence who received intensive inpatient chemical dependency treatment services, the balance of the sixty-day time period will consist, at a minimum, of weekly outpatient counseling sessions according to an individual treatment plan.

(b) For the next one hundred twenty days of treatment:

(i) Conduct group or individual chemical dependency counseling sessions for each patient, every two weeks, according to an individual treatment plan.

(ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration every sixty days for each patient, according to an individual treatment plan.

(c) Upon completion of one hundred eighty days of intensive treatment, a CDP, or a CDP trainee under the supervision of a CDP, must refer each patient for ongoing treatment or support, as necessary, using PPC.

(3) For ~~((client's that))~~ patients who are assessed with insufficient evidence of substance dependence or substance abuse, a CDP must refer the ~~((client))~~ patient to alcohol/drug information school.

AMENDATORY SECTION (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-640 What are the requirements for providing off-site chemical dependency treatment services?** (1) If a certified service provider wishes to offer treatment services, for which the provider is certified, at a site where ~~((clients))~~ patients are located primarily for purposes other than chemical dependency treatment, the administrator must:

- (a) Ensure off-site treatment services will be provided:
  - (i) In a private, confidential setting that is discrete from other services provided within the off-site location; and
  - (ii) By a chemical dependency professional (CDP) or CDP trainee under supervision of a CDP;
- (b) Revise agency policy and procedures manuals to include:
  - (i) A description of how confidentiality will be maintained at each off-site location, including how confidential information and patient records will be transported between the certified facility and the off-site location;
  - (ii) A description of how services will be offered in a manner that promotes patient and staff member safety; and
  - (iii) Relevant administrative, personnel, and clinical practices.
- (c) Maintain a current list of all locations where off-site services are provided including the name, address (except patient in-home services), primary purpose of the off-site location, level of services provided, and date off-site services began at the off-site location.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-710 What are the requirements for opiate substitution medical management?** (1) The medical director must assume responsibility for administering all medical services performed by the opiate substitution treatment program.

(2) The medical director must be responsible for ensuring that the opiate substitution treatment program is in compliance with all applicable federal, state, and local laws and regulations.

(3) A program physician or authorized health care professional under supervision of a program physician, must provide oversight for determination of opiate physical addiction and conducting a complete, fully documented physical evaluation for each patient before admission.

(4) A ~~((physical))~~ medical examination must be conducted on each patient:

- (a) By a program physician or other medical practitioner; and
- (b) Within fourteen days of admission.

(5) Prior to initial prescribed dosage of opiate substitution medication, a program physician must ensure that all pregnant patients are provided written and verbal:

(a) Current health information concerning the possible addiction, health risks and benefits opiate substitution medication may have on them and their fetus;

(b) Current health information concerning the risks of not initiating opiate substitution medication may have on them and their fetus and;

(c) Referral options to address neonatal abstinence syndrome for their baby.

(6) Following the patient's initial dose of opiate substitution treatment, the physician must establish adequacy of dose, considering:

- (a) Signs and symptoms of withdrawal;
- (b) Patient comfort; and
- (c) Side effects from over medication.

~~((6))~~ (7) Prior to the beginning of detox, a program physician must approve an individual detoxification schedule for each patient being detoxified.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-715 What are the requirements for opiate substitution medication management?** (1) An opiate substitution treatment program must use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction.

(2) In addition, an opiate substitution treatment program who is fully compliant with the protocol of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administration for use in the treatment of opioid addiction:

- (a) Methadone;
- (b) Levomethadyl acetate (LAAM); and
- (c) Buprenorphine distributed as subutex and suboxone.

(3) An opiate substitution treatment program must maintain current procedures that are adequate to ensure that the following dosage form and initial dosing requirements are met:

(a) Methadone must be administered or dispensed only in oral form and must be formulated in such a way as to reduce its potential for parenteral abuse;

(b) For each new patient enrolled in a program, the initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the patient's record that forty milligrams did not suppress opiate abstinence symptoms.

(4) An opiate substitution treatment program must maintain current procedures adequate to ensure that each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling. Dosing and administration decisions must be

made by a program physician familiar with the most up-to-date product labeling. These procedures must ensure that any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the patient's record.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-740 What are the requirements for opiate substitution treatment counseling?** (1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must provide individual or group counseling sessions once each:

(a) Week, for the first ninety days, for a new patient or a patient readmitted more than ninety days since the person's most recent discharge from opiate substitution treatment;

(b) Week, for the first month, for a patient readmitted within ninety days of the most recent discharge from opiate substitution treatment; and

(c) Month, for a patient transferring from another opiate substitution treatment program where the patient stayed for ninety or more days.

~~(2) ((A CDP, or a CDP trainee under supervision of a CDP, must conduct and document a continuing care review with each patient to review progress, discuss facts, and determine the need for continuing opiate substitution treatment:~~

~~(a) Between six and seven months after admission; and  
(b) Once every six months thereafter)) Conduct a treatment plan review once every six months after the second year of continued enrollment in treatment.~~

(3) A CDP, or a CDP trainee under supervision of a CDP, must provide counseling in a location that is physically separate from other activities.

(4) A pregnant woman and any other patient who requests, must receive at least one-half hour of counseling and education each month on:

(a) Matters relating to pregnancy and street drugs;  
(b) Pregnancy spacing and planning; and  
(c) The effects of opiate substitution treatment on the woman and fetus, when opiate substitution treatment occurs during pregnancy.

(5) Staff must provide at least one-half hour of counseling on family planning with each patient through either individual or group counseling.

(6) The administrator must ensure there is one staff member who has training in family planning, prenatal health care, and parenting skills.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-750 What are the requirements for opiate substitution treatment take-home medications?** (1) An opiate substitution treatment provider may authorize take-home medications for a patient when:

(a) The medication is for a Sunday or legal holiday, as identified under RCW 1.16.050; or

(b) Travel to the facility presents a safety risk for patients or staff due to inclement weather.

(2) A service provider may permit take-home medications on other days for a stabilized patient who:

(a) Has received opiate substitution treatment medication for a minimum of ninety days; and

(b) Had negative urines for the last sixty days.

(3) The provider must meet 42 CFR, Part 8.12 (i)(1-5) requirements.

(4) The provider may arrange for opiate substitution treatment medication to be administered by licensed staff or self-administered by a pregnant woman receiving treatment at a certified residential treatment agency when:

(a) The woman had been receiving treatment medication for ninety or more days; and

(b) The woman's use of treatment medication can be supervised.

(5) All exceptions to take-home requirements must be authorized by the state methadone authority.

**AMENDATORY SECTION** (Amending 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-800 What are the requirements for ADATSA assessment services?** (1) An agency certified to conduct ADATSA assessments must conduct the assessment for each eligible patient and be governed by the requirements under:

(a) WAC 388-805-001 through 388-805-310;

(b) WAC 388-805-020 and 388-805-325 (1), (2), (3), (4), ~~(5)~~, (9), (15), (16), 388-805-330; and 388-805-350; and

(c) Chapter 388-800 WAC.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-810 What are the requirements for DUI assessment providers?** (1) If located in a district or municipal probation department, each DUI service provider must meet the requirements of:

(a) WAC 388-805-001 through 388-805-135,

(b) WAC 388-805-145 (4), (5), and (6);

(c) WAC 388-805-150, the administrative manual, subsections (4), (7) through (11), (13), and (14);

(d) WAC 388-805-155, facilities, subsections (1)(b), (c), (d), and (2)(b);

(e) WAC 388-805-200 (1), (4), and (5);

(f) WAC 388-805-205 (1), (2), (3)(a) through (d), (4), (6), and (7);

(g) WAC 388-805-220, 388-805-225, and 388-805-230;  
(h) WAC 388-805-260, volunteers;

(i) WAC 388-805-300, clinical manual, subsections (1), (2), (3), (9), ~~((and (20)(e)))~~ (20), (21), and (22);

(j) WAC 388-805-305, patients' rights;

(k) WAC 388-805-310, assessments;

(l) WAC 388-805-320, patient record system, subsections (3)(a) through (f), and (5);

(m) WAC 388-805-325, record content, subsections (1), (2), (3), (4), ~~(5)~~, (7), ~~((+9))~~ (8), ~~((+11))~~ (10), (15), (16), and (17); and

(n) WAC 388-805-350, outcomes evaluation;

(o) WAC 388-805-815, DUI assessment services.

(2) If located in another certified chemical dependency treatment facility, the DUI service provider must meet the requirements of:

- (a) WAC 388-805-001 through 388-805-260; 388-805-305 and 388-805-310;
- (b) WAC 388-805-300, 388-805-320, 388-805-325 as noted in subsection (1) of this section, 388-805-350; and
- (c) WAC 388-805-815.

**AMENDATORY SECTION** (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-815 What are the requirements for DUI assessment services?** (1) The administrator must limit ~~((clients))~~ patients to persons who have been arrested for a violation of driving while under the influence of intoxicating liquor or other drugs or in physical control of a vehicle as defined under chapter 46.61 RCW;

(2) A chemical dependency professional (CDP), or a CDP trainee under the supervision of a CDP, or a probation assessment officer must conduct each ~~((client))~~ patient assessment and ensure the assessment includes, in addition to the requirements under WAC 388-805-310:

- (a) Evaluation of the ~~((client's))~~ patient's blood alcohol level and other drug levels at the time of arrest, if available; and
- (b) Assessment of the ~~((client's))~~ patient's self-reported driving record and the abstract of the ~~((client's))~~ patient's legal driving record.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-820 What are the requirements for alcohol and other drug information school?** (1) Alcohol and other drug information school providers must be governed under:

- (a) WAC 388-805-001 through 388-805-135; and
- (b) This section.
- (2) The provider must:
  - (a) Inform each student of fees at the time of enrollment; and
  - (b) Ensure adequate and comfortable seating in well-lit and ventilated rooms.
  - (3) A certified information school instructor or a chemical dependency professional must teach the course and:
    - (a) Advise each student there is no assumption the student is an alcoholic or drug addict, and this is not a therapy session;
    - (b) Discuss the class rules;
    - (c) Review the course objectives;
    - (d) Follow curriculum contained in "Alcohol and Other Drugs Information School Training Curriculum," published in 2001, or later amended;
    - (e) Ensure not less than eight and not more than fifteen hours of class room instruction;
    - (f) Administer the posttest from the above reference to each enrolled student after the course is completed;
    - (g) Ensure individual ~~((client))~~ student records include:
      - (i) Intake form;
      - (ii) Hours and date or dates in attendance;

- (iii) Source of referral;
- (iv) Copies of all reports, letters, certificates, and other correspondence;
- (v) A record of any referrals made; and
- (vi) A copy of the scored posttest.
- (h) Complete and submit reports required by the courts and the department of licensing, in a timely manner.

#### **REPEALER**

The following section of the Washington Administrative Code is repealed:

|                 |   |
|-----------------|---|
| WAC 388-805-850 | What are the requirements for treatment accountability for safer communities (TASC) providers and services? |
|-----------------|---|

**WSR 06-07-007**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed March 3, 2006, 7:32 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-919-990 Physician and surgeon fees and renewal cycle (physicians surcharge fees) and 246-918-990 Fees and renewal cycle (physician assistants surcharge fees).

Hearing Location(s): Department of Health, 101 Israel Road S.E., Room 133, Tumwater, WA 98504, on April 26, 2006, at 10:00 a.m.

Date of Intended Adoption: April 26, 2006.

Submit Written Comments to: Beverly A. Thomas, Program Manager, P.O. Box 47866, Olympia, WA 98504, e-mail [web site] <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4768, by April 1, 2006.

Assistance for Persons with Disabilities: Contact Beverly Thomas, Program Manager, by April 19, 2006, TTY (800) 833-6388 or 711 or (360) 236-4788.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to an increase in workload, the Washington physicians health program (WPHP) has requested an increase in the impaired physician program fee paid by the department of health (department) to WPHP. The department conducted an analysis of WPHP's fees, staffing, caseload, program costs, and productivity. The department determined that an increase to the impaired physician program fee is necessary to continue to make payments out of the fund for the duration of the contract, which expires on June 30, 2009. The department is proposing amending the rule to raise the impaired physician program fee to \$35.00 per year. The statute governing the impaired physicians program fee allows licensees to be charged up to \$35.00 per year.

Reasons Supporting Proposal: The proposed fee increase will provide additional funding for the impaired



physician program, allowing the continuation of treatment and monitoring for the duration of the contract.

Statutory Authority for Adoption: RCW 43.70.250 and 18.71.310(2).

Statute Being Implemented: RCW 18.71.310(2).

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, Implementation and Enforcement: Beverly A. Thomas, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4788.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department did not conduct a small business economic analysis under RCW 19.85.025(3), because the rule does not qualify for a small business economic impact statement under RCW 34.05.310(4)(f). The rule adjusts fees pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The department did not conduct the analysis under RCW 34.05.328 (5)(b)(vi), because the proposal adjusts fees pursuant to legislative standards.

March 2, 2006  
M. C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

**WAC 246-919-990 Physician and surgeon fees and renewal cycle.** (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses and retired active physician licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program date. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) Retired active physician licenses shall be renewed every year. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a rea-

sonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(4) The applicants and licensees must pay the following nonrefundable fees:

| Title of Fee  | Fee                             |
|---|---------------------------------|
| Physicians and surgeons: Chapter 18.71 RCW  |                                 |
| Application*  | \$300.00                        |
| Retired active physician license renewal*   | 100.00                          |
| Retired active late renewal penalty   | 50.00                           |
| Two-year renewal*   | 400.00                          |
| Late renewal penalty  | 100.00                          |
| Expired license reissuance  | 200.00                          |
| Certification of license  | 50.00                           |
| Duplicate license   | 15.00                           |
| Temporary permit  | 50.00                           |
| Application fee for transitioning from a postgraduate training limited license*   | 100.00                          |
| Postgraduate limited license fees: RCW 18.71.095  |                                 |
| Limited license application*  | 200.00                          |
| Limited license renewal*  | 200.00                          |
| Limited duplicate license   | 15.00                           |
| Impaired physician program *(assessed at <del>\$(25.00)</del> <u>\$35.00</u> on each application and for each year of the renewal period as required in RCW 18.71.310(2)) | <del>(25.00)</del> <u>35.00</u> |

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

**WAC 246-918-990 Physician assistants fees and renewal cycle.** (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The applicant or licensee must pay the following nonrefundable fees:

| Title of Fee   | Fee     |
|--|---------|
| Physician assistants, certified physician assistants, physician assistant-surgical assistants, acupuncture physician assistants: |         |
| Application*   | \$50.00 |
| Two-year renewal*  | 70.00   |

| Title of Fee  | Fee          |
|---|--------------|
| Expired license reissuance  | 35.00        |
| Duplicate license   | 15.00        |
| Impaired physician program surcharge  | ((25.00))    |
| * (assessed at \$( <del>25.00</del> ) <u>35.00</u> on each application and for each year of the renewal period as required in RCW 18.71.310(2)) | <u>35.00</u> |

**WSR 06-07-011**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Filed March 3, 2006, 3:17 p.m.]

Continuance of WSR 06-03-093.

Title of Rule and Other Identifying Information: Chapter 173-224 WAC, Wastewater discharge permit fees.

Submit Written Comments to: Bev Poston, P.O. Box 47600, Olympia, WA 98504-7600, e-mail bpos461@ecy.wa.gov, fax (360) 407-6425, by April 7, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of ecology is extending the public comment period to April 7, 2005 [2006].

March 2, 2006  
 Polly Zehm  
 Deputy Director

**WSR 06-07-022**  
**WITHDRAWAL OF PROPOSED RULES**  
**WASHINGTON STATE LOTTERY**

(By the Code Reviser's Office)

[Filed March 7, 2006, 8:55 a.m.]

WAC 315-36-010, 315-36-020, 315-36-030, 315-36-040, 315-36-050, 315-36-060, 315-36-070, 315-36-080, 315-36-090, 315-36-100, 315-36-110, 315-36-120, 315-36-130, 315-36-140 and 315-36-150, proposed by the Washington state lottery in WSR 05-17-096 appearing in issue 05-17 of the State Register, which was distributed on September 7, 2005, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 06-07-024**  
**PROPOSED RULES**  
**DEPARTMENT OF COMMUNITY,**  
**TRADE AND ECONOMIC DEVELOPMENT**

[Filed March 7, 2006, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-125.

Title of Rule and Other Identifying Information: State funding for local early childhood education and assistance programs.

Hearing Location(s): Educational Service District 123, 3918 West Court Street, Pasco, WA 99301, on April 26, 2006, at 3:00-5:00 p.m.; at Educational Service District 113, 601 McPhee Road S.W., Olympia, WA 98502, on May 1, 2006, at 3:00-5:00 p.m.; and at Educational Service District 101, 4202 South Regal Street, Spokane, WA 99223, on May 10, 2006, at 3:00-5:00 p.m.

Date of Intended Adoption: June 15, 2006.

Submit Written Comments to: Heike Syben, CTED, Children's Services, Box 42525, Olympia, WA 98504-2525, e-mail heikes@cted.wa.gov, fax (360) 586-0489, by May 1, 2006.

Assistance for Persons with Disabilities: Contact Heike Syben by May 1, 2006, TTY (360) 725-4000.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes to existing rules is to:

- Implement Governor Gregoire's executive order on plain talk.
- Clarify program eligibility and staff qualifications requirements.
- Incorporate existing policy memos into rules.
- Remove day-to-day program operation details that are also in ECEAP performance standards, as recommended by the attorney general's office.
- Eliminate redundancy within rules.

These changes will lead to clearer understanding of program expectations and contractors will find it easier to use the WAC.

Reasons Supporting Proposal: This proposal is strongly supported by ECEAP stakeholders and was amended by stakeholder input on February 14, 2006.

Statutory Authority for Adoption: Chapter 28A.215 RCW.

Statute Being Implemented: Chapter 28A.215 RCW.

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

Name of Proponent: Washington state department of community, trade and economic development, governmental.

Name of Agency Personnel Responsible for Drafting: Joyce Kilmer, Davis-Williams Building, 906 Columbia, Olympia, Washington, (360) 725-2843; Implementation and Enforcement: Eileen Ackerman, Davis-Williams Building, 906 Columbia, Olympia, Washington, (360) 725-2862.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This WAC has no impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. None required.

March 1, 2006  
 Juli Wilkerson  
 Director

AMENDATORY SECTION (Amending Order 88-04, filed 8/31/88)

**WAC 365-170-010 Authority.** These rules are adopted under the authority of (~~RCW 43.63A.060 which provides that the director shall make such rules and regulations and do all other things necessary and proper to carry out the purposes of chapter 43.63A RCW. RCW 43.63A.065(2) provides that among its functions and responsibilities the department shall administer state and federal grants and programs which are assigned to the department by the governor or the legislature. These rules are also adopted under the specific authority delegated to the department under RCW 28A.34A.060 to adopt rules for the administration of the program. The program which these rules are designed to implement is found in~~) chapter (~~(28A.34A)~~) 28A.215 RCW.

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-020 Purpose.** (~~The purpose of this chapter is to set forth the conditions and procedures under which state funding may be made available to assist local early childhood education and assistance programs.~~) The early childhood education and assistance program (ECEAP) provides preschool education, family support, and health and nutrition services to low-income three- and four-year-old children to promote school success.

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-030 Definitions.** (1) (~~"Applicant" means a public or private nonsectarian organization which applies for state early childhood education and assistance program funds.~~

(2) ~~"At risk" means by virtue of socio-economic, or developmental or environmental status at risk of failure in the common school system.~~

(3) ~~"Contract year" means the period July 1 through June 30 in which the program must operate.~~

(4) "Contractor" means a nonsectarian public or private organization that contracts with the department of community, trade, and economic development to provide local early childhood education and assistance services.

(2) ~~"Department" means the department of community, trade and economic development.~~

(~~(5) "Direct service" means any educational, health, or social service for children which is designed to meet the early childhood education assistance program performance standards.~~

(6) ~~(3) "Director" means the director of the department of community, trade and economic development.~~

(~~(7) "Early childhood education and assistance program" means the statewide administrative activities carried out within the department of community, trade and economic development to allocate, award, and monitor state funds appropriated to assist local early childhood education and assistance programs.~~

(8) ~~"Enrolled child(ren)" means participant(s) in the early childhood education and assistance program.~~

(9) ~~"Family" means all persons living in the same household who are supported by the income of the parent(s) or guardian(s) of the child enrolling in the early childhood education and assistance program, and related to the parent(s) or guardian(s) by blood, marriage, adoption, or legal obligation to provide support.~~

(10) ~~"Contractor" means an applicant which has been awarded state funds under the early childhood education and assistance program, and which has entered into a contract with the department of community, trade and economic development to provide an early childhood education and assistance program. Contractors may be local public or private organizations which are nonsectarian in their delivery of services.~~

(11) ~~"Like educational services" means comprehensive programs providing educational, family support, and health services funded by other sources.~~

(12) ~~"Low-income family" means a family whose total income before taxes for the previous twelve months or full calendar year, whichever period better reflects the current income of the family, is equal to, or less than, one hundred ten percent of the federally established poverty guidelines as defined by the department of health and human services. Recipients of cash benefits under the temporary assistance to needy families program are included in this definition.~~

(13) ~~"Nonsectarian" means that no aspect of early childhood education and assistance services will include any religious orientation.~~)

AMENDATORY SECTION (Amending Order 88-04, filed 8/31/88)

**WAC 365-170-060 Process for allocating or awarding funds.** (1) Public or private nonsectarian organizations are eligible to apply for funding as early childhood education and assistance programs.

(2) Funds shall be awarded on a competitive basis or allocated by the department, consistent with the amount allocated by the legislature.

(~~(2)~~) (3) An applicant (shall use forms issued and) must use the application procedures established by the department.

(~~(3) The department shall notify all applicants of funding decisions. All recipients of funds shall be provided with a contract for signature.~~) (4) Successful applicants will be awarded a contract with the department. This contract must be signed by an official with authority to bind the recipient (and must be returned to the department prior to the award or allocation of any funds under this program).

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-070 Use of funds.** (1) (~~Department funds must not be used to supplant other existing funding sources.~~

(2) ~~Contracting agencies (receiving early childhood education assistance program funds) must provide comprehensive early education and family support services free of charge to enrolled families.~~

~~((3))~~ (2) Early childhood education and assistance program funds must be used as dollars of last resort for medical, dental, nutrition, and mental health services.

~~((4))~~ (3) Administrative costs funded under this program are limited to fifteen percent of the total award.

#### NEW SECTION

**WAC 365-170-07005 Comprehensive service delivery.** (1) Contractors must conduct a community assessment, and must plan and deliver the following comprehensive services to enrolled children:

- (a) Early childhood education;
- (b) Family support;
- (c) Parent involvement including options for participation in their child's classroom, program policy decisions, service delivery system development, and parent education and training; and

(d) Health services and referral, including medical, dental, nutrition, and mental health.

(2) Contractors must comply with the early childhood education and assistance program contract, performance standards, and policy memos in the delivery of all services.

(3) Contractors may request exceptions to rules, performance standards, or policies. Contractors must receive written approval from the department before implementing exceptions.

#### NEW SECTION

**WAC 365-170-07010 Nondiscrimination.** Contractors must not deny service to, or discriminate against, any person who meets the eligibility criteria for the early childhood education and assistance program on the basis of gender, race, color, religion, age, national origin, citizenship, ancestry, physical or mental disability, family configuration, sexual orientation, culture, or public assistance recipient status.

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-080 ((Recruitment, eligibility and enrollment of children.)) Eligibility for services.** (1) ((Nondiscrimination. Programs must neither deny service to, nor otherwise discriminate in the delivery of services against, any person who otherwise meets the eligibility criteria for the program on the basis of gender, race, color, religion, age, national origin, citizenship, ancestry, physical or mental disability, family configuration, culture, or because such person is a recipient of federal, state, or local public assistance. Services must comply with ADA and the Family Policy Initiative principles defined in RCW 74.14A.025.

(2) Recruitment.

(a) Policies and procedures must be in place to systematically recruit, document eligibility, and enroll children who reflect the low income population in the service area of the program. Ongoing recruitment activities must be conducted to ensure that eligible families in the community are aware of services.

(b) Recruitment efforts must be made to ensure enrollment at one hundred percent of the funded enrollment level

within thirty calendar days of the first date of service. Daily attendance at eighty five percent of the funded enrollment level must be maintained. Efforts to recruit eligible children and maintain waiting lists for filling vacancies as they occur must continue until forty five calendar days from the end of the program year.

(e) Not less than ten percent of the available slots statewide shall be reserved for children of migrant families, seasonal farmworker families, and native American families living on or off reservation.

(d) As many as ten percent of the available funded enrollment slots may be filled with children who do not meet income eligibility requirements if the child is determined to be "at-risk" due to developmental or environmental factors.

(3) Eligibility. A child is eligible if:

(a) The child is not eligible for kindergarten as of August 31 of the contract year; and

(b) The child would benefit from a preschool program designed to help prepare children to enter the school system;

(c) The child is not otherwise a participant in a federal or state program providing like educational services as defined under WAC 365-170-030(10); and

(d) The child:

(i) Is a member of a family with an income level that, as defined by the Department of Health and Human Services, is at or below one hundred ten percent of the U.S. Poverty Guidelines for family size. Verification and documentation of family income must be obtained for the previous calendar year or twelve months which precede the child's enrollment date, whichever is more reflective of current circumstances; or

(ii) Is a member of a family which receives cash benefits under the Temporary Assistance to Needy Families program; or

(iii) Occupies one of the slots of ten percent which may be filled with children who do not meet income eligibility requirements but are determined to be at-risk due to developmental or environmental factors; or

(iv) Occupies one of the slots of ten percent of slots available statewide which shall be reserved for children of migrant families, seasonal farmworker families, and native American families living on or off reservation who are otherwise eligible.

(4) Enrollment.

(a) Enrolled children and their families must not be charged fees for any services provided.

(b) Programs must develop an enrollment process that addresses identification of age eligible and income eligible children and prioritization within that same population. Priority must be given to children from families with the lowest income or to eligible children from families with multiple needs. Criteria for prioritizing child eligibility must address the various factors in WAC 365-170-080(3) and must at minimum prioritize as follows:

(i) First priority for enrollment, consistent with the intent to prepare children for the common school system, must be given to four year olds who are not eligible for kindergarten as of August 31 of the contract year and are considered to be at-risk;

~~(ii) Second priority must be given to three-year-olds if local program priorities determine the child would benefit from a comprehensive early education program.)) Contractors must recruit, document eligibility, and enroll children based on available funds. Enrolled children must not be participants in the federally funded head start program. Contractors must give priority for enrollment to children from families with the lowest incomes or to children from families with multiple needs.~~

~~(2) To be enrolled, children must meet the following age criteria.~~

~~(a) First priority for enrollment must be given to children who are four years old, but not yet five years old, by August 31 of the program year.~~

~~(b) Second priority may be given to children who are three years old by August 31 of the program year and meet other eligibility criteria.~~

~~(c) Contractors may not enroll children who are younger than three years old or older than five years old on August 31 of the program year.~~

~~(3) To be enrolled, children must meet either the following income or risk factor criteria:~~

~~(a) Family income. Children are eligible if their family income is at or below one hundred ten percent of the Federal Poverty Guidelines established by the United States Department of Health and Human Services. Contractors may choose which time period below best reflects the family's current financial circumstances:~~

~~(i) Previous calendar year before enrollment;~~

~~(ii) Twelve months before enrollment; or~~

~~(iii) Previous or current month, when annual family income has been documented and shows a significant recent decrease due to death, divorce, job loss, or similar circumstance.~~

~~(b) Risk factors. Up to ten percent of funded slots may be used for children from families who are not income eligible and are impacted by:~~

~~(i) Developmental factors, such as developmental delay or disability; or~~

~~(ii) Environmental factors, such as domestic violence, chemical dependency, child protective services involvement, or other factors affecting school success.~~

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-095 ((Staffing-)) Staff qualifications.**

~~(1) ((A system must be developed for the recruitment and selection of early childhood education and assistance program staff. The system must:~~

~~(a) Meet state and relevant federal laws that ensure equity;~~

~~(b) Advertise and describe position qualifications and requirements to the public;~~

~~(c) Use a selection and hiring process which involves parents, guardians and appropriate staff;~~

~~(d) Requires background reference check, criminal record clearance, and finger printing of any staff or volunteers who have unsupervised contact with children;~~

~~(e) Prevents hiring of staff whose health or behavior presents a threat to children's safety.~~

~~(2) A description of how specific staff classifications will be used to deliver services in each distinct model must be maintained in program planning records. Programs must make concerted efforts to recruit and hire qualified staff that reflects the diversity of culture, ethnicity, language and physical abilities of the service population.~~

~~(3) Staff hired into lead teacher and family educator positions must meet the standard qualifications for their position within five years of appointment or by July 1, 2004, whichever is later. Staff hired into positions of assistant teacher, family advocate, family service worker and health aide after June 30, 1999, must meet the standard qualifications for their position within five years of appointment or by July 1, 2004, whichever is later.~~

~~(4) Early childhood education or special education degrees from out-of-state may be accepted on par with Washington state degrees. Out-of-state teaching certificates must be validated by an endorsement obtained through the office of the superintendent of public instruction.~~

~~(5) Clock hours accumulated through June 30, 1999, may be credited towards quarter credit requirements of positions at the rate of ten clock hours to one credit hour.~~

~~(6) Staff not meeting standard qualifications may be hired if they meet provisional qualifications and program records document planning for progression to the standard qualifications within five years.~~

~~(7) An exception to minimum qualifications may be requested of the department to retain or appoint a person who does not meet the standard or provisional qualifications but has other education and experience in the applicable field. Any necessary approvals for existing staff must be obtained by August 31, 1999.~~

~~(8) Programs unable to hire staff meeting standard qualifications must document written plans and efforts for professional development. Planning documents must show how staff will progress to the standard qualifications of their position(s) within five years of appointment, or by July 1, 2004, whichever is later.~~

~~(9) The following standard and provisional staff qualifications are required for program positions:~~

~~(a) Standard lead teacher qualifications:~~

~~(i) A two-year or four-year degree from an accredited public or private institution of higher education in the field of early childhood education or child development and two years of successful work experience with adults/parents and young children; or~~

~~(ii) Three years of successful, relevant, documented work experience in a preschool, child care or kindergarten setting; and~~

~~(A) A two-year or four-year degree in any field from an accredited public or private institution of higher education; and at least thirty quarter units or equivalent semester hours in the field of early childhood education or child development; or~~

~~(B) A valid Washington state elementary education teaching certificate with an endorsement in early childhood education (pre-K-Grade 3) or special education with an emphasis in early childhood education.~~

(b) Provisional lead teacher qualifications.— Three years of successful, relevant, documented work experience in a preschool, child care or kindergarten setting; and

(i) A child development associate certificate (CDA); or

(ii) A two-year or four-year degree in any field from an accredited public or private institution of higher education; or

(iii) A valid Washington state teaching certificate, which does not include an endorsement in early childhood education or early childhood special education.

(c) Standard assistant teacher qualifications.— One year of successful, relevant, documented work experience in a preschool or child care setting; and

(i) A one-year certificate in the field of early childhood education or child development from an accredited public or private technical college or institution of higher education; or

(ii) A high school diploma and child development associate (CDA) certificate.

(d) Provisional assistant teacher qualifications.— One year of successful, relevant, documented work or volunteer experience in a preschool or child care setting.

(e) Standard family educator qualifications:

(i) A two-year or four-year degree in the field of adult education, human development, human services, social work, early childhood education, child development, psychology, or a related field from an accredited public or private institution of higher education and two years of successful work experience with adults/parents and young children; or

(ii) Three years of successful, relevant, documented work experience with adults/parents of young children; and

(A) A two-year or four-year degree in any field from an accredited public or private institution of higher education and thirty quarter units or the equivalent semester hours in adult education, human development, human services, social work, early childhood education, child development, or a related field; or

(B) A valid Washington state elementary education teaching certificate with an endorsement in early childhood education (pre-K-Grade 3) or special education with an emphasis in early childhood education.

(f) Provisional family educator qualifications.— Three years of successful, relevant, documented work experience in a preschool, child care, kindergarten or social work setting; and

(i) A child development associate certificate (CDA); or

(ii) A two-year or four-year degree in any field from an accredited public or private institution of higher education; or

(iii) A valid Washington state teaching certificate, which does not include an endorsement in Early childhood education or early childhood special education.

(g) Standard family advocate, family service worker, and health aide qualifications:

(i) A two-year or four-year degree in the field of adult education, human development, human services, public health, health education, nursing, social work, early childhood education, child development, psychology, or a related field from an accredited public or private institution of higher education and a minimum of two years of successful, relevant, documented work experience with adults/parents and young children; or

(ii) A two-year degree in any field from an accredited public or private institution of higher education, and at least thirty quarter units or the equivalent semester hours in the fields of adult education, human development, human services, social work, nursing, public health, health education, early childhood education, child development or a related field and three years of successful work experience with adults/parents of young children.

(h) Provisional family advocate, family service worker, and health aide qualifications.— Two years or more of successful, relevant, documented work or volunteer experience working with families of young children in an early childhood family support program setting.

(i) Standard health professional qualifications:

(i) Four-year degree in the field of public health, nursing, or health education and two or more years experience in public health, nursing, health education, or management of a health program serving children and families; or

(ii) A registered nurse with a two-year degree in nursing, health education, or the management of health programs, and two or more years experience in health programs serving children and families.

(j) Standard dietitian qualifications.— Two years successful, relevant, documented work experience in a community nutrition program serving children and families and a four-year degree in nutrition science, public health nutrition, dietetics, or other related fields and current registration with the American Dietetic Association as dietitian or be eligible, registered and scheduled for the registration exam.

(k) Standard mental health professionals qualifications:

(i) Certified or licensed mental health professional; or

(ii) School counselor; or

(iii) A registered mental health professional working in a licensed facility; or

(iv) Licensed psychologist with experience and expertise serving young children and their families.

(10) Programs must implement and maintain a system for training and development of staff and families of enrolled children. Staff and families must be involved in the system design and implementation process.)) Contractors must provide adequate staff to comply with all ECEAP performance standards. Contractors must have written policies and procedures for recruitment and selection of staff, including procedures for advertising all position openings to the public.

(2) All persons serving in the role of lead teacher must meet one of the following qualifications:

(a) An associate or higher degree with the equivalent of thirty college quarter credits of early childhood education. These thirty credits may be included in the degree or in addition to the degree; or

(b) A valid Washington state teaching certificate with an endorsement in early childhood education (pre-K-grade 3) or early childhood special education.

(3) All persons serving in the role of assistant teacher must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program assistant teacher in the same agency before July 1, 1999;

(b) The equivalent of twelve college quarter credits in early childhood education; or

(c) A Child Development Associate (CDA) credential awarded by the Council for Early Childhood Professional Recognition.

(4) All persons serving in the role of family support specialist must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family service worker in the same agency before July 1, 1999; or

(b) An associate's or higher degree with the equivalent of thirty college quarter credits of adult education, human development, human services, family support, social work, early childhood education, child development, psychology, or another field directly related to their job responsibilities. These thirty credits may be included in the degree or in addition to the degree.

(5) All persons serving in the role of family support aide or health aide must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family support aide or health aide in the same agency before July 1, 1999; or

(b) The equivalent of twelve college quarter credits in family support, public health, health education, nursing, or another field directly related to their job responsibilities.

(6) The early childhood education and assistance program health professional must meet one of the following qualifications:

(a) Licensed in Washington state as a registered nurse; or  
(b) A bachelor's or higher degree in public health, nursing, health education, or related field.

(7) The early childhood education and assistance program dietitian must meet all of the following qualifications:

(a) A bachelor's or higher degree in nutrition science, public health nutrition, dietetics, or other related field; and

(b) Registered dietitian with the American Dietetic Association or certified as a dietitian under chapter 18.138 RCW.

(8) The early childhood education and assistance program mental health professional must meet one of the following qualifications:

(a) Licensed by the Washington state department of health as a mental health counselor, marriage and family therapist, social worker, psychologist, psychiatrist, or psychiatric nurse; or

(b) Credentialed by the Washington state office of the superintendent of public instruction as a school counselor, social worker, or psychologist.

(9) Contractors may provisionally hire lead teachers, assistant teachers, family service workers, family service aides, or health aides who do not fully meet the qualifications for the position if all of the following conditions are met:

(a) Contractors have attempted to recruit and hire fully qualified staff and are unable to because of a documented labor pool shortage;

(b) Contractors are able to recruit a person competent to fulfill the role and implement all related performance standards; and

(c) Contractors write a professional development plan describing how the provisional hire will obtain full qualifications within five years of appointment.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

|                 |  |
|-----------------|--|
| WAC 365-170-040 | Determination of funding.                    |
| WAC 365-170-050 | Eligibility criteria for funding applicants. |
| WAC 365-170-090 | Program design.                              |
| WAC 365-170-100 | Administration.                              |

## **WSR 06-07-034**

### **PROPOSED RULES**

### **DEPARTMENT OF HEALTH**

[Filed March 8, 2006, 7:44 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-08-400 Allowable fees for searching and duplicating medical records.

Hearing Location(s): Department of Health, Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501, on April 25, 2006, at 9:00 a.m.

Date of Intended Adoption: April 26, 2006.

Submit Written Comments to: Sherry Thomas, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, e-mail [web site] <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by April 25, 2006.

Assistance for Persons with Disabilities: Contact Sherry Thomas by April 18, 2006, TTY 711 or (800) 833-6388 or (360) 236-4612.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to correct the statutory authority referenced in the WAC from RCW 70.02.010(12) to 70.02.010(14) to alleviate confusion. The subsection number was changed by ESSB 5158, chapter 468, Laws of 2005.

Reasons Supporting Proposal: A change in the rule is necessary to eliminate any confusion about the fees.

Statutory Authority for Adoption: RCW 70.02.010(14) and 43.70.040.

Statute Being Implemented: RCW 70.02.010(14).

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 and Implementation: Sherry Thomas, Policy Coordinator, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is exempt under RCW 34.05.310 (4)(c) and (d). It incorporates by reference without material change Washington state statute and corrects a typographical error without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt under RCW 34.05.310 (4)(c) and (d). It incorporates by reference without material change Washington state statute and corrects a typographical error without changing its effect.

March 7, 2006  
M. C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 05-12-013, filed 5/20/05, effective 7/1/05)

**WAC 246-08-400 How much can a medical provider charge for searching and duplicating medical records?** RCW 70.02.010(~~(12)~~)(14) allows medical providers to charge fees for searching and duplicating medical records. The fees a provider may charge cannot exceed the fees listed below:

- (1) Copying charge per page:
  - (a) No more than ninety-one cents per page for the first thirty pages;
  - (b) No more than sixty-nine cents per page for all other pages.
- (2) Additional charges:
  - (a) The provider can charge a twenty-one dollar clerical fee for searching and handling records;
  - (b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.
- (3) This section is effective July 1, 2005, through June 30, 2007.
- (4) HIPAA covered entities: See HIPAA regulation Section 164.524 (c)(4) to determine applicability of this rule.

**WSR 06-07-072**  
**PROPOSED RULES**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**  
[Filed March 13, 2006, 9:38 a.m.]

Original Notice.

Title of Rule and Other Identifying Information: Columbia River Gorge Commission Rule 350-81 (Land Use Ordinance).

Hearing Location(s): Hood River Best Western Inn, 1108 East Marina Way, Hood River, OR, on June 13, 2006, 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: June 13, 2006.

Submit Written Comments to: Martha J. Bennett, Executive Director, P.O. Box 730, White Salmon, WA 98672, e-mail [crgc@gorge.net](mailto:crgc@gorge.net), fax (509) 493-2229, by June 1, 2006.

Assistance for Persons with Disabilities: Contact Nancy Andring by June 1, 2006, (509) 493-3323.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments were added to the management plan in December 2005 (Plan Amendment File No. PA-05-02). The pro-

posed amendments to the management plan are identical to the language adopted into the management plan. The purpose of the proposed amendments to Commission Rule 350-81 is thus to make the land use ordinance consistent with the management plan. Anticipated effects were addressed during adoption of the amendments to the management plan.

Statutory Authority for Adoption: 16 U.S.C. 544e; RCW 43.97.015; ORS 196.150.

Statute Being Implemented: 16 U.S.C. 544e; RCW 43.97.015; ORS 196.150.

Name of Proponent: Columbia river gorge commission.  
Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Martha J. Bennett, White Salmon, Washington, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed amendments only add substantive regulations that were previously adopted, amending the land use ordinance is clerical by nature.

A cost-benefit analysis is not required under RCW 34.05.328. This section does not apply to the gorge commission pursuant to RCW 34.05.328 (5)(a)(ii). In addition, these proposed amendments would be exempt pursuant to RCW 34.05.328 (5)(b)(iii).

March 9, 2006  
Nancy A. Andring  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-09 issue of the Register.

**WSR 06-07-074**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed March 13, 2006, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-116.

Title of Rule and Other Identifying Information: Chapter 388-825 WAC, Division of developmental disabilities service rules; amending WAC 388-825-105, 388-825-130, 388-825-145, and 388-825-155.

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, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on April 25, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 26, 2006.

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 [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., April 25, 2006.



Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by April 21, 2006, 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: These rules are necessary to amend WAC 388-825-105, 388-825-130, 388-825-145 and 388-825-155 to conform to RCW 71A.20.080. These rules amend the procedural time frames for providing notice to residents of a resident of a state residential habilitation center (RHC) being transferred to the community, amend the procedures for requesting appeals by a resident of a state RHC being transferred to the community and amend the period of time that the department must wait before implementing a decision to transfer a resident of a state RHC to the community.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.20.080.

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: Steve Brink, P.O. Box 5310, Olympia, WA 98507-5310, (360) 725-3471; Implementation: Harlan Soloman, P.O. Box 5310, Olympia, WA 98507-5310, (360) 725-3441; and Enforcement: Donald Clintsman, P.O. Box 5310, Olympia, WA 98507-5310, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These are "procedural rules" under RCW 34.05.-328 (5)(c), which defines procedures related to agency hearings and therefore are exempt as they are not "significant legislative rules" by definition.

March 8, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-15-093, filed 7/16/04, effective 8/16/04)

**WAC 388-825-105 Am I given any advance notice of termination or reduction or eligibility or services?** (1) DDD will provide you at least ~~((thirty days))~~ ten-days advance notice, as described in WAC 388-458-0040 (1), (2) and (3), of any action to terminate your eligibility, or terminate or reduce your services ~~((or discharge))~~

(2) DDD will provide you at least thirty-days advance notice prior to transferring you from a residential habilitation center to the community under RCW 71A.20.080.

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

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-130 How long do I have to file a request for an administrative hearing?** (1) The following rules apply to all situations except a decision to transfer you from a state residential habilitation center (RHC) to the community under RCW 71A.20.080. The rules for administrative hearings regarding the department's decision to transfer you from an RHC to the community are contained in WAC 388-825-155.

(2) You have to request an administrative hearing within ninety days of receipt of the notification of the decision you are disputing.

~~((2))~~ (3) You must request an administrative hearing within the ten-day notice period, as described in WAC 388-458-0040 (1), (2) and (3), if you wish to maintain current services during the appeal process.

~~((3))~~ (4) The notification sent to you will include the date that the ten-day notice period ends.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-145 Will my benefits continue if I request an administrative hearing?** (1) If you request an administrative hearing regarding the department's decision to transfer you from a residential habilitation center to the community under RCW 71A.20.080, the rules in WAC 388-825-155 apply.

(2) If you request an administrative hearing within the ten-day notice period, as described in chapter 388-458 WAC, unless one or more of the conditions in WAC 388-825-150 applies, the department will take no action until there is a final decision on your appeal of the department's decision to:

(a) Terminate your eligibility;

(b) Reduce or terminate your services; or

(c) Reduce or terminate the payment of SSP set forth in chapter 388-827 WAC.

~~((2))~~ (3) The department will take no action until there is a final decision on your appeal of the department's decision to remove or transfer you to another residential service unless one or more of the conditions in WAC 388-825-150 applies.

~~((3))~~ (4) The department will take no action to terminate your provider of choice unless one or more of the circumstances described in WAC 388-825-150 applies.

~~((4))~~ (5) After the administrative hearing, you may have to pay back continued benefits you get, as described in chapter 388-410 WAC, if the administrative hearing decision is in favor of the department.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-155 What are my appeal rights if I am appealing a decision to ~~((move))~~ transfer me from a state residential habilitation center to the community?** (1) The procedures in RCW 71A.10.050(2) and RCW 71A.20.080 govern the proceeding.

~~((1))~~ (2) You have thirty days from date that you receive notice to request an administrative hearing appealing

the department's decision to transfer you from a residential habilitation center to the community under RCW 71A.20.080.

~~((3))~~ The department will take no action ~~((until there is a final decision on your appeal to move you from a state residential habilitation center to the community))~~ to transfer you from a state residential habilitation center to the community under RCW 71A.20.080 during the period that an appeal can be requested or while an appeal is pending and undecided unless you or your legal representative consent, or a court order authorizes the transfer, or ((the)) an administrative law judge or review judge rules that you ((have caused an unreasonable delay in the proceedings-

~~((2)))~~ are not diligently pursuing your appeal.

~~((4))~~ The burden of proof is on the department.

~~((3))~~ ~~((5))~~ The burden of proof is whether the proposed placement is in your best interest.

**WSR 06-07-075**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed March 13, 2006, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-117.

Title of Rule and Other Identifying Information: WAC 388-450-0195 Utility allowances for Basic Food programs.

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, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on April 25, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 26, 2006.

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 [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., April 25, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by April 21, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these changes to update utility standards that are used to determine the excess shelter deduction for the Washington Basic Food program and Washington combined application program (WASHCAP). The proposed increase in utility allowances based on the December 2005 consumer price index will cause a small increase in benefits for people who do not already receive the maximum excess shelter deduction or maximum allotment for Basic Food or WASHCAP.

Reasons Supporting Proposal: The changes proposed under this filing are to adopt standards that are approved by

the United States Department of Agriculture, Food and Nutrition Service based on increased utility costs. The increased utility allowance will partially offset the additional cost for heating and other utilities.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4116.

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 outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

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."

March 7, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-19-062, filed 9/16/05, effective 10/17/05)

**WAC 388-450-0195 Utility allowances for Basic Food programs.** (1) For Basic Food, "utilities" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water or sewer;
- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

| Assistance Unit (AU) Size | Utility Allowance                |
|---------------------------|----------------------------------|
| 1                         | \$ <del>((299))</del> <u>307</u> |
| 2                         | \$ <del>((308))</del> <u>316</u> |
| 3                         | \$ <del>((317))</del> <u>325</u> |
| 4                         | \$ <del>((326))</del> <u>334</u> |
| 5                         | \$ <del>((335))</del> <u>344</u> |
| 6 or more                 | \$ <del>((344))</del> <u>353</u> |

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred (~~(thirty-six)~~) forty-two dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~(thirty-eight)~~) thirty-nine dollars.

**WSR 06-07-076**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed March 13, 2006, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-018.

Title of Rule and Other Identifying Information: WAC 388-426-0005 Client complaints.

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, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on April 25, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 26, 2006.

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 [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., April 25, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by April 21, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes are to update the department's process related to addressing complaints about department decisions and violations of a person's civil rights. The proposal also updated contact information for complaints to the United States Department of Agriculture and the United States Department of Health and Human Services.

Reasons Supporting Proposal: The changes proposed under this filing will be to adopt updated civil rights guidance from the United States Department of Agriculture consistent with regulations for the food stamp program under Title 7 of the United States Code of Federal Regulations and guidance issued by the United States Department of Health and Human Services or the temporary assistance for needy families (TANF) program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 74.04.515, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 272.6.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4116.

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 outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

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."

March 7, 2006

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-03-050, filed 1/15/04, effective 2/15/04)

**WAC 388-426-0005 (~~(Client complaints.)~~) How do I make a complaint to the department? (~~((1) Clients who believe they have been discriminated against by the department for reason of race, color, creed, political affiliation, national origin, religion, age, gender, disability, or birthplace have the right to file a complaint. Clients can file discrimination complaints with the:~~**

~~(a) DSHS, Division of Access and Equal Opportunity, PO Box 45012, Olympia, WA, 98504;~~

~~(b) Administrator, Food and Nutrition Services, 3101 Park Center Drive, Alexandria, VA, 22302; or~~

~~(c) Secretary of Agriculture, U.S. Department of Agriculture, Washington D.C., 20250.~~

~~(2) Clients with a complaint about a department decision or action have the right to present their complaint, in writing, to a supervisor.~~

~~(a) Within ten days of the receipt of the complaint:~~

~~(i) A decision will be made on the client's complaint; and~~

~~(ii) The client will be sent written notice of the decision, including information about the right to further review by the local office administrator.~~

~~(b) Clients not satisfied with the decision of a supervisor have the right to present a written complaint to the local office administrator. Within ten days of the receipt of the complaint:~~

~~(i) A decision will be made on the complaint; and~~

~~(ii) The client will be sent written notice of the decision.~~

~~(c) Written notice of the administrator's decision concludes the complaint procedure.~~

~~(d) The filing of a written complaint does not prevent a client from requesting a fair hearing under chapter 388-02 WAC.~~

~~(e) Clients have the right to speak to a worker's supervisor or have a decision or action reviewed by the supervisor, whether or not a formal complaint has been filed)) If you do not agree with a decision we made or an action we took, you~~

can make a complaint. We address your concerns based on the nature of your complaint.

**Civil Rights:**

(1) We will not discriminate based on your race, color, national origin, sex, age, disability, religion, or political beliefs. This agrees with:

(a) Federal law and policy of the United States Department of Agriculture (USDA) and the United States Department

of Health and Human Services (HHS) that ban discrimination based on race, color, national origin, sex, age or disability; and

(b) The Food Stamp Act and USDA policy, which bans discrimination on religion or political beliefs.

(2) To file a complaint that we discriminated based on your race, color, national origin, sex, age, disability, religion, or political beliefs, contact USDA or HHS:

|  |  |
|--|--|
| <b>Write:</b>  |  |
| <u>USDA</u>  | <u>HHS</u>                               |
| <u>Director, Office of Civil Rights</u>                            | <u>Director, Office for Civil Rights</u> |
| <u>1400 Independence Avenue, S.W.</u>                              | <u>Room 506-F</u>                        |
| <u>Washington, D.C. 20250-9410</u>                                 | <u>200 Independence Avenue, S.W.</u>     |
|  | <u>Washington, D.C. 20201</u>            |
| <b>Or call:</b>  |  |
| <u>USDA</u>  | <u>HHS</u>                               |
| <u>(800) 795-3272 (voice); or</u>                                  | <u>(202) 619-0403 (voice); or</u>        |
| <u>(202) 720-6382 (TTY).</u>                                       | <u>(202) 619-3257 (TTY).</u>             |
| <u>USDA and HHS are equal opportunity providers and employers.</u> |  |

**Complaints about our decisions or actions:**

(3) If you do not agree with a decision we made or an action we took, you may use our complaint process:

(a) **Supervisor review:** You may give a supervisor a written complaint. We will:

(i) Make a decision about your written complaint within ten days of the date we get it; and

(ii) Send you a letter telling you what we decided and that you may have another review by the local office administrator if you ask for it.

(b) **Administrator review:** If you do not accept the decision you get from a supervisor, you may give the local office administrator a written complaint. We will:

(i) Make a decision about your written complaint within ten days of the date we get it; and

(ii) Send you a letter telling you what we decided.

(4) When we send you a letter with the administrator's decision, this ends the complaint process.

(5) If you file a written complaint, you may still ask for a fair hearing under chapter 388-02 WAC.

(6) You may always speak with your worker's supervisor or have them review your worker's decision even if you do not file a formal complaint.

Title of Rule and Other Identifying Information: The rule being amended is WAC 246-817-560 Acts that may be performed by dental hygienists under close supervision. The amendment adds "placement of antimicrobials" to the list of acts that may be performed by a dental hygienist under the close supervision of a licensed dentist. This rule is being amended as a result of 2003 legislation, chapter 257, Laws of 2003 (RCW 18.29.050). The legislation amended the dental hygiene statute to allow hygienists to place antimicrobials. WAC 246-817-560 Delegations of duties, is being amended to reflect the level of dental supervision required for the function.

Hearing Location(s): Department of Health, Point Plaza East, Room 152-153, 310 Israel Road S.E., Tumwater, WA 98501, on May 18, 2006, at 7:00 p.m.

Date of Intended Adoption: May 18, 2006.

Submit Written Comments to: Lisa Anderson, Program Manager, Dental Quality Assurance Commission, P.O. Box 47867, Olympia, WA 98504-7867, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by May 1, 2006.

Assistance for Persons with Disabilities: Contact Lisa Anderson, Program Manager, by May 1, 2006, TTY 211 or (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes the level of dental supervision required when a dental hygienist places antimicrobials. Although the statute was amended in the dental hygiene law, chapter 18.29 RCW, during the 2003 legislative session, the delegation of duties rules are located in the Dental Practice Act under WAC 246-817-500 series, and need to be updated to add this function. The anticipated effect is that the rule [will] establish the standards of practice and level of dental supervision required when dental hygienists place antimicrobial drugs.

Reasons Supporting Proposal: The delegations of duties rule needs to be updated to reflect the law to add the function,

**WSR 06-07-093**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Dental Quality Assurance Commission)  
 [Filed March 15, 2006, 2:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-09-055.

placement of antimicrobials, and to establish the level of dental supervision required for the placement of antimicrobials by dental hygienists.

Statutory Authority for Adoption: RCW 18.32.0365.

Statute Being Implemented: RCW 18.29.050(2).

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

Name of Proponent: Washington State Dental Hygiene Association, private; and the dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lisa Anderson, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4863.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required. This rule does not impose more than minor costs under RCW 19.85.030, but simply establishes the level of dental supervision required for dental hygienists to place antimicrobials.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lisa Anderson, Dental Quality Assurance Commission, P.O. Box 47867, Olympia, WA 98504-7867.

March 2, 2006

Joy N. King

Executive Director

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

**WAC 246-817-560 Acts that may be performed by licensed dental hygienists under close supervision.** In addition to the acts performed under WAC 246-817-520, a dentist may allow a dental hygienist licensed under the provisions of chapter 18.29 RCW to perform the following acts under the dentist's close supervision:

- (1) Perform soft-tissue curettage.
- (2) Give injections of a local anesthetic.
- (3) Place restorations into the cavity prepared by the dentist, and thereafter could carve, contour, and adjust contacts and occlusion of the restoration.
- (4) Administer nitrous oxide analgesia.
- (5) Place antimicrobials.

#### WSR 06-07-104

#### PROPOSED RULES

#### PUBLIC DISCLOSURE COMMISSION

[Filed March 16, 2006, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-061.

Title of Rule and Other Identifying Information: Title 390 WAC, rules implementing chapter 445, Laws of 2005 (ESSB 5034 Electioneering communications), including

independent expenditure reporting (WAC 390-16-060), and other related rules in Title 390 WAC.

Hearing Location(s): Public Disclosure Commission, 711 Capitol Way, Room 206, Olympia, WA 98504, on April 27, 2006, at 9:30 a.m.

Date of Intended Adoption: April 27, 2006.

Submit Written Comments to: Doug Ellis, Assistant Director, 711 Capitol Way, Room 206, Olympia, WA 98504, e-mail dellis@pdc.wa.gov, fax (206) 753-1112, by April 24, 2006.

Assistance for Persons with Disabilities: Contact Chip Beatty by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt new rules and amend existing rules to implement ESSB 5034 Electioneering communications legislation approved by the legislature and signed by the governor on May 13, 2005. The new rules and rule amendments will provide guidance to filers who engage in electioneering communications and independent expenditures.

Reasons Supporting Proposal: To comply with statutory provisions under chapter 445, Laws of 2005.

Statutory Authority for Adoption: RCW 42.17.370, [42.17].562(4).

Statute Being Implemented: RCW 42.17.561-[42.17].-575, [42.17].510, [42.17].020, and 42.17.640

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 new rules and rule amendments are consistent with the legislative intent to improve disclosure of campaign spending and to fully implement the statutory restrictions on the uses of political party's exempt funds (soft money).

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting: Vicki Rippie, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 753-1111; 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 these new rules and rule amendments impacts persons engaging in electioneering communications and independent expenditures. Small businesses are only affected if they engage in this election campaign activity.

A cost-benefit analysis is not required under RCW 34.05.328. The public disclosure commission (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 this rule adoption pursuant to subsection (5)(a)(i) of section 201, and, to date, the joint audit and review committee has not made section 201 application to this rule adoption.

March 16, 2006

Vicki Rippie

Executive Director

AMENDATORY SECTION (Amending WSR 96-09-015, filed 4/8/96, effective 5/9/96)

**WAC 390-05-210 Definition—Contribution.** (1) The term "contribution" as defined in RCW 42.17.020 shall be deemed to include, among other things, furnishing services or property or rights on a discriminatory basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution of goods or services is provided, it shall be reported at its fair market value~~(s)~~ per WAC 390-05-235 and, pursuant to RCW 42.17.640, the fair market value is the amount of the contribution to be allocated to the contributor in determining compliance with the contributor's contribution limit.

(2) **Duplicating political advertising.** The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

(3) **Consulting with a state, local or judicial candidate.** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or

(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's authorized committee or agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through ~~((or)),~~ in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ~~((current election cycle, (i) is or has been authorized to raise or spend over \$500 per election on behalf of the candidate, or (ii)))~~ twelve months preceding the expenditure, is or has been an officer of the candidate's authorized committee; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent.

(4) **Consulting with a caucus political committee.** An expenditure, that does not qualify as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent is a contribution to such caucus political committee.

An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent when:

(a) Any arrangement, coordination or direction by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that caucus political committee or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the caucus political committee's plans, projects or needs provided to the expending person by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus with a view toward having an expenditure made; or

(c) An expenditure is made by, through ~~((or)),~~ in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ~~((current election cycle, (i) is or has been authorized to raise or spend over \$500 per year on behalf of the caucus political committee, or (ii)))~~ twelve months preceding the expenditure, is or has been an officer of the caucus political committee or another political committee financed, controlled or operated by the caucus; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus.

(5) **Consulting with a bona fide political party.** An expenditure, that does not qualify as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party or its agent is a contribution to such bona fide political party. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party when:

(a) Any arrangement, coordination or direction by the bona fide political party, its agent or a political committee financed, controlled or operated by the party is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that bona fide political party or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the bona fide political party's plans, projects or needs provided to the expending person by the bona fide political party or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through ~~((or)),~~ in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ~~((current elec-~~

tion cycle, (i) is or has been authorized to raise or spend over \$2,500 per year in nonexempt funds on behalf of the bona fide political party, or (ii)) twelve months preceding the expenditure, is or has been an officer of the bona fide political party or a political committee financed, controlled or operated by the bona fide political party; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the bona fide political party, its agent or a political committee financed, controlled or operated by the bona fide political party.

(6) **Consulting with other political committees.** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee is a contribution to such political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee when:

(a) Any arrangement, coordination or direction by the political committee, its agent or another political committee financed, controlled or operated by the committee is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or prior to an expenditure being made by that person ~~((supporting))~~ benefiting that political committee; or

(b) An expenditure is made based on information about the political committee's plans, projects or needs provided to the expending person by the political committee or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through ~~((or)),~~ in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the ~~((current election cycle, (i) is or has been authorized to raise or spend over \$5,000 on behalf of the political committee or another political committee financed, controlled or operated by the committee, or (ii))~~ twelve months preceding the expenditure, is or has been an officer of the political committee or another political committee financed, controlled or operated by the committee; or

(d) An expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the political committee, its agent or another political committee financed, controlled or operated by the committee.

#### NEW SECTION

**WAC 390-05-500 Debate or forum.** "Debate or forum" means qualifying events under RCW 42.17.020 (21)(b) where candidates are invited based upon predefined objective criteria, including where only one candidate in an uncontested race participates.

#### NEW SECTION

**WAC 390-05-505 Electioneering communication exclusions.** (1) "Electioneering communication" does not include communications listed in RCW 42.17.020(21).

(2) "Electioneering communication" also does not include:

(a) Letters to the editor or comparable communications to news media described in RCW 42.17.020 (21)(c);

(b) Communications conveyed through web sites, e-mails, telephone calls, or in-person leaflet/pamphlet drops at street addresses; or

(c) Communications conveyed in a manner not specified in RCW 42.17.020(20).

#### NEW SECTION

**WAC 390-05-510 General treasury funds.** "General treasury funds" means a collective designation of all of the assets of an organization which furnish the means for defraying the necessary, usual, ordinary running and incidental expenses of an organization. General treasury funds are typically not derived from a special solicitation, effort, or receipt, but derive from regular, planned for, and ongoing revenue streams or sources.

#### NEW SECTION

**WAC 390-05-515 Member.** In determining whether a communication is to a "member" as that term is used in RCW 42.17.020 and 42.17.100, and for the purposes of RCW 42.17.105(8) and 42.17.640:

(1) The commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and whether it has formal organizing documents, membership criteria and services it provides its members.

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account such factors as whether the members affirmatively accept membership and the rights and obligations conferred on members by the organization.

(3) If a membership organization and its members satisfy the criteria regarding "membership associations" and "members" established by the Federal Election Commission (FEC) in 11 C.F.R. Sec. 100.134 (e)-(g), the commission will consider the organization and its members as qualifying for the exemption in RCW 42.17.020 (15)(b)(v) and (21)(g), unless the communication was not sent primarily to members. However, these FEC criteria are not the only indicators of legitimate membership organizations or valid members, a determination that will be made by the commission on a case-by-case basis as necessary.

(4) In determining whether an internal political communication is "primarily" limited to the members of an organization or political committee, the commission will consider

whether any distribution to nonmembers is incidental and isolated.

#### NEW SECTION

**WAC 390-05-520 Periodical.** "Periodical" means a publication on paper that is serial in nature and appears or is intended to appear indefinitely at regular or stated intervals.

#### NEW SECTION

**WAC 390-05-525 Public service announcement.** (1) "Public service announcement" means a communication meets all the following criteria. The communication is:

- (a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;
- (b) Not selling a product or service;
- (c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;
- (d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;
- (e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;
- (f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and
- (g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

#### NEW SECTION

**WAC 390-05-530 Funding sources for electioneering communications.** (1) "Source of funds" means a person who contributes anything of value for the communication, including a loan, gift, advance, payment, pledge, or personal or professional services for less than full consideration.

(2) Goods, services, property or rights other than money or its equivalent are deemed to have a monetary value equivalent to their fair market value.

(3) "Source of funds" does not include those things of value specified in RCW 42.17.020 (15)(b).

AMENDATORY SECTION (Amending WSR 02-12-007, filed 5/23/02, effective 6/23/02)

**WAC 390-16-060 Forms for report of independent expenditures and electioneering communications.** (1) The official form for reports of independent expenditures and electioneering communications as required by RCW 42.17.100 (~~and~~), 42.17.103 and 42.17.565 is designated "C-6," revised (~~(6/02)~~) 5/06. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504 and on-line at [www.pdc.wa.gov](http://www.pdc.wa.gov). Any paper attachments shall be on 8 1/2" x 11" white paper.

(2) The C-6 report may be filed electronically consistent with WAC 390-19-040 by using an electronic filing alternative provided or approved by the commission. C-6 reports of electioneering communications shall be filed electronically as provided in RCW 42.17.565.



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Form C6 6/02. This space for office use. POST RECEIVED

Use this form for: (check one)

- INDEPENDENT EXPENDITURES (Occurring at any time) — \$100 or more
INDEPENDENT EXPENDITURE ADS (Appearing within 21 Days of an Election) — \$1,000 or more

See instructions on Reverse

1. Name and address of person making expenditure: Name, Mailing Address, City / State / Zip Code

2. Candidate(s) or ballot proposition(s) supported or opposed. Candidate/Proposition Names, Office/District/Proposition Number, Party (If Partisan). Check Support or Oppose

Continued on attached sheet.

Table with 5 columns: Date Made, Date first Published/ Presented, Name and Address of Vendor or Recipient, Description of Expenditure, Amount or Value. Includes sub-section for Expenditures \$50 or less not itemized above.

Summary table with columns: Amount or Value, Total this report, Total independent expenditures made by filer during this election campaign.

Person responsible for making Independent Expenditure:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the above mentioned candidate, the candidate's authorized committee, or an agent of the candidate.

Signature, Printed name, Street address, City/State/Zip, Date Signed, Place signed (city and county)

\*RCW 9A.72.040 provides that: "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

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# INSTRUCTIONS – C6 REPORT Rev. 6/02

## WHO MUST REPORT:

- (1) Persons who make independent expenditures aggregating \$100 or more anytime during an election campaign in support of or opposition to a candidate or ballot proposition.
- (2) Persons sponsoring independent expenditure political ads valued at \$1,000 or more that are mailed or presented to the public within twenty-one days of a primary, general or special election.

**DO NOT** report monetary or in-kind contributions made directly to or in coordination with a candidate or political committee.

## WHEN AND WHERE TO REPORT:

When aggregate amount reaches:

|  |   |
|--|---|
| <b>Less than \$100</b>   | —No report is required  |
| <b>\$100 or more</b> (or value cannot be estimated)  | —Postmark within 5 days of making the expenditure.  |
| If additional expenditures are made:   | —10 <sup>th</sup> of month preceding election in which other reports are not required*<br>—21 days prior to election*<br>—7 days prior to election*<br>—10 <sup>th</sup> day of month after election* |
| <i>*Required only when expenditures have been made since last report was submitted.</i>  |   |
| Send <b>original to Public Disclosure Commission</b> . Send a <b>copy to the County Auditor</b> (county elections office) of the county of residence of the candidate supported or opposed. For ballot propositions, County Elections Officer of the county of residence of the person responsible for the independent expenditure. Persons making independent expenditures are advised to contact their City Clerk to learn if local filing is required by local ordinance. |   |

|   |  |
|---|--|
| <b>\$1,000 or more and ads are presented to the public within 21 days of an election</b>  | — <u>Deliver (electronic<sup>①</sup>, fax<sup>②</sup>, or paper format) to PDC within 24 hours</u> of, or on the first working day after, the date the advertisement was first published, mailed, or otherwise presented to the public.  |
|   | Additional independent expenditures <u>of any amount</u> following the expenditure listed on the initial filing must be reported within 24 hours of, or on the first working day after, the date the new advertisement is first published, mailed, or otherwise presented to the public. |
| <i>① Fill out and sign electronic filing signature card, fax a copy of the signature card to the PDC, complete and file the electronic C6 report. Mail the original signature card to PDC within 24 hours.</i>  |  |
| <i>② Fax a copy of the signed C6 report to the PDC and mail the original within 24 hours.</i>   |  |
| Send <b>original to Public Disclosure Commission</b> . County filing is <b>NOT</b> required for reports due within 24 hours. Persons making independent expenditures are advised to contact their City Clerk to learn if local filing is required by local ordinance. |  |

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|                           |
|---------------------------|
| Form<br><b>C6</b><br>5/06 |
|---------------------------|

Reporting Form for: (check one)

Instructions on Page 3

- INDEPENDENT EXPENDITURES (Occurring at any time) — \$100 or more
- INDEPENDENT EXPENDITURE ADS (Appearing within 21 days of an election) — \$1,000 or more
- ELECTIONEERING COMMUNICATIONS, Except Contributions (Appearing within 60 days of an election) — \$5,000 or more

|   |           |
|---|-----------|
| 1. Name and complete postal mailing address of sponsor: | E-mail    |
|   | Telephone |

2. Itemize expenditures of more than \$100 associated with the independent expenditure or electioneering communication.

| Date Made                                     | Date First Presented/ Mailed | Name and Address of Vendor or Recipient | Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad) | Amount or Value (*See Below) |
|---|------------------------------|---|---|------------------------------|
| Expenditures \$100 or less not itemized above |                              |   |   | \$                           |

|  |   |    |
|--|---|----|
| <b>Amount or Value</b>   | Total this report   | \$ |
| *If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed. | Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports. | \$ |

| 3. List of candidate(s) or ballot proposition(s) identified in the advertising. |                                  |       |   | Show portion of current expense attributable to each candidate or proposition | Show total C-6 expenses related to each candidate/ proposition during election campaign |
|---|----------------------------------|-------|---|---|---|
| Candidate/Proposition   | Office/District/ Proposition No. | Party | Check Support or Oppose                           |   |   |
|   |                                  |       | <input type="checkbox"/> <input type="checkbox"/> |   |   |
|   |                                  |       | <input type="checkbox"/> <input type="checkbox"/> |   |   |
|   |                                  |       | <input type="checkbox"/> <input type="checkbox"/> |   |   |
|   |                                  |       | <input type="checkbox"/> <input type="checkbox"/> |   |   |
|   |                                  |       | <input type="checkbox"/> <input type="checkbox"/> |   |   |
| Continued on attached sheet <input type="checkbox"/>                            |                                  |       |   |   |   |

**Filer Name:** \_\_\_\_\_

**4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:**

- a)  An individual using only personal funds.
- b)  An individual using personal funds and/or funds received from others.
- c)  A business, union, group, association, organization, or other person using only general treasury funds.
- d)  A business, union, group, association, organization, or other person using general treasury funds and/or funds received from others.
- e)  A political committee filing C-3 and C-4 reports. (RCW 42.17.040 - .090)
- f)  A political committee filing C-5 reports. (RCW 42.17.093)
- g)  Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

**5. Sources giving in excess of \$250 for the electioneering communication:**

| Date Received  | Source's Name, Address, City, State, Zip | For individuals, Employer's Name, City and State | Amount |
|--|--|--|--------|
|  |  |  | \$     |
|  |  | Occupation                                       |        |
|  |  |  | \$     |
|  |  | Occupation                                       |        |
|  |  |  | \$     |
|  |  | Occupation                                       |        |
|  |  |  | \$     |
|  |  | Occupation                                       |        |
|  |  |  | \$     |
|  |  | Occupation                                       |        |
|  |  | <b>Sub-Total</b>                                 |        |
| Continued on attached sheet <input type="checkbox"/> |  | <b>Amount from attached pages</b>                |        |
| <b>TOTAL FUNDS RECEIVED</b>                          |  |  |        |

| Sponsor of Independent Expenditure or Electioneering Communication  |   |                                |
|---|---|--------------------------------|
| I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17.020. I further certify that the above information is true, complete, and correct to the best of my knowledge. | Signature   | Printed Name                   |
|   | Street address  |                                |
|   | City/State/Zip  |                                |
|   | Date Signed   | Place Signed (city and county) |
|   | *RCW9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor." |                                |

NEW SECTION

**WAC 390-16-063 Additional information regarding C-6 report filing.** (1) A political committee reporting pursuant to RCW 42.17.065, 42.17.080 and 42.17.090 is exempt from providing on a C-6 form itemized information concerning its sources of funds giving in excess of two hundred fifty dollars for an electioneering communication, unless the committee received funds that were requested or designated for the communication.

(2) An out-of-state political committee shall report pursuant to RCW 42.17.565 if it sponsors an electioneering communication defined in RCW 42.17.020.

(3) The sponsor of an electioneering communication shall report pursuant to RCW 42.17.565 and commission rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17.020 or 42.17.100. Persons in compliance with this subsection are deemed in compliance with RCW 42.17.100 or 42.17.103.

(4) Any person making an expenditure that is reportable under RCW 42.17.200, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17.020 shall file pursuant to RCW 42.17.565 and commission rules regarding electioneering communications.

AMENDATORY SECTION (Amending WSR 04-12-054, filed 5/28/04, effective 6/28/04)

**WAC 390-16-207 In-kind contributions—Explanation and reporting.** (1) An in-kind contribution occurs when a person provides goods, services or anything of value, other than money or its equivalent, to a candidate or political committee free-of-charge or for less than fair market value, unless the item or service given is not a contribution according to RCW 42.17.020 ~~((14)(b))~~ or WAC 390-17-405.

(2) An in-kind contribution also occurs when a person makes an expenditure that

- Supports or opposes a candidate or a ballot measure,
- Meets the definition of contribution in RCW 42.17.020~~((14))~~ or WAC 390-05-210, and
- Is other than a monetary contribution made directly to a candidate or political committee.

For example, an in-kind contribution occurs when a person, after collaborating with a candidate or a candidate's agent, purchases space in a newspaper for political advertising supporting that candidate or opposing that candidate's opponent.

(3) An in-kind contribution also occurs when a person makes an electioneering communication that is a contribution as provided in RCW 42.17.570.

(4) According to RCW 42.17.095~~((8))~~ and WAC 390-16-238, a candidate may not use his or her campaign funds to make a contribution, including an in-kind contribution, to another candidate or a political committee. However, under RCW 42.17.095~~((3))~~, a candidate may use surplus funds as defined in RCW 42.17.020 to make a contribution to a political party or caucus political committee.

~~((4))~~ **(5) In-kind contributions to recipients who have limits.**

(a) If a state office candidate receives in-kind contributions from any person valued at more than \$25 in the aggregate

during an election cycle, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limit provided in RCW 42.17.640.

(b) If a bona fide political party or legislative caucus committee receives in-kind contributions from any person valued at more than \$25 in the aggregate during a calendar year, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limit provided in RCW 42.17.640.

(c) If a state official against whom recall charges have been filed or a political committee supporting the recall of a state official receives in-kind contributions from any person valued at more than \$25 in the aggregate during a recall campaign, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limits provided in RCW 42.17.640.

~~((5))~~ **(6) Political committees that make in-kind contributions.** A political committee that makes in-kind contributions to a candidate or political committee totaling more than \$50 in the aggregate during a reporting period must identify the recipient and the amount of the contribution as part of its C-4 report covering that period.

If the in-kind contribution is in the form of an expenditure that has been obligated, but not yet paid, the identity of the recipient candidate or political committee, along with a good faith estimate of the value of the contribution, must be disclosed in part 3 of Schedule B, in addition to the other information required by the form. When the expense is paid, the recipient's name and the amount of the contribution must be disclosed on Schedule A, along with the other information required by the form.

If a political committee provides equipment, property or anything else of value owned, leased or controlled by it to a candidate or political committee, the contributing committee must attach a statement to its C-4 report showing the name of the candidate or political committee to whom the contribution was made and the date, description and fair market value of the in-kind contribution.

~~((6))~~ **(7) Reporting by recipients.** Except as provided in subsection ~~((4))~~ **(5) of this section**, in-kind contributions from one source are not reportable by the recipient candidate or political committee until the aggregate value of all in-kind contributions received from that source during a reporting period is more than \$50. If this threshold is met, the in-kind contributions must be reported in part 1 of Schedule B to the C-4 report covering that reporting period.

~~((7))~~ **(8) Valuing in-kind contributions.**

(a) For purposes of determining the value of goods or services provided as in-kind contributions, refer to WAC 390-05-235, Definition—Fair market value.

(b) If an expenditure that constitutes an in-kind contribution is made, the value of the in-kind contribution to a particular candidate or political committee is the portion of the expense that benefits the candidate or political committee.

~~((8))~~ **(9) Application of RCW 42.17.105~~((8))~~—Last-minute contributions.**

(a) If an expenditure that constitutes an in-kind contribution is made no later than twenty-two days before a general election and written notice of the in-kind contribution is in

the possession of the recipient candidate committee or political committee twenty-two or more days before that general election, the contribution is not subject to the respective \$5,000 or \$50,000 maximum amounts specified in RCW 42.17.105((8)).

(b) If an in-kind contribution is in the form of personal services donated to a campaign for the duration of the twenty-one days before a general election, and if written notice of the value of this donation is in the possession of the recipient candidate or political committee twenty-two or more days before the election, that in-kind contribution is not subject to the respective \$5,000 or \$50,000 maximum amounts specified in RCW 42.17.105((8)).

#### NEW SECTION

**WAC 390-16-307 Contributions by controlled entities.** (1) **Corporations.** Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch or department of a corporation that is participating in an election campaign or making contributions.

(2) A corporation is participating in an election campaign if it:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate prior to contributions being made by a subsidiary, branch or department of the corporation with respect to a candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a subsidiary, branch or department of the corporation; or

(e) Directly or indirectly collaborates or consults with its subsidiary, branch or department on matters relating to the support of or opposition to a candidate, including the amount of a contribution, when a contribution should be given, or what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(3) **Trade associations, labor unions, collective bargaining organizations.** Two or more entities are treated as a single entity if one of the two or more entities is a local unit or branch of a trade association, labor union or collective bargaining association that is participating in an election campaign or making contributions.

(4) A trade association, labor union or collective bargaining organization is participating in an election campaign if it:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate prior to contributions being made by a local unit or branch of the association, union or organization with respect to a candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution

being made by a local unit or branch of the association, union or organization; or

(e) Directly or indirectly collaborates or consults with its local unit or branch on matters relating to the support of or opposition to a candidate, including the amount of a contribution, when a contribution should be given, or what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

AMENDATORY SECTION (Amending WSR 04-12-056, filed 5/28/04, effective 6/28/04)

#### **WAC 390-17-030 Sample ballots and slate cards.** (1)

**Intent.** The commission finds that, under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW 42.17.640 (14)(a) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter 42.17 RCW and subject to the political advertising provisions of the law.

The purpose of this exemption from the contribution limits is to allow political parties and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements by undertaking any degree of significant campaigning on behalf of candidates.

(2) For purposes of RCW 42.17.020(21) and 42.17.640 (14)(a), "**sample ballots**" means slate cards, or other candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

(3) Sample ballots constitute political advertising for a slate or list of candidates and must be properly identified and otherwise in compliance with the ~~((political advertising))~~ provisions ~~((of RCW ((42.17.505)))~~ 42.17.510 through 42.17.550.

(4)(a) **A bona fide political party** may use contributions it receives pursuant to RCW 42.17.640(14) to produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(5) **Any person**, as defined by RCW 42.17.020, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

(6) **An in-state political committee**, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(7) **An out-of-state committee**, when disclosing expenditures for sample ballots on a C-5 report, is not required to allocate a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due no later than the 20th day of the month following the month in which the expenditure was made.

(8) If a **lobbyist or lobbyist employer** makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be allocated to individual candidates listed on the sample ballot.

(9) **The candidates listed on a sample ballot** are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

(10) **Qualifying criteria for sample ballots, slate cards and other candidate listings.** In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17.640(14), a sample ballot must satisfy **all** of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, Web sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments. On Web sites, electronic bulletin

boards or electronic billboards, the sample ballot must be a separate document.

AMENDATORY SECTION (Amending WSR 02-12-007, filed 5/23/02, effective 6/23/02)

**WAC 390-17-060 Exempt activities—Definitions, reporting.** (1)(a) "Exempt contributions" are contributions made to a political committee which are earmarked for exempt activities as described in RCW 42.17.640 (14)(a) and (b). Such contributions are required to be reported under RCW 42.17.090, are subject to the restrictions in RCW 42.17.105(8), but are not subject to the contribution limits in RCW 42.17.640. Any written solicitation for exempt contributions must be so designated. Suggested designations are "not for individual candidates" or "for exempt activities."

(b) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for voter registration, absentee ballot information, get-out-the-vote campaigns, sample ballots are presumed to be for the purpose of promoting individual candidates and are subject to the contribution limits in RCW 42.17.640.

(c) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for internal organization expenditures or fund-raising are presumed to be with direct association with individual candidates and are subject to the contribution limits in RCW 42.17.640.

(2) "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited and out of which only expenditures for exempt activities shall be made.

(3) "Exempt activities" are those activities referenced in RCW 42.17.640(14) as further clarified by subsections (4), (5), (6), and (7) of this section ~~((and by the Washington state supreme court's decision regarding issue advocacy in Washington State Republican Party v. Washington State Public Disclosure Commission et al., 141 Wn.2d 245, 4 P.3d 808 (2000)))~~. Only exempt activities are eligible for payment with exempt contributions.

(4)(a) Except as permitted by WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 (14)(a) that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.

(b) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.

(5) Activities referenced in RCW 42.17.640 (14)(a) that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message.

(6)(a) "Internal organization expenditures" referenced in RCW 42.17.640 (14)(b) are expenditures for organization purposes, including legal and accounting services, rental and

purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organization's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.

(b) "Fund-raising expenditures" referenced in RCW 42.17.640 (14)(b) are expenditures for fund-raising purposes, including facilities for fund-raisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to subsections (a) and (b) above are made in direct association with individual candidates, they shall not be paid with exempt contributions.

(7) For purposes of RCW 42.17.640 (14)(a) and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.

#### NEW SECTION

**WAC 390-17-410 Electioneering communications may constitute contributions and be subject to limit.** (1) Electioneering communications are contributions when they satisfy the definition of contribution in RCW 42.17.020(15) or 42.17.570.

(2) Contributions are subject to all applicable provisions of chapter 42.17 RCW and Title 390 WAC, including RCW 42.17.105(8) and 42.17.640.

AMENDATORY SECTION (Amending WSR 03-12-034, filed 5/29/03, effective 6/29/03)

**WAC 390-18-010 Advertising, political advertising, ~~(— Identification of sponsor), electioneering communications, and independent expenditures.~~** (1) For the purposes of chapter 42.17 RCW (~~42.17.510~~) and (~~this rule, "sponsor" means the candidate, political committee or other person paying for the advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor~~) Title 390 WAC:

(a) "Sponsor of an electioneering communication, independent expenditure or political advertising" is defined in RCW 42.17.020.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, electioneering communications, or independent expenditures that are for political advertising and/or electioneering communications subject to the provisions of chapter 42.17 RCW and as defined in RCW 42.17.020 or 42.17.100.

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, (~~it is unnecessary to include that contributor's name as~~) that person is not deemed a sponsor provided the contribution is

reported in accordance with applicable provisions of chapter 42.17 RCW and Title 390 WAC.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). However, printed advertising undertaken as an independent expenditure (~~as defined in RCW 42.17.020~~) or electioneering communication shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and provide this information in an area set apart from any other printed matter. Political committees (~~(— other than a bona fide political party,)~~) that sponsor independent expenditure or electioneering communication printed advertising are required to provide the "Top Five Contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

(5)(a) (~~Political~~) Advertising consisting of more than one page but intended to be presented as a single item (i.e. 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) (~~Political~~) Advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or (~~television political~~) television advertising shall be clearly spoken or identified as required in RCW 42.17.510. (~~However,~~)

(a) All radio, telephone and television (~~political~~) advertising undertaken as an independent expenditure as defined in RCW 42.17.020 shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(b) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17.020 shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(c) Political committees (~~(— other than a bona fide political party,)~~) that sponsor independent expenditure or electioneering communication radio and television (~~political~~) advertising are required to clearly speak or otherwise identify the "Top Five Contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

AMENDATORY SECTION (Amending WSR 99-12-067, filed 5/27/99, effective 6/27/99)

**WAC 390-18-020 (~~Political~~) Advertising—Political party identification.** (1) According to RCW 42.17.510, sponsors of (~~political~~) advertising supporting or opposing a



candidate ~~((for partisan office))~~ who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(2) According to RCW 42.17.510, sponsors of electioneering communications identifying a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(3) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors ~~((of political advertising))~~ to identify a candidate's political party.

AMENDATORY SECTION (Amending WSR 02-12-007, filed 5/23/02, effective 6/23/02)

**WAC 390-18-025 ((Political)) Advertising—Identification of "top five contributors."** (1) For purposes of RCW 42.17.510 (2), ~~(4) and (5)~~, "top five contributors" means the five persons, as defined in RCW 42.17.020, giving the largest aggregate contributions exceeding seven hundred dollars during the twelve-month period preceding the date on which the ~~((political))~~ advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding seven hundred dollars and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

(2)(a) For independent expenditure advertisements, the "top five contributors" identification requirement of RCW 42.17.510 applies to all political committees that make independent expenditures, including continuing political committees~~((, required to register and report under))~~ and out-of-state political committees subject to chapter 42.17 RCW other than a bona fide political party committee.

(b) For electioneering communications, the "top five contributors" identification requirement of RCW 42.17.510 applies to all political committees that make electioneering communications including continuing political committees and out-of-state political committees subject to chapter 42.17 RCW.

(3) If a political committee keeps records necessary to track contributions according to the use intended by contributors, and the committee subsequently makes independent expenditures for advertisements supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose, as opposed to identifying the overall top five contributors to the committee as is otherwise required by RCW 42.17.510~~((2))~~ and this section.

However, a contributor's contributions earmarked for independent expenditures supporting or opposing a specific candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used ~~((to support or oppose))~~ with respect to a

different candidate or slate of candidates without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure.

#### NEW SECTION

**WAC 390-18-027 Medium that does not include a visual image.** (1) For electioneering communications identifying sponsors and top five contributors as required by RCW 42.17.510 a "medium that does not include a visual image" means radio.

(2) For independent expenditures identifying sponsors and top five contributors as required by RCW 42.17.510 a "medium that does not include a visual image" means radio or telephone transmissions.

AMENDATORY SECTION (Amending WSR 04-12-057, filed 5/28/04, effective 6/28/04)

**WAC 390-18-030 ((Political)) Advertising—Exemptions from identification.** ~~((+))~~ Pursuant to RCW 42.17.510~~((4))~~ (6), the following forms of ~~((political))~~ advertising need not include the sponsor's name and address, the "notice to voters" or the "top five contributors" information as otherwise required by RCW 42.17.510 (1) and (2) because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers—size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less, noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, ~~((political tickers,))~~ pot holders, reader boards where message is affixed in moveable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers—size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local voters pamphlets published pursuant to law, tickets to fund raisers, water towers, whistles, yard signs—size 4' x 8' or smaller, yo-yos, and all other similar items.

~~((2) Political tickers are text messages that scroll across a television screen during scheduled programming.))~~

AMENDATORY SECTION (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

**WAC 390-18-040 Use of the terms "reelect," "retain," and "return."** (1) The term "reelect" when used in ~~((a political))~~ an advertisement represents that the candidate is presently holding the office being sought, was elected to it, and is seeking another term in that same office in the same district or political subdivision.

(2) The term "reelect" may be used in ~~((a political))~~ an advertisement by a nonincumbent candidate who has previously been elected to the office being sought provided that

in the same advertisement it is clearly stated that the candidate is not the incumbent.

(3) The term "retain" in ~~((a-political))~~ an advertisement represents that the candidate is the incumbent but does not imply that the candidate attained the office by election.

(4) The term "return" in ~~((a-political))~~ an advertisement represents that the candidate now holds, or has previously held, the office being sought, but does not represent that the office was attained by election.

(5) Whenever the boundaries of a district or political subdivision are officially altered through redistricting, consolidation or other official procedures, the candidate holding an office in the affected district or political subdivision may, in ~~((a-political))~~ an advertisement, use the term "reelect," "retain" or "return," as appropriate, if the candidate is seeking the same office in the revised district or political subdivision.

(6) Stating the office sought (e.g., "mayor") by a candidate in a political advertisement without expressly stating the candidate is seeking election to the office (e.g., "for mayor"; "Elect Smith Mayor") represents that the candidate presently holds that office.

AMENDATORY SECTION (Amending WSR 99-12-068, filed 5/27/99, effective 6/27/99)

**WAC 390-18-050 Commercial advertisers—Public inspection of records.** (1) Pursuant to RCW 42.17.110, any person, without reference to or permission from the public disclosure commission, is entitled to inspect the ~~((political))~~ advertising records of a commercial advertiser.

(2) No commercial advertiser shall be required to make available for public inspection information regarding ~~((political))~~ advertising prior to the time when the advertisement has initially received public distribution or broadcast.

(3) The documents and books of account that must be maintained open for public inspection pursuant to RCW 42.17.110(1) are:

(a) The name of the candidate or ballot measure supported or opposed;

(b) The name and address of the person who sponsored the advertising;

(c) The total cost of the advertising, how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

(4) In addition to subsection (3) of this section and pursuant to RCW 42.17.110 (1)(b), the documents and books of account open for public inspection must include a description of the major work components or tasks, as specified in (a) through (f) of this subsection, that were required to provide the advertising services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Time and number of spot advertisements. If the broadcaster provides additional ser-

vices such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

#### NEW SECTION

**WAC 390-18-060 Electioneering communication reporting threshold and sponsors.** (1) A "sponsor of an electioneering communication" is defined in RCW 42.17.020 (43).

(2) For the purposes of RCW 42.17.020 (20)(c), an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

(a) Identifies the same candidate in one or more communications satisfying RCW 42.17.020 (20)(a) and (b) or commission rules;

(b) Is made by the same sponsor of one or more of the communications;

(c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market or aggregate value of \$5,000 or more; and

(d) Is not a communication exempted from reporting under RCW 42.17.020(21) or commission rule.

(3) When the electioneering communication or communications - including radio or television transmissions, mailings, billboards, newspapers and/or periodicals - reach the \$5,000 threshold, the sponsor shall electronically report to the commission as required by RCW 42.17.565 within twenty-four hours of, or on the first working day after, the date the electioneering communication is first broadcast, transmitted, erected, distributed, or otherwise published.

(4) Once the \$5,000 threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW 42.17.565 and this rule.

(5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the \$5,000 threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.

(6) Consistent with WAC 390-16-060 and the requirements of PDC Form C-6, a prorated portion of independent expenditure and electioneering communications expenditures shall be attributed to each candidate or ballot proposi-

tion identified in the advertisement or communication. That proration shall be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

(7) **Examples.** The following is a nonexclusive list of examples of reportable activities for electioneering communications:

(a) **Single sponsor, single ad.** Sponsor A pays for an electioneering communication identifying Candidate 1 and the communication has a fair market value of \$5,000 or more. The electioneering communication is reportable by Sponsor A.

(b) **Single sponsor, multiple ads.** Sponsor A pays for three electioneering communications identifying Candidate 1, and the communications have an aggregate fair market value of \$5,000 (\$1,000 for the first, \$2,000 for the second, and \$2,000 for the third). All three communications are reportable within 24 hours of the third communication being first broadcast, transmitted, erected, distributed or otherwise published. All subsequent electioneering communications by Sponsor A identifying Candidate 1 are reportable.

(c) **Multiple sponsors, multiple ads.** Sponsors A and B jointly agree to pay for three electioneering communications identifying Candidate 1, and the communications have a total fair market value of \$5,000 (\$1,000 for the first, \$2,000 for the second, and \$2,000 for the third). All three communications become reportable when the third communication is sponsored. All subsequent electioneering communications by Sponsors A and B identifying Candidate 1 are reportable.

(d) **Multiple sponsors, multiple ads.** Sponsors A and B have separately paid for an electioneering communication identifying Candidate 1, and each communication has a fair market value of \$4,000. Those communications are not reportable because they have not yet reached the \$5,000 threshold. However, Sponsors A and B then jointly agree to pay for another electioneering communication identifying Candidate 1, and the communication has a fair market value of \$1,000. Now the \$5,000 reporting threshold has been reached and within 24 hours of the jointly sponsored communication being published, that communication and prior separately sponsored communications identifying Candidate 1 are reportable by Sponsors A and B. All subsequent electioneering communications by Sponsors A and B identifying Candidate 1 are reportable.

(e) **Multiple sponsors, multiple ads.** Sponsors A, B and C jointly plan and agree to pay for a series of electioneering communications identifying Candidate 1. They decide that Sponsor A will pay for the first ad, Sponsor B will pay for the second ad, and Sponsor C will pay for the third ad. Each ad has a fair market value of \$4,999. Because A, B and C are acting in concert as one sponsoring entity for the electioneering communications, upon the publishing of the second ad the \$5,000 threshold is met and A, B and C have an obligation to report the electioneering communications within 24 hours. Likewise, A, B and C have an obligation to report the third electioneering communication within 24 hours of its publication. All subsequent electioneering communications by Sponsors A, B and/or C identifying Candidate 1 are reportable.

(f) **Prorating an ad.** If 80% of one or more electioneering communications with a fair market value of \$7,000 relates to a message or messages about Candidate 1, and the remaining 20% relates equally to two ballot propositions, the communication is reportable by the sponsor or sponsors because the \$5,000 threshold has been met. All subsequent electioneering communications identifying Candidate 1 are reportable.

## WSR 06-07-112

### PROPOSED RULES

### GAMBLING COMMISSION

[Filed March 17, 2006, 10:00 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-129.

Title of Rule and Other Identifying Information: New section WAC 230-12-337 Manufacturers and distributors transporting and displaying gambling devices—Trade shows and conventions.

Hearing Location(s): Marcus Whitman Hotel, 6 West Rose, Walla Walla, WA 99362, (509) 525-2200, on June 16, 2006, at 1:30 p.m.

Date of Intended Adoption: June 16, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov), fax (360) 486-3625, by June 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by June 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule would allow licensed manufacturers and distributors to transport, display and take orders for authorized gambling devices at trade shows and conventions. The target audience of the trade show or convention must be operators of authorized gambling activities.

Statutory Authority for Adoption: RCW 9.46.070.

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: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

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 does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

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.

March 16, 2006  
Susan Arland  
Rules Coordinator

#### NEW SECTION

**WAC 230-12-337 Manufacturers and distributors transporting and displaying gambling devices—Trade shows and conventions.** A manufacturer or distributor licensed by the Washington state gambling commission to sell gambling devices authorized by state or federal law may transport, display and accept orders for the sale or lease of those devices at trade shows and conventions, under the following restrictions:

- (1) The target audience of the trade show or convention must be operators of authorized gambling activities in Washington state;
- (2) The commission must be notified in writing of the nature, date, and location ten days before the trade show or convention; and
- (3) All gambling devices purchased or leased at the trade show or convention must be delivered to the operator's authorized location.

**WSR 06-07-115**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**  
[Filed March 17, 2006, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-04-091.

Title of Rule and Other Identifying Information: Amending section WAC 230-12-050 Extension of credit, loans, or gifts prohibited—Limited exception.

Hearing Location(s): Marcus Whitman Hotel, 6 West Rose, Walla Walla, WA 99362, (509) 525-2200, on June 16, 2006, at 1:30 p.m.

Date of Intended Adoption: June 16, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by June 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by June 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, cash, checks and electronic point-of-sale bank transfers (debit cards) are authorized forms of payment to participate in gambling activities. Gift certificates and gift cards are prepaid and are treated the same as cash. This amendment would include gift cards and gift certificates as authorized forms of payment to participate in gambling activities.

Statutory Authority for Adoption: RCW 9.46.070.

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: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

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 does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

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.

March 18 [16], 2006  
Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending Order 425, filed 10/13/03, effective 1/1/04)

**WAC 230-12-050 Extension of credit, loans, or gifts prohibited—Limited exception.** No licensee, member or employee thereof shall extend credit, make a loan, or grant a gift to any person playing in an authorized gambling activity, or which enables a person to play in an authorized gambling activity.

**Gifts prohibited—Exceptions.**

(1) Gifts are items licensees give away to its customers and are not connected to gambling activities regulated by the commission. Licensees shall not offer gifts in conjunction with gambling activities, with the following exceptions:

(a) Promotions are allowed as authorized by WAC 230-12-045;

(b) Transportation services provided to and from gambling activities;

(c) Free or discounted food, drink or merchandise may be provided under the following conditions:

(i) The actual cost of any individual item may not exceed five hundred dollars;

(ii) The merchandise shall not be traded back to the licensee for cash or be used to further participate in an authorized gambling activity;

(d) For each individual gift with an actual cost over one hundred dollars, charitable and nonprofit organizations shall prepare and maintain a written record with the following information:

(i) How the recipients of the gifts were selected;

(ii) The number of gifts awarded; and

(iii) The total cost of each gift given.

**Credit and loans prohibited—Exceptions.**

(2) The consideration required to participate in the gambling activity shall be collected in full, by cash, check, ~~((or))~~ electronic point-of-sale bank transfer, gift certificate, or gift card, prior to participation, with the following exceptions:

**Punch boards/pull-tabs.**

(a) The consideration paid for the opportunity to play a punch board or pull-tab series may be collected immediately after the play is completed only when such consideration is ten dollars or less;

**Charitable/nonprofit organization's billing system for members.**

(b) When a bona fide charitable or bona fide nonprofit organization conducting any of the activities authorized by chapter 9.46 RCW or commission rules has a regular billing system for all of the activities of its members with such organization, such billing system may be utilized in connection with the playing of any of the activities authorized hereunder if:

(i) The playing of such activity is limited to regular members of such organization who have become regular members prior to the commencement of such activity and whose qualifications for membership were not dependent upon, or in any way related to, the playing of such activity; and

(ii) The director has given prior written consent to the use of such billing system in connection with the conduct of activities authorized under these rules.

**Raffle tickets purchased with credit cards.**

(c) Charitable or nonprofit organizations utilizing credit cards, issued by a state and/or federally regulated financial institution, for payment to participate in raffles.

**WSR 06-07-119****PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed March 20, 2006, 11:18 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 04-15-050.

Title of Rule and Other Identifying Information: Chapter 196-09 WAC, Board practices and procedures.

Hearing Location(s): La Quinta, Board Room, 1425 East 27th Street, Tacoma, WA 98421, on April 26, 2006, at 7:00 p.m.

Date of Intended Adoption: May 1, 2006.

Submit Written Comments to: George A. Twiss, Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by April 24, 2006.

Assistance for Persons with Disabilities: Contact Kim King by April 24, 2006, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To replace the current brief adjudicative proceedings portions of this chapter, so that the new sections of the brief adjudicative proceedings may be used in more circumstances.

Reasons Supporting Proposal: The new brief adjudicative proceedings processes will be standardized throughout the division and agency.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.235 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no fiscal impact on the licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no fiscal impact on the licensees.

March 15, 2006

George A. Twiss

Executive Director

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

**WAC 196-09-050 Brief adjudicative proceedings. (1)**

The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. ~~((Such proceedings may be held at the request of the applicant/registrant/board (petitioner) for the following purposes:))~~ Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapter 18.43 RCW, chapter 18.210 RCW, chapter 18.235 RCW, administrative rules in title 196 WAC or any statutes or rules that specifically govern the defined practices of engineering, land surveying and on-site wastewater treatment system designs. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

~~((1) To appeal a determination that an applicant for certification as an engineer-in-training or land surveyor-in-training does not meet the minimum certification requirements as provided in chapter 18.43 RCW and/or chapters 196-20 and 196-21 WAC; or~~

~~(2) To appeal a determination that a professional engineer or professional land surveyor applicant does not meet the minimum licensing requirements as provided in chapter 18.43 RCW and/or chapter 196-12 WAC (PE) and chapter 196-16 WAC (PLS); or))~~

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

(f) Whether a licensee has sufficient continuing education credits when the licensee submits a renewal application;

(g) Whether an applicant or licensee failed to cooperate in an investigation by the board

(h) Whether an application or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

(i) Whether an applicant or licensee has defaulted on educational loans;

(j) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

(k) Whether a person has engaged in false, deceptive or misleading advertising; or

(l) Whether a person has engaged in unlicensed practice.

~~((3) To determine whether a licensee requesting renewal or reinstatement has submitted all required information and has met the minimum criteria for renewal or reinstatement; or))~~

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

~~((4) To determine whether an individual, named in default of student loan payments under RCW 18.43.160, holds a certification or license issued under chapter 18.43 RCW.))~~

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**AMENDATORY SECTION** (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

**WAC 196-09-055 Records required for brief adjudicative proceeding.** The records for the brief adjudicative proceeding shall include:

~~(1) ((Applicants for certification/licensing: Original complete application with all attachments required by the board; all documents relied upon in reaching the determination of ineligibility; and all correspondence between the applicant and the board about the application or the appeal.)) -Renewal or reinstatement of license:~~

- All correspondence between the applicant and the board about the renewal or reinstatement;

- Copies of renewal notice(s) sent by the department of licensing to the licensee;

- All documents received by the board from or on behalf of the licensee relating to information, payments, or explanations that have been provided to the board.

~~(2) ((License renewal or reinstatement: Copy(ies) of original renewal notice(s) sent by the department of licensing to the licensee; all documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.)) Applicants for certification/licensing:~~

- Original complete application with all attachments as submitted by the applicant;

- Copies of all supplementary information related to application review by staff or board member;

- All documents relied upon in reaching the determination of ineligibility;

- All correspondence between the applicant and the board about the application or appeal.

~~(3) Default of student loan payments: ((Copy(ies) of notice(s) to the board showing the name and other identification information of the individual claimed to be in default on student loan payments; copies of identification information corresponding to the person(s) who is (are) certified/licensed by the board that relate to the identity of the individual in default; and all documents received by the board from or on behalf of the licensee relating to rebutting such identification.))~~

- Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;

- Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;

- All documents received by the board from or on behalf of the licensee relating to rebutting such identification;

- Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed student loan or service-conditional scholarship; or

- A written release, if any issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

~~(4) Determination of compliance with previously issued board order:~~

- The previously issued final order or agreement;

- All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

- All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

- All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**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 06-07-121**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed March 20, 2006, 4:07 p.m.]

The department of health would like to withdraw the following CR-102 for proposed rule making to increase the fee for new and renewal applications for midwives because it is no longer valid. Based on the supplemental budget passed during the 2006 legislative session, the department must decrease fees for new and renewal applications for midwives for the period of July 1, 2006, through June 30, 2007.

| WAC NUMBER  | WSR NUMBER | WSR DATE | SUBJECT                          |
|-------------|------------|----------|----------------------------------|
| 246-834-990 | 05-22-127  | 11/2/05  | Midwifery fees and renewal cycle |

If you have any questions, please contact Kendra Pitzler, program manager, at (360) 236-4723.

B. White  
 for Mary C. Selecky  
 Secretary

**WSR 06-07-131**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 (Board of Boiler Rules)  
 [Filed March 21, 2006, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-108.

Title of Rule and Other Identifying Information: Board of boiler rules—Substantive, chapter 296-104 WAC.

Hearing Location(s): Department of Labor and Industries, 950 Broadway, Suite 200, Tacoma, WA, on May 24, 2006, at 10:00 a.m.

Date of Intended Adoption: May 31, 2006.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by 5:00 p.m. on May 24, 2006.

Assistance for Persons with Disabilities: Contact Sally Elliott by May 1, 2006, [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov) or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules is proposing a 2.82% (rounded down to the nearest tenth of a dollar) general fee increase. The 2.82% rate is the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2006. The general fee increase is necessary to help offset inflation and to maintain the financial health and operational effectiveness of the program.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Statute Being Implemented: Chapter 70.79 RCW.

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

Name of Proponent: Board of boiler rules, governmental.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, Washington, (360) 902-5270; Implementation and Enforcement: Linda Williamson, Tumwater, Washington, (360) 902-5270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because of the exemption under RCW 34.05.328 (5)(b)(vi), since the changes in this rule making set or adjust fees.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared because of the exemption under RCW 34.05.328 (5)(b)(vi), since the changes in this rule making set or adjust fees.

March 21, 2006  
 Craig Hopkins, Chair  
 Board of Boiler Rules

**AMENDATORY SECTION** (Amending WSR 05-12-028, filed 5/24/05, effective 6/30/05)

**WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?** The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

|   |                          |                          |
|---|--------------------------|--------------------------|
| Heating boilers:  | Internal                 | External                 |
| Cast iron—All sizes   | \$(( <del>31.20</del> )) | \$(( <del>24.90</del> )) |
|   | <u>32.00</u>             | <u>25.60</u>             |
| All other boilers less than 500 sq. ft.                                       | \$(( <del>37.60</del> )) | \$(( <del>24.90</del> )) |
|   | <u>38.60</u>             | <u>25.60</u>             |
| 500 sq. ft. to 2500 sq. ft.   | \$(( <del>62.00</del> )) | \$(( <del>31.20</del> )) |
|   | <u>63.70</u>             | <u>32.00</u>             |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | \$(( <del>24.90</del> )) | \$(( <del>12.30</del> )) |
|   | <u>25.60</u>             | <u>12.60</u>             |
| Power boilers:  | Internal                 | External                 |
| Less than 100 sq. ft.   | \$(( <del>31.20</del> )) | \$(( <del>24.90</del> )) |
|   | <u>32.00</u>             | <u>25.60</u>             |
| 100 sq. ft. to less than 500 sq. ft.  | \$(( <del>37.60</del> )) | \$(( <del>24.90</del> )) |
|   | <u>38.60</u>             | <u>25.60</u>             |
| 500 sq. ft. to 2500 sq. ft.   | \$(( <del>62.00</del> )) | \$(( <del>31.20</del> )) |
|   | <u>63.70</u>             | <u>32.00</u>             |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | \$(( <del>24.90</del> )) | \$(( <del>12.30</del> )) |
|   | <u>25.60</u>             | <u>12.60</u>             |
| Pressure vessels:   |                          |                          |
| Automatic utility hot water supply heaters per RCW 70.79.090                  |                          | \$(( <del>5.90</del> ))  |
|   |                          | <u>6.00</u>              |

All other pressure vessels:  
 Square feet shall be determined by multiplying the length of the shell by its diameter.

|  | Internal                             | External                             |
|--|--------------------------------------|--------------------------------------|
| Less than 15 sq. ft.                                   | <del>\$(24.90)</del><br><u>25.60</u> | <del>\$(18.60)</del><br><u>19.10</u> |
| 15 sq. ft. to less than 50 sq. ft.                     | <del>\$(37.00)</del><br><u>38.00</u> | <del>\$(18.60)</del><br><u>19.10</u> |
| 50 sq. ft. to 100 sq. ft.                              | <del>\$(43.00)</del><br><u>44.20</u> | <del>\$(24.90)</del><br><u>25.60</u> |
| For each additional 100 sq. ft. or any portion thereof | <del>\$(43.00)</del><br><u>44.20</u> | <del>\$(12.30)</del><br><u>12.60</u> |

Certificate of inspection fees: For objects inspected, the certificate of inspection fee is ~~\$(18.60)~~ 19.10 per object.

Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee) \$50.00

Nonnuclear shop inspections, field construction inspections, and special inspection services:

|   |                                      |
|---|--------------------------------------|
| For each hour or part of an hour up to 8 hours        | <del>\$(37.60)</del><br><u>38.60</u> |
| For each hour or part of an hour in excess of 8 hours | <del>\$(56.20)</del><br><u>57.70</u> |

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

|   |                                      |
|---|--------------------------------------|
| For each hour or part of an hour up to 8 hours        | <del>\$(56.20)</del><br><u>57.70</u> |
| For each hour or part of an hour in excess of 8 hours | <del>\$(88.20)</del><br><u>90.60</u> |

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

|   |                                      |
|---|--------------------------------------|
| For each hour or part of an hour up to 8 hours        | <del>\$(37.60)</del><br><u>38.60</u> |
| For each hour or part of an hour in excess of 8 hours | <del>\$(56.20)</del><br><u>57.70</u> |

When insurance company is authorized inspection agency:

|   |                                      |
|---|--------------------------------------|
| For each hour or part of an hour up to 8 hours        | <del>\$(56.20)</del><br><u>57.70</u> |
| For each hour or part of an hour in excess of 8 hours | <del>\$(87.70)</del><br><u>90.10</u> |

Examination fee: A fee of ~~\$(69.40)~~ 71.30 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: An initial fee of \$25 and an annual renewal fee of \$10 along with an annual work card fee of \$15.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Washington state specials: For each vessel to be considered by the board for a Washington state special certificate, a fee of ~~\$(348.20)~~ 358.00 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

**WSR 06-07-135**

**WITHDRAWAL OF PROPOSED RULES  
 HORSE RACING COMMISSION**

[Filed March 21, 2006, 11:05 a.m.]

The Washington horse racing commission (WHRC) would like to withdraw our CR-102 proposed rule making to chapter 260-200 [260-20] WAC, WSR 06-05-075. The WHRC is not yet ready to conduct its adoption hearing on this matter.

If you have any questions you may contact Robert J. Lopez at (360) 459-6462 or via e-mail at rlopez@whrc.state.wa.us.

R. J. Lopez  
 Administrative Services Manager

**WSR 06-07-143**

**PROPOSED RULES  
 FOREST PRACTICES BOARD**

[Filed March 21, 2006, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-172.

Title of Rule and Other Identifying Information: Amend Title 222 WAC, Forest practices rules, related to northern spotted owl protection.

Hearing Location(s): Longview, Red Lion Hotel and Conference Center, on May 25, 2006, at 2 p.m.; in Forks, Department of Natural Resources Olympic Region Office, on June 1, 2006, at 2 p.m.; in Yakima, Red Lion City Center Hotel, on June 6, 2006, at 2 p.m.; in Mt. Vernon, Best Western CottonTree Convention Center, on June 8, 2006, at 2 p.m.

Date of Intended Adoption: August 9, 2006.



Submit Written Comments to: Patricia Anderson, Forest Practices Board, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@wadnr.gov, fax (360) 902-1428, by 5 p.m. on June 9, 2006.

Assistance for Persons with Disabilities: Contact Forest Practices Division at (360) 902-1400, by May 15, 2006, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In light of northern spotted owl population declines and reductions in the amount of habitat in areas intended to provide conservation, the forest practices board proposes to amend WAC 222-10-041 and 222-16-010.

- The proposed amendment to WAC 222-10-041 (4)(b) would discontinue a provision that has allowed a landowner to, when calculating the amount of habitat remaining within a median home range circle, count habitat that has been harvested under a habitat conservation plan. This affects mitigation considerations in SEPA analysis, potential reduction in timber harvest and, ultimately, increased protection for the northern spotted owl.
- The proposed amendment to the definition of "northern spotted owl site center" in WAC 222-16-010 would ensure that no spotted owl site center will be decertified according to U.S. Fish and Wildlife protocol, until after June 30, 2007. This is to allow time for federal and state recovery planning to indicate longer-term solutions.

Reasons Supporting Proposal: Since the forest practices board adopted rules to protect the habitat of the northern spotted owl in 1996, the amount of suitable habitat within spotted owl special emphasis areas and outside areas that are being managed under the aegis of habitat conservation plans or similar agreements has declined by an average of 16%. Furthermore, fewer plans to conserve northern spotted owl habitat at a landscape level have been developed than was anticipated when the northern spotted owl rules were adopted. With few landscape-level plans, the forest practices rules continue to rely heavily on the regulation of timber harvest at individual spotted owl sites to provide habitat conservation. Therefore, rule changes are proposed to address this concern.

Statutory Authority for Adoption: RCW 76.09.040.

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: This permanent rule proposal, if adopted, would replace an emergency rule adopted for the same purpose under WSR 05-24-038.

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Gretchen Robinson, 1111 Washington Street S.E., Olympia, (360) 902-1705; Implementation: Jed Herman, 1111 Washington Street S.E., Olympia, (360) 902-1684; and Enforcement: Lenny Young, 1111 Washington Street S.E., Olympia, (360) 902-1744.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**OBJECTIVES:** The forest practices board adopted an emergency rule affecting northern spotted owl conservation at its November 9, 2005, meeting. The rule became effective on November 30, 2005. The board now proposes to make this rule permanent. The objectives of this economic analysis are to determine whether the benefits of the proposed rules exceed the costs, and whether the compliance costs of the proposed rules will disproportionately affect the state's small businesses.

The Administrative Procedure Act (chapter 34.05 RCW)<sup>1</sup> requires completion of a cost-benefit analysis (CBA) prior to rule adoption that demonstrates that probable benefits of the proposal exceed its probable costs and that it is the most cost-effective means of achieving the goal of the rule change. A small business economic impact statement (SBEIS) is required by the Regulatory Fairness Act (chapter 19.85 RCW)<sup>2</sup> to consider the impacts of state administrative rules on small businesses, defined as those with fifty or fewer employees. An SBEIS compares the costs of compliance for small businesses with the cost of compliance for the 10% of businesses that are the largest businesses required to comply with the proposed rules.

This economic analysis combines the SBEIS and the CBA and complies with the legislative requirements for these analyses as part of the rule-making process.

**HISTORICAL CONTEXT:** The forest practices board adopted rules on May 22, 1996, to protect northern spotted owl habitat. Developing and adopting this rule took place over several years and involved extensive public review and comments. The rules:

- Identify "critical wildlife habitat" (state) for the northern spotted owl. Forest practices applications proposed within these areas would be Class IV-Special, and would require additional environmental review under SEPA (State Environmental Policy Act). The rules do not prohibit harvesting.
- Provide SEPA guidance to DNR for threatened and endangered species, and specific SEPA guidance for the northern spotted owl.
- Delineate ten SOSEAs ("spotted owl special emphasis areas") where critical wildlife habitat (state) is designated within circles around owl site centers (owl circles). Habitat goals (functions) are identified on maps for each SOSEA.
- Require SEPA review for the seventy acres of habitat around owl site centers outside SOSEAs. This applies during nesting season only, from March 1 to August 31.
- Provide a small parcel exemption from SEPA for landowners who own less than five hundred acres in a SOSEA, if their proposed forest practice is not within 0.7 mile of a site center.
- Include two landscape planning processes: A landowner option plan (LOP) for landowners currently impacted by owls, and a cooperative habitat enhancement agreement (CHEA) for those not currently impacted by owls.

- Identify certain restrictions against disturbance around owl site centers inside SOSEAs during nesting season.

**PROPOSED RULES SUMMARY:** The proposal affects WAC 222-10-041(4) and 222-16-010 (definition of northern spotted owl site center") as follows:

1. The definition of northern spotted owl site center in WAC 222-16-010 is amended to create a temporary moratorium on the practice of "decertifying" status 1, 2 and 3 spotted owl sites. The moratorium will be in place until June 30, 2007. Decertifications recorded by the Washington department of fish and wildlife before November 1, 2005, are not subject to this moratorium.

2. The last paragraph in WAC 222-10-041(4) is deleted. With the deletion of this paragraph, the determination of suitable spotted owl habitat acreage within a SOSEA does not include lands harvested under a DNR determination as described in WAC 222-10-041(6) or a habitat conservation plan (HCP) or other approved plan as listed in WAC 222-16-080 (1)(h)(iv) and (6). For simplification, we are calling this provision "virtual habitat."

In practice, the decertification process follows the survey protocol endorsed by the United States Fish and Wildlife Service for spotted owl sites that are no longer occupied. The protocol states that "if no responses have been obtained from a historical site after three years of survey (using established guidelines), the site may be considered unoccupied, barring other evidence to the contrary." Unoccupied sites are changed to "status 5" and are not subject to forest practices rules pertaining to northern spotted owls.

**ECONOMIC ANALYSIS:** This economic analysis is in response to:

- The Administrative Procedure Act (APA), which requires agencies to assess whether probable benefits of a proposed new rule exceed its probable costs and whether the proposed rule change is the most cost-effective means of achieving the goal of the rule change; and
- The Regulatory Fairness Act (RFA), which requires that an SBEIS be prepared for proposed rules that will impose more than minor costs on businesses.

To comply with the APA and RFA this analysis identifies potentially affected industries, defines small and large businesses and determines if there is a disproportionate economic impact on small businesses, in which case the RFA requires that the cost imposed by the rule on small businesses be reduced where legal and feasible to meet the rule's objective. If steps are not taken to reduce the costs on small businesses, the agency must provide reasonable justification.

The proposed rules amend existing forest practices rules (Title 222 WAC). This analysis calculates benefits and costs and their effects on small businesses using the provisions of the forest practices rules in effect prior to the emergency rule making as the base case. The moratorium on decertification affects forestland identified as habitat within owl site centers (circles) and within SOSEA boundaries, excluding forestland that is in an HCP, owned by the federal government, or covered by a landowner option plan. Portions of a given circle that also fall within one or more other status 1, 2 or 3 circles are not considered decertified. For small forest landowners (owning less than five hundred acres in a SOSEA) the effects

of the proposed rules are limited to habitat within the inner 0.7-mile circle.

We were not able to identify affected habitat for the virtual habitat provision due to time and information constraints. Instead, we have included a case analysis of a relevant spotted owl circle to illustrate the effects of this provision. Methodology is discussed below.

**Potentially Affected Industries:** The rule-complying community affected by the proposal is businesses that own or control the cutting rights on forestland or those with the right to dispose of the timber.

**Small Businesses Versus Large Businesses:** The RFA defines a "small business" as one with fifty or fewer employees. Ownership acreage is generally a more appropriate metric for characterizing small businesses in the timber industry. Small businesses are identified in this economic analysis as those subject to the small parcel northern spotted owl exception provision in the rule, which states that: "Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to five hundred acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical habitat (state) for northern spotted owls." All other private landowners are categorized as "large businesses" for purposes of this analysis.

**Benefits and Costs Included in the Analysis:** To ensure compatibility between cost and benefit measurements, they are calculated on a per-acre basis, and are limited to direct costs and benefits. The costs of the rule change are measured as the potential loss of timber revenue, based on an estimate of the habitat acreage affected by the rule making. Benefits are defined as the value of protecting the habitat, based on the findings of a 1993 study done in Oregon that estimated the value to state residents of protecting northern spotted owl habitat. This was the best information available to us, and we use it with the caveat that there are uncertainties regarding the application of it to this analysis. Methodology is further discussed below.

**Compliance Cost for Businesses:** Compliance costs for small businesses, defined as landowners with less than five hundred acres in a given SOSEA, are less than for large businesses in the aggregate, because the small parcel northern spotted owl exception provision in the rule limits the effects of the rule change to habitat within the inner 0.7-mile site circle.

**Involvement of Concerned Stakeholders:** Before finalizing recommendations to the forest practices board, DNR executive director of regulatory programs, Pat McElroy and DNR forest practices division manager, Lenny Young briefed Sherry Fox, past president of the Washington Farm Forestry Association (WFFA), on proposed rule changes. WFFA's mission is to "protect the economic viability of the small forest landowner while providing forest resource benefits such as clean water, clean air, and fish and wildlife habitat."

**METHODS OF ANALYSIS:** This analysis compares the costs and benefits of the rule changes on a per-acre basis. Costs are defined as the estimated timber harvest revenue that will not be harvested due to the rule change. Our calculations

assume that potential harvest will be delayed indefinitely, though the situation beyond the proposal's sunset date of June 30, 2007, is unknown. Benefits are estimated based on willingness to pay for protecting spotted owl habitat. The effects on small businesses are highlighted where appropriate.

The following steps show the process for estimating costs related to the decertification provision:

Step 1. Identify owl circles potentially affected by the rule change. The Washington department of fish and wildlife provided a list of the northern spotted owl circles that were undergoing or had recently completed surveying in anticipation of decertification.

Step 2. Analyze spotted owl circles identified in Step 1. Circles that are entirely or partially within SOSEAs were analyzed using GIS to determine ownership, management status (HCPs), and seral layer status.

Step 3. Determine forest acreage affected by the rule change. Forest acreage affected by the rule making was determined based on the GIS analysis.

Step 4. Estimate habitat acreage. Habitat acreage affected by the rule making was estimated based on Pierce et al.'s Washington State Spotted Owl Habitat Assessment Report<sup>3</sup>.

Step 5. Estimate habitat that would have been harvested without the rule change. The acreage of habitat that would have been harvested was estimated.

Step 6. Determine costs associated with a moratorium on decertification. Costs were calculated by multiplying lost harvest acreage by average per-acre timber harvest revenue for western and eastern Washington.

We did not estimate costs associated with the virtual habitat because of the difficulties in determining affected acreage. This is further discussed below.

Benefits of the decertification provision were estimated by applying the findings of the study by Loomis et al. that estimated the value of reducing fire hazards to old-growth forests in the Pacific Northwest<sup>4</sup>.

**ANALYSIS:**

**Determining costs associated with a moratorium on decertification:** Step 1 - Identify owl circles potentially affected by the rule change.

Because the moratorium on decertification of spotted owl circles would expire on June 30, 2007, spotted owl circles that are potentially affected by the rule will have already been surveyed at least once. The Washington state department of fish and wildlife (DFW) provided us with a list of such circles. Additional circles may have been in the process of being surveyed, though this has seldom been the case in the past, since surveyors want to ensure they are following proper surveying protocol.

Five spotted owl site circles have been identified as potentially affected; three in the I-90 East SOSEA located east of the Cascade Range Crest, and two in the Mineral Block SOSEA located on the west side. (An additional spotted owl circle in the process of decertification is not in a SOSEA, so is not affected by this rule making.)

Step 2 - Analyze spotted owl circles identified in Step 1.

GIS analysis identified ownership status (federal, state, industry, nonindustrial private), whether the parcel was covered by a habitat conservation plan or similar arrangement

that exempted the parcel from forest practices rules pertaining to the spotted owl, and its seral layer status. SOSEA boundaries and transecting status 1, 2 and 3 northern spotted owl circles were also delineated, because the proposed rule making does not affect the portion of spotted owl circles outside of SOSEAs nor portions of decertified circles within SOSEAs that are also part of other status 1, 2 or 3 circles.

Step 3 - Determine forest acreage affected by the rule change.

Forest acreage affected by the moratorium on decertification is limited to habitat within owl site circles within SOSEA boundaries, excluding forestland that is either in an HCP, owned by the federal government, or covered by a landowner option plan. Portions of a given circle that are also within one or more other status 1, 2 or 3 circles are not considered decertified. In addition, the effects on small forest landowners are limited to habitat within the inner 0.7-mile circle. If the spotted owl circle includes more than 40% habitat, excess habitat has been identified and is available for harvest.

Table 1 summarizes the amount of privately-owned forest acreage that is affected by the rule making for the three owl circles on the east side and the two on the west side, as well as an estimate of the affected habitat acreage (discussed in Step 4 below). There are 14,407 acres potentially affected within the five owl circles included in the analysis; all but one hundred fifty-two acres are industrial forestland. These one hundred fifty-two acres are owned by landowners subject to the small parcel northern spotted owl exception provision, and are most likely small forest landowners.

**Table 1  
Forest and Habitat Acreage  
Affected by the Rule Proposal**

|       | Industrial Acreage |         |           |
|-------|--------------------|---------|-----------|
|       | Forest             | Habitat | % Habitat |
| East  | 8123               | 2624    | 32.3      |
| West  | 6132               | 369     | 6.0       |
| Total | 14255              | 2993    | 21.0      |

|       | Small Landowner Acreage |         |           |
|-------|-------------------------|---------|-----------|
|       | Forest                  | Habitat | % Habitat |
| East  | 152                     | 26      | 17.1      |
| West  | 0                       | 0       | 0.0       |
| Total | 152                     | 26      | 17.1      |

|       | Total Acreage |         |           |
|-------|---------------|---------|-----------|
|       | Forest        | Habitat | % Habitat |
| East  | 8275          | 2650    | 32.0      |
| West  | 6132          | 369     | 6.0       |
| Total | 14407         | 3019    | 21.0      |

Step 4 - Estimate habitat acreage.

For each of the five owl circles included in the analysis, we estimated the amount of habitat by multiplying the affected forest acreage in the circles by the habitat proportion by seral status estimates provided by Pierce et al. (2005).

These proportions are summarized in Table 2. The three owl circles located in the I-90 east SOSEA are within the east Cascades zone, and the two circles within the Mineral Block SOSEA are in the south Cascades zone.

**Table 2**  
**Estimated Percentage of Northern Spotted Owl Habitat with Geographic and Forest Seral Stand Conditions**

| ZONE           | OTHER SERAL | EARLY SERAL | MID SERAL | LATE SERAL |
|----------------|-------------|-------------|-----------|------------|
| East Cascades  | 2.1         | 12.5        | 58.8      | 65.7       |
| North Cascades | 2.1         | 0.4         | 28.9      | 60.9       |
| Olympics       | 2.1         | 0.4         | 31.2      | 60.9       |
| South Cascades | 2.1         | 0.4         | 45.0      | 60.9       |
| Southwest      | 2.1         | 0.4         | 21.7      | 60.9       |

Source: Pierce et al. (2005) Table 15, p. 51.

Habitat is defined differently on the west and east sides of the Cascade Range Crest, reflecting differences in northern spotted owl behavior. This is apparent in the habitat acreage estimates in Table 1. The proportion of habitat is much higher in the east (32.0%) than in the west (6.0%). We estimate there is a total of 3,019 acres of habitat affected by the rule making; that is, 3,019 acres of habitat that could have been harvested if the five owl circles were decertified. Only twenty-six acres of this acreage is in the small landowner category, leading us to conclude that the rule making does not have a disproportionate effect on small businesses.

Step 5 - Estimate habitat that would have been harvested without the rule change.

DNR field staff estimated that without the decertification moratorium, approximately 75% of the affected habitat would have been harvested, leaving 2,264 acres of timberland that would not be harvested because of the rule change.

Step 6 - Determine costs associated with a moratorium on decertification.

We estimated the stumpage revenue potential, assuming harvest of 75% of the habitat subject to the rule making in the five spotted owl circles. This calculation required that we make assumptions regarding the volume per acre and price. Stand quality and species composition are implicitly factored into these assumptions. The high-end estimate assumes volume of 50,000 board feet (50 MBF) per acre at a price of \$400 per MBF, and the low-end estimate assumes volume of 40 MBF per acre at a price of \$350 per MBF. Per-acre stumpage value is \$20,000 and \$14,000, respectively. Therefore, the opportunity loss for 2,264 acres of timberland ranges from \$31.7 million to \$45.3 million. These calculations are illustrated in Table 3.

**Determining benefits associated with a moratorium on decertification:** The benefits of this rule making are difficult to estimate. The intended purpose of the rule making is to help arrest the decline in northern spotted owl populations in Washington by providing additional habitat protection. Few studies have estimated values of protecting northern spotted owls or their habitat (Hagen et al 1992; Rubin et al 1991; Loomis et al 1996). These studies use the contingent valuation method (CV) to measure the willingness to pay (WTP) for protecting the northern spotted owl and old growth forests. This approach is widely accepted among fed-

eral agencies for benefit-cost analysis that measure the benefits of nonmarket goods such as an endangered species. While all three studies use a CV approach to measure benefits and costs of protecting the northern spotted owl, the study by Loomis and Gonzales (LG) provides the preferred approach for our purpose, as it estimates benefits of an incremental change in protected habitat of a specified number of acres. The report on the findings is available at the United States Forest Service Pacific Southwest Research Service web site at <http://www.fs.fed.us/psw/publications/documents/rp-229/>.

The LG study surveyed residents of the state of Oregon in 1993 on their WTP for protecting old growth northern spotted owl habitat from fire in the Pacific Northwest. Following is a discussion of the methodology used in the LG study, the WTP results, and the limitations that may apply in terms of the transferability of these results to Washington. We use these results to evaluate the probable benefits of protecting northern spotted owl habitat in Washington state, adjusting the results as necessary.

Survey participants were asked to evaluate a scenario whereby approximately 3,500 acres of old-growth northern spotted owl habitat was saved from fire. The average (median) WTP of survey respondents was \$77 per household per year, corresponding to \$24,170 per acre. Assuming that nonrespondents (about half of those sent surveys) had a WTP of \$0 provides a minimum value of \$45 per household per year.

We adjusted these findings to account for inflation and the number of households in Washington. WTP in Washington is estimated to be \$104 per household per year, with a minimum value of \$61. The benefits to the state's 2.5 million households amounts to \$259 million per year, an average of \$74,129 per acre. The corresponding minimum values are \$152 million and \$43,322, respectively. (Although these estimates are on a per-year basis, we have assumed they are a one-time payment to mitigate for the uncertainties with using this benefit valuation approach.)

Although this study was the most applicable to our analysis, there are a number of factors that might have an effect on its transferability, with the potential for over or underestimation. These include:

- The base study was limited to Oregon residents. Attitudes towards protecting the northern spotted owl may differ between the states. Higher average incomes in Washington suggest that WTP may be higher in Washington.
- We extrapolated the LG study results to Washington residents only; WTP for nonresidents was ignored, though it may be considerable.
- The base study valued protecting old growth forests from fire. The rule changes under consideration protect all levels of habitat from general loss. Washington residents likely value less mature forests lower than old growth. Other benefits accruing from avoidance of fire would not be applicable to this analysis, possibly overstating benefits.
- Attitudes towards protecting northern spotted owls and their habitat may have changed since 1993.
- Placing a value on nonmarket goods such as habitat protection is difficult for some people.

**Economic analysis of virtual habitat provision:** The virtual habitat provision of the proposal negates a provision that permitted a landowner to disregard timber harvesting that took place on lands included in an HCP within a given owl circle when determining whether a circle was above or below the 40% habitat threshold. Under these circumstances, a non-HCP landowner could harvest habitat that brought the circle below the 40% habitat threshold, so long as the part of the circle outside the HCP had more than 40% habitat. Such a situation could occur within an owl circle that is partially within an HCP and had excess habitat at the time of certification.

It is not possible to determine the amount of habitat acreage that would be affected by this rule change provision without a detailed analysis of each spotted owl circle that is partially covered by an HCP and included nonfederal land. Such an analysis would need to include an up-to-date identification of the amount and location of harvests that have taken place. Instead, for illustrative purposes, we have provided a case study of an owl circle in the 190-east SOSEA that fulfills the requirements. This owl circle includes a patchwork of ownership, including six hundred fifty-eight acres of DNR-managed land covered by DNR's HCP. There are about three hundred acres of habitat above the 40% threshold. Prior to the emergency rule making, any harvest of spotted owl habitat taking place on land covered by DNR's HCP would not be included in the calculation of the 40% threshold for the circle. We estimate that there are two hundred eighty-one acres of habitat on DNR-managed land within the circle (all of which is covered by an HCP). Private landowners could theoretically harvest two hundred eighty-one acres of habitat beyond the 40% habitat threshold. The actual amount will likely be lower, depending on the amount of harvest taking place on DNR-managed land, which will be a function of how the DNR habitat acreage fits into DNR's landscape-based HCP.

**CONCLUSION:** This economic analysis estimates ranges of costs and benefits of the proposed rule making. Costs are defined as the estimated timber harvest revenue that could have been accrued if the provisions of the rule change were not in place, assuming that the potential harvest will be delayed indefinitely. Estimated benefits are based on willingness to pay for protecting spotted owl habitat. The estimated costs of protecting 2,264 acres of northern spotted owl habitat range from \$31.7 million to \$45.3 million, and the benefits range from \$152 million to \$259 million. On a per-acre basis, costs range from \$14,000 to \$20,000 per acre, and benefits range from \$43,322 to \$74,129 per acre. Table 3 summarizes estimated costs and benefits.

**Table 3**  
**Estimated Costs and Benefits of the Proposal**

|               | Total Cost     | Cost Per Acre | Total Benefit | Benefit Per Acre |
|---------------|----------------|---------------|---------------|------------------|
| High Estimate | \$45.3 million | \$20,000      | \$259 million | \$74,129         |
| Low Estimate  | \$31.7 million | \$14,000      | \$152 million | \$43,322         |

We analyzed seral layer information to estimate habitat acreage affected by the proposed rule, assuming that the rule sunsets on June 30, 2007. Additional spotted owl circles could be affected by the rule if the sunset provision were to be

subsequently removed. The relationship between costs and benefits, measured on a per-acre basis, would be unaffected, though the total costs and benefits would be greater. Similarly, although we were not able to estimate the effects of the virtual habitat provision, the cost/benefit per-acre relationship will be the same as for the decertification provision.

Per-acre cost estimates are dependent on price, stand quality and species composition assumptions. In addition, this analysis assumes that affected habitat is not harvested, implying that the proposed rules are continued. If the rules are not continued, affected habitat could theoretically be harvested sometime in the future. Costs may also be lower if a landowner chooses to develop a landowner option plan, which exempts the landowner from these rules.

Benefit estimates are more uncertain due to the lack of market price signals for environmental amenities. Although survey respondents may have implicitly valued other amenities that accrue from protecting northern spotted owl habitat (such as habitat for other species, open space, and water quality), some of the ancillary benefits of protecting habitat may not have been captured by this analysis.

In spite of these uncertainties, estimated benefits are sufficiently greater than costs to provide a reasonable degree of certainty that the benefits of this rule making exceed the costs. It is worth noting, however, that this economic analysis estimates overall benefits and costs of proposed rule making. It does not analyze the distribution of costs and benefits, other than the impacts on small businesses, which in this case are minimal. The benefits of northern spotted owl habitat protection identified in this analysis will accrue to state residents in general, whereas the costs will primarily be borne by industrial forest landowners.

**Small business impacts:** The effects of the proposal on small forest landowners are limited to habitat within the inner 0.7-mile circle of spotted owl site centers within SOSEAs. We estimate that twenty-six acres of small forest landowner habitat are affected by the decertification provision of the proposed rules; this is less than 1% of the potentially affected habitat acreage. There may be specific instances where individual small forest landowners are disproportionately affected.

**REFERENCES:**

Hagen, D., Vincent, J. and Welle, P., 1992. **Benefits of preserving old-growth forest and the spotted owl.** *Contemp. Policy Issues*, 10: 13-25.

Loomis, John B.; Gonzalez-Caban, Armando; Gregory, Robin. 1996. **A contingent valuation study of the value of reducing fire hazards to old-growth forests in the Pacific Northwest.** Res. Paper PSW-RP-229-Web. Albany, CA: Pacific Southwest Research Station, Forest Service, U.S. Department of Agriculture; 24 p.

Pierce, D. J., J. B. Buchanan, B. L. Cosentino, and S. Snyder. 2005. **An assessment of spotted owl habitat on nonfederal lands in Washington between 1996 and 2004.** Final Report. Washington Department of Fish and Wildlife, Olympia, Washington, USA. 187 p.

Rubin, J.; Helfand, G., and Loomis, J. **A benefit-cost analysis of the northern spotted owl: Results from a contingent valuation survey.** *Journal of Forestry*. 1991; 89(12):25-30.

<sup>1</sup> For CBA requirements, see RCW 34.05.328 - The Washington state legislature.

<sup>2</sup> For SBEIS requirements, see RCW 19.85.040 - The Washington state legislature.

<sup>3</sup> Available at [http://wdfw.wa.gov/wlm/research/papers/spotted\\_owl/](http://wdfw.wa.gov/wlm/research/papers/spotted_owl/).

<sup>4</sup> Available at <http://www.fs.fed.us/psw/publications/documents/rp-229/>.

A copy of the statement may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail [gretchen.robinson@wadnr.gov](mailto:gretchen.robinson@wadnr.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail [gretchen.robinson@wadnr.gov](mailto:gretchen.robinson@wadnr.gov). Please note: The preliminary cost-benefit analysis and small business economic impact statement are combined in the draft economic analysis shown above.

March 20, 2006

L. S. Young

for Pat McElroy  
Chair

AMENDATORY SECTION (Amending WSR 02-11-075, filed 5/13/02, effective 6/13/02)

**WAC 222-10-041 Northern spotted owls.** The following policies shall apply to forest practices subject to SEPA if the forest practices may cause adverse impacts to northern spotted owls.

(1) **In SOSEAs or areas of SOSEAs where the goal is demographic support**, suitable spotted owl habitat should be maintained either to protect the viability of the owl(s) associated with each northern spotted owl site center or to provide demographic support for that particular SOSEA as described in the SOSEA goals.

(2) **In SOSEAs or areas of SOSEAs where the goal is dispersal support**, either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated with each northern spotted owl site center or dispersal habitat should be managed, over time, to provide the dispersal support for that particular SOSEA as described in the SOSEA goals. Dispersal support is provided by a landscape which includes dispersal habitat at the stand level interspersed with areas of higher quality habitat. Stands of dispersal habitat should be managed to reduce gaps between stands and to maintain a sufficient level of dispersal habitat to meet the SOSEA goals over time.

(3) **In SOSEAs or areas of SOSEAs where the goal is a combination of dispersal support and demographic support**, either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated with each northern spotted owl site center or a variety of habitat conditions should be provided which in total are more than dispersal support and less than demographic support. This can be accomplished by providing:

(a) Dispersal support as described in subsection (2) of this section;

(b) Areas of suitable spotted owl habitat that contain some opportunities for nesting as well as roosting and foraging habitat; and

(c) Connectivity between areas of SOSEAs designated for demographic support or adjacent federal lands which are designated as late successional reserves, congressionally reserved areas, or administratively withdrawn areas.

(4) **Within SOSEAs**, the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of the owl(s) associated with each northern spotted owl site center, in the absence of more specific data or a mitigation plan, as provided for in subsections (6) and (7) of this section respectively:

(a) All suitable spotted owl habitat within 0.7 mile of each northern spotted owl site center;

(b) Including the suitable spotted owl habitat identified in (a) of this subsection:

(i) For the Hoh-Clearwater/Coastal Link SOSEA - A total of 5,863 acres of suitable spotted owl habitat within the median home range circle (2.7 mile radius).

(ii) For all other SOSEAs - A total of 2,605 acres of suitable spotted owl habitat within the median home range circle (1.8 mile radius).

The department shall first identify the highest quality suitable spotted owl habitat for this purpose. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable habitat. Suitable spotted owl habitat identified outside 0.7 mile of a northern spotted owl site center may support more than one median home range circle.

~~((Suitable spotted owl habitat harvested by a landowner shall continue to be counted as part of the total acres necessary under (b) of this subsection for other landowners within the median home range circle if the harvest is conducted pursuant to agreements or plans approved under subsection (6) of this section or WAC 222-16-080 (1)(h)(iv), (6)(a)(iv), or (f).))~~

(5) **Outside SOSEAs**, during the nesting season (between March 1 and August 31), seventy acres of the highest quality suitable spotted owl habitat surrounding a northern spotted owl site center should be maintained. The seventy acres for one site center shall not be utilized for meeting suitable habitat needs of any other site center.

(6) The assumptions set forth in subsection (4) of this section are based on regional data. Applicants or others may submit information that is more current, accurate, or specific to a northern spotted owl site center, proposal, or SOSEA circumstances or goals. The department shall use such information in making its determinations under this section where the department finds, in consultation with the department of fish and wildlife, that the information is more likely to be valid for the particular circumstances than the assumptions established under subsection (4) of this section. If the department does not use the information, it shall explain its reasons in writing to the applicant.

(7) The department shall consider measures to mitigate identified adverse impacts of an applicant's proposal. Mitigation measures must contribute to the achievement of SOSEA goals or to supporting the viability of impacted northern spotted owl site centers.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-16-010 \*General definitions.** Unless otherwise required by context, as used in these rules:

**"Act"** means the Forest Practices Act, chapter 76.09 RCW.

**"Affected Indian tribe"** means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

**"Alluvial fan"** see "sensitive sites" definition.

**"Appeals board"** means the forest practices appeals board established in the act.

**"Aquatic resources"** means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

**"Area of resource sensitivity"** means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

**"Bankfull depth"** means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the floodplain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

**"Bankfull width"** means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain 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 character distinct from that of the abutting upland.

**"Basal area"** means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

**"Bedrock hollows"** (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

**"Board"** means the forest practices board established by the act.

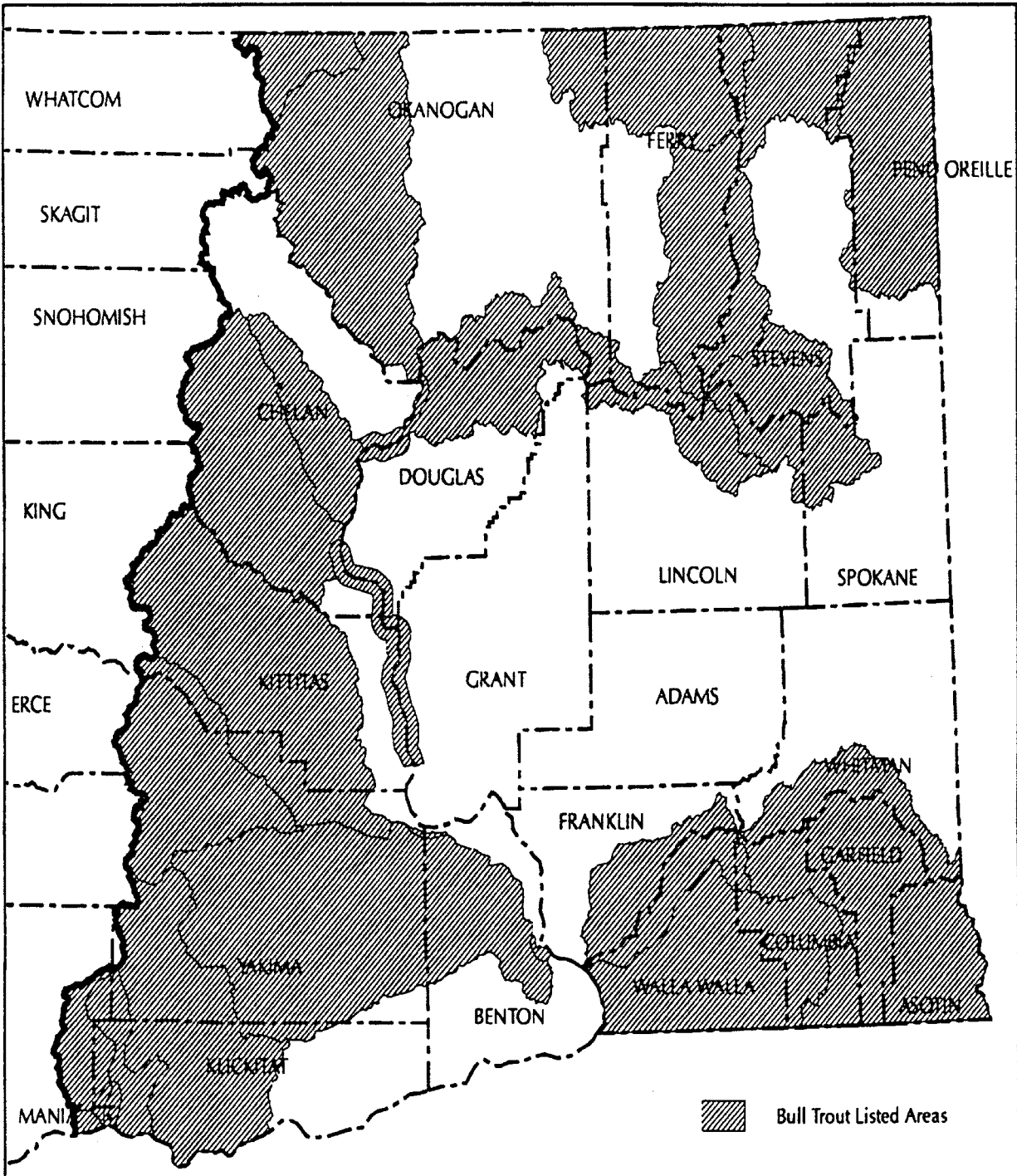
**"Bog"** means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an

overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

**"Borrow pit"** means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

**"Bull trout habitat overlay"** means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:



It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Columbia River Gorge National Scenic Area or CRGNSA"** means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

**"CRGNSA special management area"** means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

**"CRGNSA special management area guidelines"** means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

**"Commercial tree species"** means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

**"Completion of harvest"** means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

**"Constructed wetlands"** means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

**"Contamination"** means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

**"Convergent headwalls"** (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

**"Conversion option harvest plan"** means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

**"Conversion to a use other than commercial timber operation"** means a bona fide conversion to an active use which is incompatible with timber growing.

**"Cooperative habitat enhancement agreement (CHEA)"** see WAC 222-16-105.

**"Critical habitat (federal)"** means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

**"Critical nesting season"** means for marbled murrelets - April 1 to August 31.

**"Critical habitat (state)"** means those habitats designated by the board in accordance with WAC 222-16-080.

**"Cultural resources"** means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

**"Cumulative effects"** means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

**"Daily peak activity"** means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

**"Debris"** means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

**"Deep-seated landslides"** means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

**"Demographic support"** means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

**"Department"** means the department of natural resources.

**"Desired future condition (DFC)"** is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

**"Diameter at breast height (dbh)"** means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

**"Dispersal habitat"** see WAC 222-16-085(2).

**"Dispersal support"** means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat

found within RMZs, WMZs or other required and voluntary leave areas.

**"Drainage structure"** means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts,

ditch diversions, water bars, or other such structures demonstrated to be equally effective.

**"Eastern Washington"** means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



**"Eastern Washington timber habitat types"** means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

| Timber Habitat Types | Elevation Ranges |
|----------------------|------------------|
| ponderosa pine       | 0 - 2500 feet    |
| mixed conifer        | 2501 - 5000 feet |
| high elevation       | above 5000 feet  |

**"Edge"** of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

**"End hauling"** means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

**"Equipment limitation zone"** means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

**"Erodible soils"** means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

**"Even-aged harvest methods"** means the following harvest methods:

- Clearcuts;
- Seed tree harvests in which twenty or fewer trees per acre remain after harvest;
- Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;
- Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;
- Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;
- Partial cutting in which fewer than fifty trees per acre remain after harvest;
- Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Fen"** means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

**"Fertilizers"** means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

**"Fill"** means the placement of earth material or aggregate for road or landing construction or other similar activities.

**"Fish"** means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

**"Fish habitat"** means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

**"Fish passage barrier"** means any artificial instream structure that impedes the free passage of fish.

**"Flood level - 100 year"** means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

**"Forest land"** means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. For road maintenance and abandonment planning and implementation for small forest landowners, "forest land" excludes any of the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have a fixed structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to

the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

**"Forest land owner"** means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner(~~(= Provided, That)~~). However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(1) "Large forest landowner," for purposes of road maintenance and abandonment planning, means any forest landowner who is not a small forest landowner.

(2) "Small forest landowner" is a forest landowner who at the time of submitting a forest practices application or notification:

(a) Has harvested from his or her own forest lands in Washington state no more than an average timber volume of two million board feet per year during the three years prior to submitting the forest practices application or notification to the department; and

(b) Certifies that he or she does not expect to harvest from his or her own forest lands in the state more than an average timber volume of two million board feet per year during the ten years following the submission of a forest practices application or notification to the department.

(c) A landowner who exceeded the harvest threshold as described above, or expects to exceed the harvest limits during any of the following ten years, will still be considered a "small forest landowner" if:

(i) He or she establishes to the department's reasonable satisfaction that the harvest limits were or will be exceeded in order to raise funds to pay estate taxes; or

(ii) There is an equally compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses.

(d) For the purposes of the forestry riparian easement program, "small forest landowner" is defined in WAC 222-21-010(13).

**"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

**"Forest road"** means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices or forest management activities such as fire control. "Forest roads" does not include skid trails, highways, or county roads except where the county is a forest landowner or operator. "Forest road," as it applies to road maintenance and abandonment planning for small forest landowners, means a road or road segment that crosses forest lands owned by the small forest landowner, but excludes portions of access roads to residential home sites not used as a part of a current forest practice involving harvest or salvage of trees.

**"Forest trees"** does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

**"Full bench road"** means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

**"Green recruitment trees"** means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

**"Ground water recharge areas for glacial deep-seated slides"** means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

**"Headwater spring"** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

**"Herbicide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

**"Historic site"** includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

**"Horizontal distance"** means the distance between two points measured at a 0% slope.

**"Hyporheic"** means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

**"Identified watershed processes"** means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

- Large organic debris;
- Shading; and
- Stream bank and bed stability.

**"Inner gorges"** means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

**"Insecticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

**"Interdisciplinary team"** (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

**"Islands"** means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

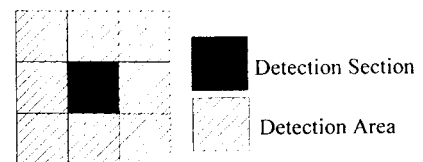
**"Limits of construction"** means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

**"Load bearing portion"** means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

**"Local governmental entity"** means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

**"Low impact harvest"** means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

**"Marbled murrelet detection area"** means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



**"Marbled murrelet nesting platform"** means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that

is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

**"Median home range circle"** means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

**"Merchantable stand of timber"** means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

**"Multiyear permit"** means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

**"Northern spotted owl site center"** means:

(1) Until June 30, 2007, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 on November 1, 2005; or

(b) Newly discovered and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After June 30, 2007, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Notice to comply"** means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

**"Occupied marbled murrelet site"** means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those

sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Old forest habitat"** see WAC 222-16-085 (1)(a).

**"Operator"** means any person engaging in forest practices except an employee with wages as his/her sole compensation.

**"Ordinary high-water mark"** means the mark on the shores of all waters, which will be found by examining the beds 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 character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

**"Other forest chemicals"** means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

**"Park"** means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

**"Partial cutting"** means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

**"Pesticide"** means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

**"Plantable area"** is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

**"Power equipment"** means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

**"Preferred tree species"** means the following species listed in descending order of priority for each timber habitat type:

|                                    |                                   |
|------------------------------------|-----------------------------------|
| <b>Ponderosa pine habitat type</b> | <b>Mixed conifer habitat type</b> |
| all hardwoods                      | all hardwoods                     |
| ponderosa pine                     | western larch                     |
| western larch                      | ponderosa pine                    |
| Douglas-fir                        | western red cedar                 |
| western red cedar                  | western white pine                |
|                                    | Douglas-fir                       |
|                                    | lodgepole pine                    |

**"Public resources"** means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

**"Qualified surveyor"** means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

**"Rehabilitation"** means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

**"Resource characteristics"** means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

**"Riparian function"** includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

**"Riparian management zone (RMZ)"** means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

| Site Class | Western Washington Total RMZ Width |
|------------|------------------------------------|
| I          | 200'                               |
| II         | 170'                               |
| III        | 140'                               |
| IV         | 110'                               |
| V          | 90'                                |

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) **For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

| Site Class | Eastern Washington Total RMZ Width |
|------------|------------------------------------|
| I          | 130'                               |
| II         | 110'                               |

| Site Class | Eastern Washington Total RMZ Width |
|------------|------------------------------------|
| III        | 90' or 100*                        |
| IV         | 75' or 100*                        |
| V          | 75' or 100*                        |

\* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

**"RMZ core zone"** means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the 30 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

**"RMZ inner zone"** means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

**"RMZ outer zone"** means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

**"Road construction"** means the establishment of any new sub-grade including widening, realignment, or modification of an existing road prism, with the exception of replacing or installing drainage structures, for the purposes of managing forest land under Title 222 WAC.

**"Road maintenance"** means any road work specifically related to maintaining water control or road safety and visibility (such as; grading, spot rocking, resurfacing, roadside vegetation control, water barring, ditch clean out, replacing or installing relief culverts, cleaning culvert inlets and outlets) on existing forest roads.

**"Rodenticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of

the state department of agriculture may declare by regulation to be a pest.

**"Salvage"** means the removal of snags, down logs, windthrow, or dead and dying material.

**"Scarification"** means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

**"Sensitive sites"** are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

**"Shorelines of the state"** shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

**"Side casting"** means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

**"Site class"** means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

| Site class | 50-year site index range (state soil survey) |
|------------|--|
| I          | 137+   |

| Site class | 50-year site index range<br>(state soil survey) |
|------------|---|
| II         | 119-136   |
| III        | 97-118  |
| IV         | 76-96   |
| V          | <75   |

(2) For Eastern Washington

| Site class | 100-year site index range<br>(state soil survey) | 50-year site index range<br>(state soil survey) |
|------------|--|---|
| I          | 120+   | 86+   |
| II         | 101-120  | 72-85   |
| III        | 81-100   | 58-71   |
| IV         | 61-80  | 44-57   |
| V          | ≤60  | <44   |

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

**"Site preparation"** means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

**"Skid trail"** means a route used by tracked or wheeled skidders to move logs to a landing or road.

**"Slash"** means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

**"SOSEA goals"** means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

**"Spoil"** means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

**"Spotted owl dispersal habitat"** see WAC 222-16-085(2).

**"Spotted owl special emphasis areas (SOSEA)"** means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

**"Stop work order"** means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

**"Stream-adjacent parallel roads"** means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

**"Sub-mature habitat"** see WAC 222-16-085 (1)(b).

**"Suitable marbled murrelet habitat"** means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

- (a) Within 50 miles of marine waters;
- (b) At least 40% of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;
- (c) Two or more nesting platforms per acre;
- (d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

**"Suitable spotted owl habitat"** see WAC 222-16-085(1).

**"Temporary road"** means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

**"Threaten public safety"** means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

**"Threatened or endangered species"** means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

**"Timber"** means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by



agricultural methods, as that term is defined in RCW 84.33.-035.

**"Unconfined avulsing stream"** means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

**"Water bar"** means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

**"Watershed administrative unit (WAU)"** means an area shown on the map specified in WAC 222-22-020(1).

**"Watershed analysis"** means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

**"Weed"** is any plant which tends to overgrow or choke out more desirable vegetation.

**"Western Washington"** means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

**"Wetland"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

**"Wetland functions"** include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

**"Wetland management zone"** means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

**"Wildlife"** means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

**"Wildlife reserve trees"** means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evi-

dence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

**"Windthrow"** means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

**"Yarding corridor"** means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

**"Young forest marginal habitat"** see WAC 222-16-085 (1)(b).

**WSR 06-07-156**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed March 22, 2006, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-042.

Title of Rule and Other Identifying Information: New chapter 230-06 WAC, Rules for all licensees, WAC 230-06-001 Defining "operator," 230-06-005 Accept checks in gambling activities, 230-06-010 Age restrictions for players, 230-06-015 Prevent intoxicated persons from operating or playing gambling activities, 230-06-020 Alcohol as prizes, 230-06-025 Firearms as prizes, 230-06-030 Restrictions and conditions for gambling promotions, 230-06-035 Offer no credit, loans, or gifts, 230-06-040 Record promotional items awarded by charitable and nonprofit organizations, 230-06-045 Conduct gambling sales on licensed business premises only, 230-06-050 Review of electronic or mechanical gambling equipment, 230-06-055 Notify law enforcement of your gambling activity, 230-06-060 Maintain copy of commission rules on business premises, 230-06-065 Display copies of all licenses or have them present on business premises, 230-06-070 Keep monthly records, 230-06-075 Removal of equipment or records for inspection, 230-06-080 Report changes to application information and submit updated documents and

information, 230-06-085 Report criminal actions filed, 230-06-090 Report civil and administrative actions filed, 230-06-095 Change given name, trade name, or corporate name, 230-06-100 Changing business locations, 230-06-105 Report change of management, 230-06-110 Buy, sell, or transfer gambling equipment, 230-06-115 Using checks or credit cards to purchase gambling equipment, products, or services, 230-06-120 Sell or transfer gambling equipment to manufacturers or distributors, 230-06-125 Renew your license in a timely manner, 230-06-130 Exceeding license class, 230-06-135 Failing to apply for license class upgrade, 230-06-140 Partial refund of license fees if gambling receipts limit not met, and 230-06-145 Surrendering suspended or revoked licenses.

Hearing Location(s): Marcus Whitman Hotel, 6 West Rose, Walla Walla, WA 99362, (509) 525-2200, on June 16, 2006, at 9:30 a.m.

Date of Intended Adoption: June 16, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by June 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by June 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

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. The rules manual has been divided into sections and is being rewritten a section at a time. The first sections under review are the licensing chapters. As part of the rewrite, some items from other chapters (chapter 230-02 WAC, General provisions and definitions; chapter 230-04 WAC, Licensing; chapter 230-08 WAC, Records and reports; and chapter 230-12 WAC, Rules of general applicability), may be incorporated into the licensing chapters.

Following are the rules relating to all licensees. These rules are written in plain English and now numbered as chapter 230-06 WAC.

#### Rule Changes

Intoxicated persons participating in gambling activities: WAC 230-06-015 Prevent intoxicated persons from operating or playing gambling activities.

The proposed change will expand the current rules prohibiting intoxicated persons from operating or playing punch boards, pull-tabs, or card games to apply to all gambling activities. This change will make commission enforcement more consistent across all gambling activities. All gambling licensees will now have to prevent intoxicated persons from operating or participating in gambling activities.

Reporting rules: WAC 230-06-085 Report changes to application information and submit updated documents and information, 230-06-090 Report criminal actions filed, 230-06-095 Report civil and administrative actions filed, 230-06-100 Change given name, trade name, or corporate name, 230-06-110 Report change of management, 230-06-130 Sell or transfer gambling equipment to manufacturers or distributors, and 230-06-145 Failing to apply for license class upgrade.

These rules have a number of different time periods associated with submitting information regarding licensure. New rules will standardize the amount of time we give licensees to submit several types of information to thirty days. The proposed change will make our regulation of licensees more consistent because it changes the response period to a consistent thirty days for each type of information.

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: Beth Heston, Rules Simplification Project Manager, Lacey, (360) 486-3464; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

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 because the proposed rule does not impose more than minor costs to businesses.

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.

March 22, 2006

Susan Arland

Rules Coordinator

## Chapter 230-06 WAC

### RULES FOR ALL LICENSEES

#### RULES FOR CONDUCTING A GAMBLING ACTIVITY

##### NEW SECTION

**WAC 230-06-001 Defining "operator."** "Operator" means any person who buys or otherwise receives gambling equipment for use in authorized gambling activities from a manufacturer or distributor and operates or displays that equipment.

##### NEW SECTION

**WAC 230-06-005 Accept checks in gambling activities.** (1) Licensees may accept a check in the place of cash from a player for authorized gambling activities if:

(a) The check is not a third-party check drawn on a personal account or a counter check from the licensee's business; and

(b) The personal check is dated the same day it is offered and fully negotiable when accepted; and

(c) The check is not from a player who owes the licensee money from a previous returned personal check. If the licensee uses a check guarantee and collection service, the licensee may disregard this subsection.

(2) If licensees accept a check that violates these requirements, they are violating the rules against extending credit.

#### NEW SECTION

**WAC 230-06-010 Age restrictions for players.** Licensee must not allow anyone under the age of eighteen to participate in gambling activities except:

(1) To play in licensed bingo games when accompanied by an adult member of his/her immediate family or a guardian, who is at least eighteen years old. "Immediate family" means only the spouse, parents, or grandparents of an individual. "Guardian" means only a court-appointed, legal guardian of an individual; or

(2) To play bingo at agricultural fairs or school carnivals; or

(3) To play amusement games; or

(4) To sell raffle tickets.

#### NEW SECTION

**WAC 230-06-015 Prevent intoxicated persons from operating or playing gambling activities.** Licensees must not allow any person who appears to be intoxicated or under the influence of any narcotic or other substance to operate or play any gambling activity.

#### NEW SECTION

**WAC 230-06-020 Restrictions on alcohol as prizes.** Licensees must not offer or award beverages that contain alcohol as a prize or in place of a prize for any gambling activity except:

(1) Dice or coin contests for music, food, or beverage payment as authorized by RCW 9.46.0305; and

(2) Unlicensed members-only raffles authorized by RCW 9.46.0315, but only if the liquor control board granted the appropriate permit; and

(3) Other gambling activities where the liquor control board has authorized alcohol as a prize.

#### NEW SECTION

**WAC 230-06-025 Restrictions on firearms as prizes.** Only charitable or nonprofit organizations operating a raffle may award firearms, air guns, or other mechanical devices which are capable of discharging dangerous projectiles, including but not limited to, BB or CO<sub>2</sub> guns, rifles, shotguns, pistols or revolvers, or crossbows as a prize. If the prize awarded is restricted from transfer by state or federal law, the licensee must award the winner a certificate, redeemable by a licensed firearms dealer, for the prize offered.

#### NEW SECTION

**WAC 230-06-030 Restrictions and conditions for gambling promotions.** Licensees may conduct gambling promotions to encourage players to participate in a gambling activity, but you must follow these restrictions and conditions:

(1) Promotional items must not exceed five hundred dollars each; and

(2) You must give all players an equal opportunity to participate; and

(3) You must establish standards to determine how you will give promotional items to players. You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game; and

(4) You must not give another chance to participate in a gambling activity as a promotional item; and

(5) You must display all rules or restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

(6) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

#### NEW SECTION

**WAC 230-06-035 Offer no credit, loans, or gifts.** (1) Licensees, employees, or members must not extend credit, make loans, or give gifts to any person playing in an authorized gambling activity or which makes it possible for any person to play in an authorized gambling activity.

(2) Gifts are items licensees give to their customers. Licensees must not connect these gifts to gambling activities we regulate unless the gifts are:

(a) Gambling promotions; or

(b) Transportation services to and from gambling activities; or

(c) Free or discounted food, drink, or merchandise which:

(i) Costs less than five hundred dollars per individual item; and

(ii) Must not be traded back to you for cash; and

(iii) Must not give a chance to participate further in an authorized gambling activity.

(3) You must collect the price required to participate in the gambling activity in full before allowing someone to participate. Licensees must collect cash, check, or electronic point-of-sale bank transfer.

(4) If the price paid for the opportunity to play a punch board or pull-tab series is ten dollars or less, licensees may collect the price immediately after the play is completed.

(5) If a charitable or nonprofit organization has a regular billing system for all of the activities of its members, it may use its billing system in connection with the playing of any licensed activities as long as the organization limits play to full and active members of its organization.

(6) Charitable or nonprofit organizations may allow credit cards, issued by a state regulated or federally regulated financial institution, for payment to participate in raffles.

#### NEW SECTION

**WAC 230-06-040 Record gambling promotional items awarded by charitable and nonprofit organizations.** Charitable and nonprofit organizations must keep a written record for each gambling promotional item awarded that has

an actual cost over one hundred dollars. The record must contain, at least:

- (1) How the organization selected the recipients of the promotional items; and
- (2) The number of promotional items awarded; and
- (3) The cost of each promotional item.

#### NEW SECTION

**WAC 230-06-045 Conduct gambling activities on licensed business premises only.** (1) Licensees must conduct all gambling activities, except for raffle ticket sales, on the licensed business premises.

(2) Charitable or nonprofit organizations licensed to conduct bingo and punch board and pull-tab games may sell punch boards and pull-tabs to customers of a licensed card room if the charitable or nonprofit organization:

- (a) Shares a common wall with the card room; and
- (b) Controls all doors, counters, or windows allowing customer access through the common wall between the two premises and the charitable or nonprofit organization can securely close and lock the doors, counters, or windows; and
- (c) Keeps and sells the punch board and pull-tab games and redeems prizes only on their licensed business premises. Punch board and pull-tab players may take already purchased punch boards and pull-tabs into the card room area; and
- (d) Allows only its employees to sell the punch board and pull-tabs; and
- (e) Posts signs at the door, window, or counter common to the two business premises that clearly notify customers of the organization's identity.

#### NEW SECTION

**WAC 230-06-050 Review of electronic or mechanical gambling equipment.** (1) Persons who wish to submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC must pay the application deposit before we perform the review. They must also reimburse us for any additional costs of the review.

(2) We may require manufacturers to submit electronic or mechanical gambling equipment for review. To allow for continued testing and training, staff may keep any equipment submitted for review for as long as the equipment remains in play in Washington. The manufacturers must reimburse us for any costs of the review. We are not liable for any damage to equipment while in our possession.

(3) Licensees must operate equipment identical to the version staff approved.

#### **NOTIFYING LAW ENFORCEMENT, POSTING PUBLIC NOTICES, AND RECORDKEEPING**

#### NEW SECTION

**WAC 230-06-055 Notify law enforcement of gambling activity.** (1) Licensees must notify local law enforcement agencies, in writing, that they have been licensed before they begin to conduct any activity under the license.

(2) Licensees must tell local law enforcement agencies:

- (a) The address where they will conduct the gambling activity; and
  - (b) The type of gambling activity licensed; and
  - (c) The first date they will conduct the gambling activity; and
  - (d) The proposed schedule for the operation of the gambling activity if they plan to conduct the activity on a regular basis.
- (3) Licensees must not conduct the activity until they have made the notification.

#### NEW SECTION

**WAC 230-06-060 Maintain copy of commission rules on business premises.** Licensees must maintain a current version of our rules on their business premises. If any person asks to see our rules, the licensee must produce the rules for that person.

#### NEW SECTION

**WAC 230-06-065 Display copies of all licenses or have them present on business premises.** (1) Licensees must prominently display all gambling activity licenses or permits we have issued in the gambling area of their business premises.

(2) Licensees must have these licenses and permits ready for inspection by us, other law enforcement, and the public at all times.

(3) Card room employers may choose not to display employee licenses, but must maintain a copy of all card room employees' licenses, proof of licensing, or applications if we have not issued a license, on the licensed premises at all times.

#### NEW SECTION

**WAC 230-06-070 Keep monthly records.** Every person or organization licensed to operate any gambling activity must maintain permanent monthly records of all financial transactions directly or indirectly related to gambling activities. The licensee must include all financial transactions in enough detail to prove compliance with recordkeeping requirements for the specific gambling activity.

- (1) Every licensee must record for each licensed activity:
  - (a) The gross gambling receipts; and
  - (b) Full details on all expenses; and
  - (c) The total cost of all prizes paid.
- (2) Commercial stimulant licensees must also record:
  - (a) Gross sales of food and drink for consumption on the business premises; and
  - (b) Gross sales of food and drink for consumption off the business premises; and
  - (c) Gross sales from all other business activities occurring on the business premises.
- (3) Licensees must record each licensed activity separately and include all transactions occurring during the calendar month. Licensees must complete these records and have them available for audit or inspection by our agents or other law enforcement no later than thirty days following the end of each month.

(4) Licensees must include copies of all additional financial data which support tax reports to any governmental agency.

(5) Licensees must maintain each of these records for at least three years from the end of the fiscal year.

#### NEW SECTION

**WAC 230-06-075 Removal of equipment or records for inspection.** (1) If we believe with a reasonable probability that you, your employees, or your members are violating or have violated the provisions of chapter 9.46 RCW, its amendments, or any of our rules, we may remove, inspect, and investigate any records, equipment, parts, and devices of any nature located on your premises that relate to the licensed activity or any other gambling activity.

(2) We also may remove records from your premises or your control in order to facilitate our review of the records.

(3) If we receive a written request from you, we will provide you with copies of retained records.

(4) After the case is resolved, we will return all records, equipment, parts, and devices to the premises or to your address.

### REPORTING CHANGES TO APPLICATION INFORMATION

#### NEW SECTION

**WAC 230-06-080 Report changes to application information and submit updated documents and information.** (1) Licensees must notify us in writing if any information filed with the application changes in any way within thirty days of the change.

(2) Licensees must submit to us any new or updated documents and information, including the following:

(a) Articles of incorporation or bylaws, or any other documents which set out the organizational structure and purposes; and

(b) All oral or written contracts and agreements which relate to gambling activities or alter the organizational structure of the licensee's organization or business activities in Washington; and

(c) All cash or asset contributions, draws from lines of credit, and loans (except those from recognized financial institutions) during any calendar year which by themselves or totaled together are more than ten thousand dollars. Cash or asset contributions do not include donations to licensed charitable or nonprofit organizations; and

(d) Internal Revenue Service tax deductible status of contributions for charitable and nonprofit organizations.

### REPORTING CRIMINAL, ADMINISTRATIVE, AND CIVIL ACTIONS

#### NEW SECTION

**WAC 230-06-085 Report criminal actions filed.** (1) Licensees must report to us in writing within thirty days all criminal actions filed against the licensee, any manager of the licensed gambling activity, the business organization, or any

person holding a substantial interest in the business organization.

(2) We must receive a copy of the final written decision or settlement within thirty days after the case is resolved.

#### NEW SECTION

**WAC 230-06-090 Report administrative and civil actions filed.** (1) All licensees must report to us in writing within thirty days all administrative actions filed against them by other gambling regulatory agencies, including those from other countries and Indian tribes.

(2) Licensed organizations must report to us in writing within thirty days all civil and administrative actions that are filed by or against any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization. Actions include, but are not limited to:

(a) Divorces; and

(b) Bankruptcy; and

(c) Tax liens; and

(d) Business dissolutions.

(3) The report must consist of a complete copy of the original documents filed. Licensees must notify the commission of the final disposition of the case and include a copy of the final documents filed including, but not limited to, settlement agreements.

(4) For cases involving patent infringement on gambling equipment, licensees must send only the final written decision or settlement.

(5) We must receive a copy of the final written decision or settlement within thirty days after the case is resolved.

### CHANGING NAMES OR LOCATIONS

#### NEW SECTION

**WAC 230-06-095 Change given name, trade name, or corporate name.** Licensees must notify us and pay a fee for any change to the given name, trade name, or corporate name on their license at least thirty days before the actual change date.

#### NEW SECTION

**WAC 230-06-100 Changing business locations.** (1) Licensees must apply to us and pay a fee to change the location of their licensed business premises. Licensees must receive our approval before changing the business location.

(2) Commercial amusement game licensees may add or delete from the list of locations for which we issued their license without paying a fee.

### CHANGING MANAGEMENT OR OWNERSHIP

#### NEW SECTION

**WAC 230-06-105 Report change of management.** (1) Licensees must report in writing changes made to their organization's management, directors, officers, or any other position that makes management decisions directly affecting the

operation of their licensed gambling activity. We provide the forms to report these changes.

(2) If you are a commercial business licensee, you must report within thirty days.

(3) If you are a charitable or nonprofit organization licensee, you must report the changes when renewing your annual license.

### SALES AND TRANSFERS OF EQUIPMENT, PRODUCTS, AND SERVICES

#### NEW SECTION

**WAC 230-06-110 Buy, sell, or transfer gambling equipment.** (1) Before selling gambling equipment, licensees must ensure that the buyer possesses a valid gambling license.

(2) Before purchasing gambling equipment, licensees must ensure that the seller possesses a valid gambling license.

(3) Applicants for Class F or house-banked card room licenses may purchase and possess gambling equipment during the preclicensing process, but only after receiving written approval from us.

(4) Licensees may transfer gambling equipment as a part of a sale of a business as long as a condition of the sale is that the buyer receives a gambling license before the sale is complete. Licensees must make a complete record of all gambling equipment transferred in this manner, including commission identification and inspection services stamp numbers. Licensees must report these transfers, including a copy of the inventory record, to us.

#### NEW SECTION

**WAC 230-06-115 Using checks or credit cards to purchase gambling equipment, products, or services.** (1) Licensees may use checks or credit cards from state or federally regulated financial institutions to purchase gambling equipment, devices, related supplies or paraphernalia, and services.

(a) Checks must be drawn on the licensed buyer's business account or on the personal account of an owner, partner, officer, or a substantial interest holder of a corporate licensee; and

(b) Checks must be negotiable and dated on or before the delivery date of the product or service.

(2) Licensees must deposit checks at their bank:

(a) Within ten calendar days after the date the licensee delivered the product or service; or

(b) If a licensed buyer makes payment by mail, within thirteen days from the date postmarked on the envelope containing the payment.

#### NEW SECTION

**WAC 230-06-120 Sell or transfer gambling equipment to manufacturers or distributors.** (1) If we have revoked your operator or distributor license, your license has expired, or you have voluntarily surrendered your license, you may sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor.

(2) Transfers of gambling equipment in this manner are subject to the following requirements:

(a) The transfer must be complete within thirty days of the date the license became invalid; and

(b) Distributors must use the cash or credit against amounts they owe manufacturers; and

(c) Operators or distributors selling the equipment must report to us within ten days of the transaction a complete inventory of all the gambling equipment transferred, including commission identification and inspection services stamp numbers; and

(d) Manufacturers or distributors receiving the equipment must prepare a credit memorandum and retain it with their records.

### LICENSE RENEWALS

#### NEW SECTION

**WAC 230-06-125 Renew your license in a timely manner.** (1) Licensees must ensure a properly completed renewal application and all applicable fees are received at our headquarters fifteen days before the expiration date on their license.

(2) If licensees do not submit a properly completed application and all fees, their license expires, and they must immediately stop the gambling activity covered by their license.

(3) If your license expires, you must submit a new application and you must not operate any gambling activity until a new license is issued.

#### NEW SECTION

**WAC 230-06-130 Exceeding license class.** (1) Licensees must not exceed the gross gambling receipts limits for their license class during any annual license period.

(2) Licensees must apply a projection of year-to-date receipts to the remaining period of their license and, if it indicates that it is reasonably likely that they may exceed their license, they must immediately:

(a) Apply for a license that authorizes the anticipated level of gross gambling receipts; and

(b) Submit the fee required for the new license, minus the amount originally submitted for the previous license, plus a change of classification fee.

(3) If we issue a license upgrade, it is valid only for the remainder of the original term of the license.

(4) Licensees may exceed license class limits once, by the amount shown in the fees table, without having to upgrade or pay the penalties as long as they upgrade to the higher license class the next time they renew their license.

#### NEW SECTION

**WAC 230-06-135 Failing to apply for license class upgrade.** (1) If licensees fail to apply for a license class upgrade and exceed the license class limit within a present or previous license year, we assess an additional fee. We charge an additional fee of up to fifty percent of the difference

between the fee for the present license class and the new license class, or one thousand dollars, whichever is less.

(2) Licensees must pay any required license class upgrade fee, plus any additional fee required by subsection (1) of this section, within thirty days of our notification.

(3) Failure to pay the fees may result in an immediate summary suspension of all licenses.

#### NEW SECTION

**WAC 230-06-140 Partial refund of license fees if gambling receipts limit not met.** (1) Licensees may apply for a partial refund of their license fee when their annual gross gambling receipts are less than the minimum for the class of license we issued to them.

(2) Licensees may receive a refund for the difference between the fees actually paid and the fees that would normally apply to the level of gross gambling receipts actually received during the period.

(3) Licensees may make their request for refund after the end of any annual license period and before the end of the next annual license period.

#### NEW SECTION

**WAC 230-06-145 Surrendering suspended or revoked licenses.** If we suspend or revoke your license, you must, on demand, surrender the license and return it to us.

### WSR 06-07-158

#### PROPOSED RULES

#### DEPARTMENT OF REVENUE

[Filed March 22, 2006, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-118.

Title of Rule and Other Identifying Information: WAC 458-20-271 Tax incentives to reduce agricultural burning.

Hearing Location(s): Capital Plaza Building, 4th Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on April 26, 2006, at 9:30 a.m.

Date of Intended Adoption: May 3, 2006.

Submit Written Comments to: Gayle Carlson, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, fax (360) 586-5543, by April 26, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing a new rule, WAC 458-20-271 (Rule 271), to explain the tax incentives to reduce agricultural burning of cereal grain and grass fields. Chapter 420, Laws of 2005, made several changes to the tax incentives provided for reducing agricultural burning. This rule explains who is entitled to the exemption and what equipment qualifies for the exemption. The rule provides a number of examples to clar-

ify how the exemption applies. Information on the tax incentives for periods prior to the legislative change is also being incorporated from Rule 210 (WAC 458-20-210) into Rule 271.

Reasons Supporting Proposal: This rule will provide needed tax information to taxpayers and department staff about tax incentives provided for reducing agricultural burning.

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

Statute Being Implemented: RCW 82.08.841 and 82.12.841.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

March 22, 2006

Alan R. Lynn

Rules Coordinator

#### NEW SECTION

**WAC 458-20-271 Tax incentives to reduce agricultural burning.** (1) **Introduction.** Chapter 420, Laws of 2005, made several changes to the tax incentives provided for reducing agricultural burning of cereal grain and grass fields. These changes became effective July 1, 2005.

This section provides examples identifying a number of facts and then stating a conclusion. These examples should be used only as a general guide. The tax results of any situation must be determined after a review of all facts and circumstances.

(2) **General information common to the tax incentives to reduce agricultural burning before, on, and after July 1, 2005.**

(a) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold.

A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) **What is a cereal grain?** Cereal grains include wheat, oats, corn, barley, rye, spelt, and triticale.

(c) **What are the farmer's responsibilities with respect to the retail sales and use tax exemptions?** The farmer's responsibilities include the following:

(i) **Exemption certificate to be provided to seller.** The retail sales tax exemption provided by chapter 420, Laws of 2005 and RCW 82.08.840 is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(A) **Certificate—On and after July 1, 2005.** For purposes of the exemption available on and after July 1, 2005 (chapter 420, Laws of 2005), the buyer must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," as it relates to the exemption. A certificate to be completed by the farmer may be obtained via the department's web site at <http://dor.wa.gov>.

(B) **Certificate—Before July 1, 2005.** For purposes of the exemption available before July 1, 2005 (RCW 82.08.840), the buyer must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," or another certificate with substantially the same information.

(ii) **Maintaining records.** The law requires a farmer taking the exemption to keep records necessary for the department to verify eligibility. For example, copies of farm service agency or crop insurance records may be used to identify acreages by year as to crops grown. The records must be available for audit by the department.

(iii) **Reporting and paying tax on equipment that does not qualify for the exemption.** A farmer who takes a retail sales or use tax exemption and later finds that he or she does not meet the requirements is responsible for paying the sales tax (commonly referred to as "deferred sales tax") or use tax to the department.

Farmers who are registered with the department should report use tax on the excise tax return. Farmers who are not registered with the department may report use tax on the Consumer Use Tax Return available via the department's web site at <http://dor.wa.gov>.

(d) **What are the seller's responsibilities when making a tax-exempt sale?** The seller's responsibilities include the following:

(i) **Taking an exemption certificate from the buyer.** When making an exempt sale, the seller must take from the buyer a completed exemption certificate, as explained in subsection (2)(c)(i) of this section. The seller must retain a copy of the completed certificate in the seller's files. A seller who fails to take, retain, and upon request make available to the department a completed exemption certificate is liable for any uncollected retail sales tax.

(ii) **Exercising good faith.** Accepting a completed certificate documents the exempt nature of a sale under chapter 420, Laws of 2005 or RCW 82.08.840, unless there are facts that negate the presumption that the seller relied upon the certificate in good faith. The seller is not required to substantiate that the farmer satisfies the statutory requirements of a "qualifying farmer." The seller, however, must exercise a reasonable degree of care in making a tax-exempt sale.

For example, Farmer buys a disk, equipment that is potentially eligible for the exemption. Farmer provides a

completed Farmers' Retail Sales Tax Exemption Certificate to Implement Dealer. Implement Dealer reviews the certificate to ensure that it is properly completed, and retains the certificate in its files. During a later routine audit examination of Implement Dealer's records, a department auditor questions whether Farmer is eligible for the exemption. Because Implement Dealer exercised a reasonable degree of care in making the tax-exempt sale, the Implement Dealer has satisfied its responsibilities. The department will resolve any questions it has regarding Farmer's eligibility with Farmer.

(3) **Incentives to reduce agricultural burning—Periods after June 30, 2005.** Chapter 420, Laws of 2005 (2SSB 5663) provides a sales and use tax exemption for specified equipment to qualified farmers. There is also an exemption for labor and services for the construction of hay sheds for qualified farmers. Sales to qualified farmers of tangible personal property that becomes an ingredient or component of a hay shed during the course of construction also are exempt. This exemption expires January 1, 2011, and replaces the exemption previously provided by RCW 82.08.840 and 82.12.840.

(a) **Who qualifies?** Only qualified farmers are eligible for this exemption. A "qualified farmer" means a farmer as defined above who has more than fifty percent of his or her tillable acres in cereal grains and/or field and turf grass grown for seed in qualified counties. A person's custom farming activity is not considered for purposes of determining whether that person is a qualifying farmer. (See Example 3 and Example 4 in (a)(v) of this subsection.)

(i) **What is a "qualified county"?** A "qualified county" is a county in Washington state where cereal grain production within the county exceeds fifteen thousand acres. The qualified counties, as of July 1, 2005, are as follows:

|          |           |             |
|----------|-----------|-------------|
| Adams    | Garfield  | Stevens     |
| Asotin   | Grant     | Walla Walla |
| Benton   | Klickitat | Whatcom     |
| Columbia | Lincoln   | Whitman     |
| Douglas  | Spokane   | Yakima      |
| Franklin |           |             |

(ii) **Must a farmer live in a qualified county to qualify for the exemption?** No. It is the location of the farmer's tillable acreage that determines eligibility for the exemption, not the location of the farmer's home. Thus, a farmer who has more than fifty percent of his or her tillable acres in cereal grains, and/or field and turf grass grown for seed, in qualified counties is a "qualified farmer" even if the farmer lives in a nonqualifying county.

(iii) **Must the seller live in a qualified county to make a tax-exempt sale?** No. Again, it is the location of the farmer's tillable acreage that determines eligibility for the exemption. Thus, an implement dealer located in a nonqualifying county may make a tax-exempt sale if the dealer takes a properly completed exemption certificate from the farmer and exercises a reasonable degree of care in making the tax-exempt sale.

(iv) **Does "tillable acres" include fallow and CRP acreage?** "Tillable acres" include fallow acreage, but not acreage enrolled in Conservation Reserve Program (CRP),



Conservation Reserve Enhancement Program (CREP), or similar program under which the farmer agrees not to farm the land. Fallow acreage will be considered "in cereal grains and/or field and turf grass grown for seed" if in the following year it is planted with a cereal grain and/or field or turf grass grown for seed.

(v) **Examples.**

(A) **Example 1.** Farmer has 10,000 acres within a qualified county. In Year 1, 4,000 acres are planted in wheat, 2,000 acres are fallow, and 4,000 acres are enrolled in the CRP. In Year 2, the 2,000 acres left fallow in Year 1 are planted in wheat.

Farmer is a "qualified farmer" in Year 1. Farmer has 6,000 tillable acres (10,000 total - 4,000 CRP), 100% of which is located in a qualified county and in a cereal grain.

(B) **Example 2.** Farmer has 3,000 tillable acres within a qualified county and 4,000 acres within a nonqualified county. For purposes of determining whether Farmer is a qualifying farmer, only the 3,000 tillable acres within the qualified county is considered.

(C) **Example 3.** John owns and raises wheat on 1,000 acres located in a nonqualified county. John also performs custom farming services for Susan on 2,000 acres of wheat Susan owns and farms in a qualified county. John is not a qualified farmer. For purposes of determining whether John is a qualifying farmer, only the 1,000 tillable acres John owns is considered.

(D) **Example 4.** Steve leases (has the present right of possession of) 1,000 acres located in a qualifying county, on which he raises wheat. Steve also performs custom farming services on 2,000 acres for Jane, on which she raises potatoes. Steve is a qualifying farmer. For purposes of determining whether Steve is a qualifying farmer, only the 1,000 tillable acres for which Steve has the present right of possession are considered.

(b) **What equipment qualifies?** The law specifically identifies hay sheds and the following equipment as eligible for the exemption:

|               |                     |                                    |
|---------------|---------------------|------------------------------------|
| Bale Handlers | Minimum-till Drills | Shredders                          |
| Balers        | Mowers              | Sprayers                           |
| Chisels       | No-till drills      | Swathers                           |
| Cultivators   | Plows               | Tractors of 250 engine hp and over |
| Discs         | Power rakes         | Transplanters                      |
| Harrow        |                     |                                    |

The following combine components only:

Straw choppers    Chaff spreaders    Stripper Headers

(i) **What is a hay shed?** For the purposes of this exemption, a hay shed is a structure used to store plant residue, such as straw.

(ii) **What is a bale handler?** For purposes of this exemption, a bale handler is equipment specifically designed to load, stack, retrieve, and/or transport bales of plant residue, such as straw.

(iii) **Are hardware kits used to attach qualifying equipment to nonqualifying equipment eligible for the exemption?** Yes, provided the kit is necessary to attach exempt equipment to nonexempt equipment and the kit and exempt equipment are purchased together.

(iv) **Do tractors of less than 250 hp qualify for exemption if they are needed to pull or power eligible equipment?** No. The law specifically exempts only tractors of two hundred fifty horse power (hp) or more. Tractors of less than two hundred fifty hp are not eligible for the exemption, even if used to pull an eligible piece of equipment (e.g., a disc) or if attachment of an eligible piece of equipment is required (e.g., some bale handlers). For purposes of this exemption, horse power is measured in engine horse power.

(c) **What doesn't qualify for the retail sales and use tax exemption?** The following are examples of items or services that do not qualify for this exemption, even if purchased or used by a qualifying farmer:

- (i) Repairing, cleaning, decorating, altering, or improving of tax exempt equipment;
- (ii) Items that become an ingredient or component (e.g., repair part) of tax exempt equipment;
- (iii) Repairing, cleaning, altering, or improving of hay sheds after construction;
- (iv) Materials incorporated into hay sheds after construction; and
- (v) Construction of sheds used for storage of farm or other equipment.

(4) **Incentives to reduce agricultural burning—Periods before July 1, 2005.** This information was previously provided in WAC 458-20-210.

(a) **B&O tax credit to encourage alternatives to field burning.** Persons who qualified for a sales or use tax exemption under RCW 82.08.840 or 82.12.840 (machinery, equipment, or structures that reduce emissions from field burning) also qualified for a B&O tax credit. RCW 82.04.4459. The amount of the credit was equal to fifty percent of the amount of costs expended for constructing structures or acquiring machinery and equipment for which an exemption was taken under RCW 82.08.840 or 82.12.840. No application was necessary for the credit. Persons taking the credit must keep records necessary for the department to verify eligibility for the credit. This credit is subject to the following limitations:

- (i) No credit may be taken in excess of the amount of B&O tax that would otherwise be due;
- (ii) Credit may not be carried over to subsequent calendar years;
- (iii) The credit must be claimed by the due date of the last tax return for the calendar year in which the payment is made;
- (iv) Any unused credit expires;
- (v) Refunds will not be given in place of credits; and
- (vi) The credit may not be claimed for expenditures that occurred before March 22, 2000.

(b) **Machinery, equipment, and structures used to reduce emissions from field burning.** RCW 82.08.840 and 82.12.840 provide a sales and use tax exemption for certain property used to reduce field burning of cereal grains and field and turf grass grown for seed, or to reduce air emissions resulting from such field burning. The retail sales tax exemp-

tion applies to sales of machinery and equipment, and to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and to sales of tangible personal property that becomes an ingredient or component of eligible structures or eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. The sales tax exemption is effective March 22, 2000. The use tax exemption applies to the use of machinery and equipment, and of tangible personal property that becomes an ingredient or component of eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. This use tax exemption is also effective March 22, 2000. The use tax exemption also applies to the use of services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, if all of the requirements for the exemption are met. This component of the use tax exemption is effective June 1, 2002.

(i) **Majority use requirement.** To qualify for an exemption, the machinery, equipment, or structure must be used more than one-half of the time:

(A) For gathering, densifying, processing, handling, storing, transporting, or incorporating straw or straw-based products that results in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(B) To decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(ii) **Examples.** The following examples illustrate this exemption:

(A) Farmer cultivates turf grass. Farmer purchases spray equipment. As an alternative to field burning, the fields in which the spray equipment is used must be sprayed five times instead of twice. The use of the spray equipment meets the requirement that the equipment be used more than one-half of the time to decrease air emissions resulting from field burning; therefore, the purchase of the spray equipment is exempt.

(B) Farmer, who performs custom baling, purchases a new baler for use in baling hay and straw. The purchase of the baler is exempt if it will be used more than one-half of the time to bale straw, which results in a reduction in field burning.

(C) Farmer purchases a new combine for use in harvesting wheat. In addition to cutting the stalks, separating the kernels from the chaff, and unloading the kernels, the combine also chops the residual chaff before discharging it onto the field. While the need for field burning may decrease because the smaller residue more readily decomposes, the purchase of the combine does not qualify for the exemption. The combine is not used more than one-half of the time to decrease air emissions from field burning.

**WSR 06-07-162**  
**PROPOSED RULES**  
**SECRETARY OF STATE**  
 (Elections Division)

[Filed March 22, 2006, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-111.

Title of Rule and Other Identifying Information: Statewide voter registration database.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on April 25, 2006, at 1:30 p.m.

Date of Intended Adoption: May 8, 2006.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec-state.wa.gov, fax (360) 586-5629, by April 25, 2006.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules regarding the voter registration database are proposed and include the following topics: Data entry; frequency of duplicate and death checks; potential felons challenging pending cancellation status; incapacitated persons; voter registration challenges; lists of registered voters; and disaster recovery and security plans.

Reasons Supporting Proposal: The Help America Vote Act of 2002 requires all states to develop and maintain a statewide list of registered voters. Washington continues to refine its rules regarding this issue.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Pam Floyd, 520 Union Avenue S.E., (360) 725-5781.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes do not appear to have an impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 22, 2006

Sam Reed

Secretary of State

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-010 County election management system—Applications for voter registration.** (1) Each auditor must enter and maintain voter registration records in the official statewide voter registration data base by using a county election management system. Each record must contain at least the following information from the voter registration form in a format compatible with the official statewide voter registration data base:

(a) Name;

(b) Complete residential address;

- (c) Complete mailing address;
- (d) County registration number;
- (e) State registration number;
- (f) Gender;
- (g) Date of birth;
- (h) Date of registration;
- (i) Applicable district and precinct codes;
- (j) ~~((Five))~~ Dates upon which the individual has voted ~~((since establishing that registration record)),~~ if available;

(k) Washington state driver license number, Washington state identification card number, or the last four digits of the applicant's Social Security number if he or she does not have a Washington state driver license or Washington state identification card; and

(l) A scanned image file (format .tiff) of the applicant's signature.

~~((2))~~ ~~((The auditor may also assign numeric or alphabetic codes for city names in order to facilitate economical storage of the voter's address.~~

~~((3))~~ ~~((In the case of an applicant who applies for voter registration by mail and sends a copy of an alternative form of identification for registration purposes, pursuant to RCW 29A.08.113, the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was sent to the auditor.~~

~~((4))~~ ~~((3))~~ Upon entry of an applicant's information, the auditor must check for duplicate entries.

~~((4))~~ ~~((3))~~ Each auditor must have a quality assurance program to maintain accurate data entry into the statewide voter registration data base.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-055 Duplicate voter registration search conducted by secretary.** Upon receipt of an applicant's electronic voter registration record from the auditor, and on a ~~((quarterly))~~ monthly basis pursuant to WAC 434-324-113(3), the secretary must search for potential duplicate registration records in the official statewide voter registration data base, required in RCW 29A.08.651, by comparing the applicant's name and date of birth or other identifying information provided by the applicant on the voter registration form. ~~((Pursuant to RCW 29A.08.107, if a potential duplicate is identified, the secretary must work with the auditor to determine if the registration record is a transfer, update, or duplicate.))~~ Duplicates will be determined by comparing the signatures on all available records. If a voter is transferring his or her registration to a new county or if any other information on the application has ~~((changed))~~ been updated, the auditor must update the registration record pursuant to RCW 29A.08.107(4). A duplicate registration record must not be entered as a new registration record.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-085 Notice of new registration or transfer.** (1) The auditor must send notification to an individ-

ual by nonforwardable, address correction requested mail if an individual:

- (a) Registers to vote;
- (b) Transfers his/her registration record within the county;
- (c) Transfers his or her registration record from another county within Washington state; or
- (d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The notice must acknowledge that the request of the individual has been processed and must include:

- (a) Voter's full name;
- (b) Mailing address;
- (c) County name;
- (d) Precinct name and/or number; and
- (e) ~~((State registration number;~~
- ~~((#))~~ The date the voter registered; ~~((; and~~
- ~~((g))~~ A signature line for the voter).

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-090 Cancellation due to death—Process and notification.** (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter registration records with deceased persons information from the Social Security Administration. Comparisons must be conducted on a monthly basis. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a list of matching names, identified as potentially deceased voters, and deliver it to the auditor electronically. The auditor must review the list within five days and approve or reject the proposed cancellations. ~~((Upon the sixth day, if the auditor has failed to approve or reject the proposed cancellations, the official statewide voter registration data base must automatically send notification to the county to cancel the appropriate registrations.))~~ The secretary may assist the auditor with this review.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-100 Felony conviction—Notice from county clerk.** Upon receiving official notice from state or federal court of a person's conviction of a felony as outlined in RCW 29A.08.520, the auditor must search his or her county election management system to determine whether the ~~((potential))~~ felon named in the official notice is a registered voter. If the auditor finds a match, he or she must confirm that the first name, last name, and date of birth on the official notice match the voter registration record before canceling the felon's voter registration. After canceling a felon's voter registration, the auditor must send a cancellation notice to the felon using the last known address and send notifica-

tion to the secretary through the county election management system.

#### NEW SECTION

**WAC 434-324-108 Incapacitated persons lacking voting rights—Notice from court.** Upon receipt of a court order declaring an incapacitated person does not retain voting rights as outlined in RCW 11.88.010, the auditor must search his or her county election management system to determine whether the person is a registered voter. If the auditor determines the incapacitated person's name and other identifying information match, he or she must cancel the incapacitated person's voter registration and send notification to the secretary through the county election management system. The auditor must also send a copy of the court order to the secretary. After canceling an incapacitated person's registration, the auditor must send a cancellation notice to the incapacitated person using the last known address.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-113 Voter registration list maintenance.** In addition to conducting searches to identify felons, duplicate registration records, and deceased voters as outlined in this chapter, the following applies:

(1) Each even-numbered year, maintenance of the voter registration list, as required by RCW 29A.08.605, must be completed ninety days prior to the date of the primary in that year. The voter registration list maintenance program is complete upon mailing the required notices. Counties have discretion to also run the voter registration list maintenance ~~((program))~~ in odd-numbered years.

(2) ~~((In addition to conducting quarterly comparisons to identify felons as required in WAC 434-324-106, the secretary must search the official statewide voter registration data base on a quarterly basis to ensure there are no duplicate voter registration records or deceased voter registration records maintained. Duplicate voter registration records must be processed in accordance with WAC 434-324-050, felon registration records in accordance with WAC 434-324-106, and deceased voter registration records in accordance with WAC 434-324-090.~~

~~((3))~~ If, at any time, the secretary finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the secretary must refer such information to the appropriate county auditor ~~((to determine whether a voter registration challenge is warranted, pursuant to RCW 29A.08.810. The))~~ and county prosecutor ~~((must be copied on the notification))~~.

(3) If, at any time, the auditor finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the auditor must notify the county prosecutor.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-130 Contents of list of registered voters for the public.** Pursuant to the provisions of RCW 29A.08.710, 29A.08.540, 29A.08.720 and 29A.08.740, the auditor or secretary must furnish to any person, upon request, the current list((s)) of registered voters and a separate list of canceled voters at actual reproduction cost. The auditor ~~((must))~~ may, upon request, select names and addresses from the voter registration records on the basis of the precinct code, the district code, date of registration, or voting history of each individual voter in that portion of the voter registration file. Such lists may contain the information prescribed in RCW 29A.08.710 for each registered voter and may be in the form of computer printouts, microfilm duplicates, or electronic media copies of such information. Such voter registration lists must be used only for political purposes; commercial use of this information is punishable as provided in RCW 29A.08.740.

#### NEW SECTION

**WAC 434-324-165 Disaster recovery and security plans.** The secretary must maintain disaster recovery and security plans for the voter registration data base. A copy of the plans must be stored off-site. Both plans are exempt from public disclosure pursuant to RCW 42.17.310 (1)(ddd).

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-106 Felony conviction—Secretary's quarterly comparisons ~~((and pending cancellation notifications))~~.** (1) Once a quarter, the secretary must perform comparisons with the Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies, as authorized in RCW 29A.08.520, to search for registration records of felons. The quarterly comparison must be performed prior to the first extraction or pull of absentee ballots for a primary, special, or general election. The secretary must create a list of matches by confirming that the first name, last name, ~~((and))~~ date of birth, and other identifying information match.

(2) The list of matches must be compared to information provided by the office of the administrator for the courts ~~((and)), the indeterminate sentence review board, the clemency and pardons board, and the governor~~ to identify felons who have received certificates of discharge, orders restoring civil rights, certificates of restoration, or gubernatorial pardons ~~((for all felony convictions))~~. ~~((3))~~ The secretary must not cancel the voter registration record of a voter who has received a certificate of discharge, order restoring civil rights, certificate of restoration, or gubernatorial pardon for all felony convictions. The secretary must flag the voter registration record to prevent future cancellation based on these previous felony convictions.

~~((4))~~ (3) If there is no record of a certificate of discharge, order restoring civil rights, certificate of restoration, or gubernatorial pardon for each felony conviction, the secretary must change the voter's registration status to "pending

cancellation." This change of status must be entered prior to the first extraction or pull of absentee ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in the poll book and must not receive an absentee ballot.

~~((5))~~ (4) The secretary must mail a notification letter to each felon whose status is pending cancellation. ~~((In addition to sending a copy of the notification letter to the auditor, the secretary must also send notification of the voter's pending cancellation status to the auditor through the election management system.))~~ The notification letter must be sent to the felon's last known registration mailing address indicating that his or her voter registration is about to be canceled. The ~~((form))~~ letter must contain language notifying the felon that ~~((if the pending cancellation status is in error, the felon))~~ he or she may contact the auditor's office to ~~((reconcile the error and))~~ correct the information or request a hearing if the felon status is not correct or the right to vote has been restored. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. ((As outlined in RCW 29A.08.520, the form must also provide information on how the right to vote may be restored, as well as how to register to vote after the right to vote has been restored.)) The notification letter must contain substantially the following language:

Dear . . . . .,

According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled ~~((as outlined in the last paragraph of this letter))~~ or by a certificate of restoration issued by the governor.

Based on name ~~((and))~~, date of birth, and other identifying information maintained in state voter registration records and felony conviction records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:

- Felon's name
- Felon's date of birth
- County of conviction
- Date of conviction
- Case/cause number

No evidence was found to indicate that your civil rights lost as a result of this conviction were restored.

Your voter registration is pending cancellation. If you would like to dispute this finding, you have ~~((thirty))~~ 30 days from the postmark date on the envelope to provide documentation that this is incorrect or request a hearing ((by contacting)). You must contact:

- County auditor
- County auditor's address
- County auditor's phone number
- ~~((County auditor's e-mail address))~~

You may also request a provisional ballot for any election scheduled to occur prior to the resolution of your registration status.

If you do not contact the county elections department within 30 days to dispute ((this)) the finding ((within thirty days)), your voter registration will be canceled.

Voting before the ~~((rights are))~~ right is restored is a class C felony ~~((RCW 29A.84.660))~~. The right to vote may be restored by proof of one of the following for each felony conviction:

1. A certificate of discharge, issued by the sentencing court ~~((RCW 9.94A.637))~~;
2. A court order restoring civil right, issued by the sentencing court ~~((RCW 9.92.066))~~;
3. A final ~~((order of))~~ discharge and restoration of civil rights, issued by the indeterminate sentence review board ~~((RCW 9.96.050))~~; or
4. A certificate of restoration, issued by the ~~((governor (RCW 9.96.020))~~ cleremy and pardons board; or
5. A pardon, issued by the governor.

Further information about how to get the right to vote restored may be found at ~~((www.seestate.wa.gov/elections/restoring.aspx))~~ www.seestate.wa.gov/elections/faq.aspx.

Sincerely,

~~((.....))~~ Elections Division  
Office of the Secretary of State

The secretary must provide an explanation of the requirements for restoring the right to vote. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(5) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(6) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's civil rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation based on the same felony conviction.

(7) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(8) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documenta-

tion, such as a copy of the judgment and sentence, sufficient to prove the felony conviction by clear and convincing evidence. It is not necessary that the copy of the document be certified. The prosecuting attorney must make a diligent search of the court file to confirm that no certificate of discharge or order restoring civil rights has been issued by the sentencing court.

(9) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation based on the same felony conviction.

(10) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The prosecuting attorney must also show by clear and convincing evidence that he or she made a diligent search of the court file to confirm that no certificate of discharge or order restoring civil rights has been issued by the sentencing court. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation based on the same felony convictions. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(11) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (7) through (10) of this section.

**WSR 06-07-163**  
**PROPOSED RULES**  
**SECRETARY OF STATE**  
 (Elections Division)  
 [Filed March 22, 2006, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-113.

Title of Rule and Other Identifying Information: Voting systems.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on April 25, 2006, at 1:30 p.m.

Date of Intended Adoption: May 8, 2006.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec-state.wa.gov, fax (360) 586-5629, by April 25, 2006.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules remove references to punchcards and address issues that include the following: Manually counting ballots of selected precincts; voter verified paper audit trail printers; voters leaving the polling place without voting; storing ballot images; resolving ballots tabulated on digital scan devices; voting system requirements; and modifying voting and vote tabulating systems.

Reasons Supporting Proposal: The Help America Vote Act of 2002 requires all states to replace punchcard voting systems. Counties have adopted alternate systems, and further refinement of the rules is necessary. State law also requires the use of voter verified paper audit trails when digital recording equipment devices are utilized.

Statutory Authority for Adoption: RCW 29A.04.611.

Rule is necessary because of federal law, (partially) Help America Vote Act of 2002, 42 U.S.C. 15301.

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Paul Miller, 520 Union Avenue S.E., (360) 725-5783.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes do not appear to have an impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 22, 2006  
 Sam Reed  
 Secretary of State

AMENDATORY SECTION (Amending WSR 03-23-093, filed 11/17/03, effective 12/18/03)

**WAC 434-219-160 Political party and unaffiliated ballots—Arrangement.** Ballots for each major political party and unaffiliated ballots shall be provided as follows:

(1) Where candidate names are listed on separate ballots, each ballot shall be identified by color and either the name of the political party or as an unaffiliated ballot. Each separate

ballot shall contain a machine readable code to distinguish each ballot type within each precinct.

(2) Where candidate names are listed on a consolidated ballot, they shall be presented in such a manner that each party's group of candidates is clearly distinguishable and identified by party name. The unaffiliated ballot may be listed in a separate listing or may be considered a combination of the party ballots. The order of the parties shall be the same as the order in which candidate names are listed on partisan general election ballots.

At a polling place, each ballot must be coded so that only votes cast for candidates of the party matching the oath signed by the voter are counted.

The code shall be a response position on the consolidated ballot identifying one of the major political parties or the unaffiliated status. Its purpose will be to exclude any vote cast on the ballot that does not correspond to the party or unaffiliated status indicated by the voter on the response position. The voter must mark ~~((or punch))~~ the appropriate response position corresponding to the oath or declaration on the absentee ballot return envelope. If the vote is cast at a polling place, the voter or precinct election official shall mark ~~((or punch))~~ the code. If the code is marked ~~((or punched))~~ by the voter, the precinct election official shall ensure that the code matches the oath or declaration as signed in the poll book. If a consolidated ballot is used in a mail ballot precinct or as an absentee ballot and a party/unaffiliated code is not used, each returning ballot must be segregated by oath and then subsequently inspected to ensure that only votes cast for candidates corresponding to the oath signed by the voter are counted.

AMENDATORY SECTION (Amending WSR 98-03-033, filed 1/13/98, effective 2/13/98)

**WAC 434-230-160 Electronic voting device instructions.** The ballot shall identify the type of primary or election, the county, and the date of the primary or election. Prominently displayed in the voting booth or on the ballot shall appear instructions directing the voter how to operate the voting device and correctly cast votes on issues and candidates, including write-in votes. The instructions shall read substantially as follows: To vote for a candidate or for or against a measure, ~~((punch or))~~ mark the voting position to the right of the measure or of the name of the person for whom you desire to vote. To vote for a person not on the ballot, write the title of the office, (if applicable), the name of the candidate, and party affiliation if for a partisan office, in the space provided on the ballot card or ballot envelope and ~~((punch or))~~ mark such write-in position (if applicable).

Absentee ballots shall be designated in such a manner as to clearly distinguish them from polling place ballots.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-230-140 Definitions.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

**WAC 434-250-340 Manual count of selected precincts.** In an election conducted entirely by mail, the manual count of precincts requested by political party observers pursuant to RCW 29A.60.170 must be conducted as follows:

(1) Upon mutual agreement, the official political party observers may request that a manual count be conducted of one race or issue in up to three precincts.

(2) The official political party observers may mutually agree on which precincts are to be counted, or may agree that the selection be made at random. Once the three precincts are selected, the official political party observers may mutually agree on which race or issue in each precinct is to be counted, or may agree that the selection be made at random. The selection must occur before election day to allow the county auditor to assemble the proper ballots.

(3) The count may begin no earlier than 8:00 p.m. on election day and must be completed by 8:00 p.m. on the second day after election day. The official political party observers must receive timely notice of the time and location of the count established by the county auditor. However, the process must proceed as scheduled if the observers are unable to attend.

(4) The ballots that are ready for tabulation at the time the count begins must be included in the manual count of the selected precincts.

(5) ~~((One))~~ The manual count of the selected precincts ((is complete, the same ballots must be tabulated by)) may be conducted either before or after the voting system count. The same set of ballots must be used in both counts.

(6) The results of the manual count must be compared to the results of the voting system count, and documented in a report signed by the county auditor and political party observers present.

AMENDATORY SECTION (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

**WAC 434-253-023 Voter verified paper audit trail—Duties prior to opening of the polls.** If a direct recording electronic device is used at a poll site, before a device may be used by a voter, an inspector and at least one judge must verify:

(1) The paper printer or paper canister is secured so that the paper record may not be removed from the device by anyone other than an election officer;

(2) Only a blank portion of the paper record is visible to the voter as he or she approaches the device; and

(3) The paper printer or paper canister is sealed with a numbered seal to ensure the ~~((interior of the machine cannot be accessed))~~ paper tape cannot be removed by the voter.

AMENDATORY SECTION (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

**WAC 434-253-110 Examination of voting devices.** At least once every hour while the poll booths are open, precinct election officers shall examine the voting devices, poll booths, printed materials within the poll booths, and paper

printers or paper canisters attached to direct recording electronic devices to ensure that they have not been tampered with and are in proper working condition.

(1) If any seal or lock on a direct recording electronic device ~~((or)), including the paper printer or paper canister,~~ has been broken or tampered with, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. The direct recording electronic device and paper printer must be transferred pursuant to WAC 434-253-115 (1)(b). A written report regarding the circumstances of the removal from service must be sent to the county canvassing board.

(2) Precinct election officers must replace any printed materials that were to remain in the poll booth if they have been defaced, removed, or destroyed.

(3) If a paper printer for a direct recording electronic device has malfunctioned or run out of paper, it must be handled pursuant to WAC 434-253-115.

**AMENDATORY SECTION** (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

**WAC 434-253-115 Direct recording electronic device paper printer malfunction.** (1) The following must occur if a paper printer for a direct recording electronic device has malfunctioned or run out of paper at any time:

(a) If the precinct election officer has confirmed that no ballots have been cast after the printer ran out of paper or malfunctioned, he or she must remove the direct recording electronic device and paper printer from service, document the problem, and correct the problem, if possible. While the problem is being corrected, the direct recording electronic device and paper printer must not be removed from the poll site and must remain in sight of election officers. The direct recording electronic device and paper printer may be returned to service once the problem has been corrected.

(b) If the precinct election officer cannot confirm that no ballots were cast after the printer ran out of paper or malfunctioned, or if the problem cannot be corrected, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. ~~((At the direction of the county auditor, a team or teams composed of one representative from each major political party must pick up the direct recording electronic device and paper printer for delivery to the counting center or other location, as designated by the county auditor.))~~ The paper printer must be prepared for transfer pursuant to WAC 434-253-225. ~~((A precinct election official representing each major political party must seal the direct recording electronic device with a uniquely prenumbered seal. Upon delivery, the county auditor must receive the sealed direct recording electronic device and paper printer and record the time, date, precinct name or number, and seal numbers.))~~ The data pack or cartridge of the direct recording device must be transported to the counting center in a sealed container, consistent with WAC 434-253-203. The auditor must present a written report regarding the circumstances of the removal from service ~~((must be sent)), which includes the time, date, precinct name or number, device serial number(s) and seal numbers,~~ to the county canvassing board.

(2) In any case where an electronic ballot has been cast without a readable corresponding paper record, the county may print the ballot image stored on the device for use as a paper record for that device, in the case of an audit or manual recount. This may mean printing all ballot images from that machine.

**AMENDATORY SECTION** (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

**WAC 434-253-225 Preparation for transfer of direct recording electronic device paper records.** (1) In preparation for transfer to a counting center, paper records from direct recording electronic devices must be either:

(a) Placed in transfer containers; or

(b) Transferred in the paper printer or paper canister if the paper printer or paper canister is sealed so the paper record cannot be removed without breaking the seal.

(2) Paper records must be accompanied by a transmittal sheet which must include at a minimum:

(a) Name or other identifier of the polling place in which the digital recording electronic device was utilized;

(b) The seal number from the paper printer; and

(c) The serial number or other identifier of the digital recording electronic device if distinctly unique from the seal number on the paper record printer or paper canister.

(3) If paper records are placed in a transfer container, the inspector and one judge from each political party, if available, must sign the transmittal sheet ~~((attesting to the number of paper record tapes included in the container and the seal number)) and place it in the transfer container. ~~((If paper records are transferred in a container, the container must be locked.))~~ The number of paper record tapes included in the container must be recorded on the transmittal sheet. A uniquely prenumbered seal must ~~((also)) be applied ~~((, if available)) to the container.~~~~~~

(4) The paper records must be transferred in a manner that is consistent with the transfer of ballots.

#### **REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 434-253-230

Sealing the ballot pages appearing in punchcard voting devices.

**AMENDATORY SECTION** (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-261-005 Definitions.** (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be dupli-



cated on blank ballots or by making changes on an electronic facsimile of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title (~~(- In the case of punch cards, this means all voting response positions are cleanly punched and removed from the eard);~~);

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks (~~(or punches)~~), and questions of vote intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" is the signature of a registered voter eligible to vote in the election as verified against the voter registration files. On an absentee ballot envelope, a mark with two witnesses is a valid signature.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

**WAC 434-261-045 Secure storage.** Received ballots and ballot images must be maintained in secure storage except during processing, duplication, inspection by the canvassing board, or tabulation. Secure storage must employ the use of numbered seals and logs, or other security measures that will detect any inappropriate access to the secured materials. Ballots and ballot images may only be accessed in accordance with RCW 29A.60.110.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-261-070 Manual inspection of ballots.** (1) Upon receiving absentee ballots and upon breaking the seals and opening the ballot containers from the precincts, all voting positions on voted ballots shall be manually inspected on both sides of the ballot to determine whether the ballot will be readable by the vote tabulating system. This manual inspection is a required part of processing ballots.

(2) The inspection of ballots tabulated at the poll site is not required provided that the poll site ballot programming provisions of RCW 29A.44.340 are in effect.

(3) If the manual inspection process detects any physically damaged ballots, unreadable ballots which might not be correctly counted by the tabulating equipment, or marks (~~(or punches)~~) that differ from those specified in the voting instructions, but the marks clearly form a discernible and consistent pattern on the ballot to the extent that the voter's intent can be clearly determined, the county auditor may either:

- (a) Refer the ballots to the county canvassing board; or
- (b) Duplicate the ballots if authorized by the county canvassing board.

If the voter's intent is not clear, the ballot must be referred to the county canvassing board.

~~((4) In the case of punched ballots, if two or more corners or attachment points are detached in a punch position, the vote is valid and the ballot may be duplicated without referral to the county canvassing board.))~~

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-261-075 Manual inspection of ballot—Acceptability of marks (~~(or punches)~~).** (1) If the voter returns voting responses by mail on any form other than the ballot sent, the votes thereon shall be acceptable and tallied provided that:

- (a) Only votes for offices or measures for which the voter is eligible are counted.
- (b) The candidate or measure response position for which the voter is voting can be clearly identified.
- (c) The ballot issued is not returned, or if returned, contains no marks (~~(or punches)~~) indicating an attempt to vote it.
- (d) A valid signature on an absentee oath is on file with the county auditor.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

(2) Corrected absentee ballots shall be counted in the following manner:

(a) If a voter follows the instructions for correcting a vote, either the written instructions or other instructions given to the voter by the county auditor, the correction shall be made by duplicating the ballot and then tabulating the duplicated ballot.

(b) If a voter appears to have corrected the ballot in a manner other than as instructed, the vote for that candidate or issue shall not be tabulated unless the voter provides written instructions directing how the vote should be counted or has clearly attempted to erase a mark.

(3) If a voter has indicated a write-in vote on the ballot which duplicates the name of a candidate who already appears on the ballot for the same office, the ballot shall be duplicated to count one vote for the candidate indicated. Such a vote shall be counted pursuant to RCW 29A.60.021.

(4) If a voter signs the oath with a mark and does not have two witnesses attest to the signature, the envelope must be treated as if it were unsigned.

(5) If a ballot contains marks (~~(or punches)~~) that differ from those specified in the voting instructions, those marks (~~(or punches)~~) shall not be counted as valid votes unless there is a discernable and consistent pattern, to the extent that the voter's intent can clearly be determined. If there is such a pattern, the ballot shall be duplicated to reflect the voter's intent.

NEW SECTION

**WAC 434-261-102 Resolving ballots tabulated on digital scan vote tallying systems.** In counties tabulating ballots on a digital scan vote tallying system, two staff designated by the auditor's office must resolve ballots identified as requiring resolution.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-262-203 Poll-site ballot reconciliation—Central count optical scan ((and punched)).** Using the poll-site ballot accountability forms, the poll books, and election night precinct results, poll-site ballots shall be reconciled in the following manner:

(1) Reconciliation must begin as soon as practical after the election.

(2) Each precinct's results shall be reconciled with the precinct's ballot accountability form. The number of ballots issued should equal the number of ballots counted plus any ballots not counted. Ballots not counted may include, but not be limited to: Provisional ballots, ballots referred to the canvassing board, ballots to be duplicated, ballots with write-in votes, spoiled ballots.

(3) Any discrepancies must be investigated. At a minimum, the following areas must be checked until the discrepancy is resolved:

- (a) Check the accuracy of the ballot accountability form.
- (b) Recount the signatures in the poll book.
- (c) Check the spoiled ballots.
- (d) Check the provisional ballots.
- (e) Count the ballot stubs.
- (f) Check the poll-site supplies for ballots.
- (g) Manually count the number of ballots.
- (h) Call the poll workers.

(4) All steps to reconcile each precinct shall be documented, including any discrepancies that cannot be resolved. Reconciliation of all precincts shall be completed and presented to the county canvassing board before the election can be certified.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-040 Voting system requirements. (1)**

No voting device or its component software may be certified by the secretary of state unless it:

- (a) Secures to the voter secrecy in the act of voting;
- (b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (c) ~~((Permits the voter to vote for all the candidates of one party or in part for the candidates of one or more other parties;~~

~~((d)))~~ Correctly registers all votes cast for any and all persons and for or against any and all measures;

~~((e)))~~ ~~((d))~~ Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;

~~((f))~~ ~~Beginning January 1, 2006,~~ ~~((e))~~ Produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; ~~((and~~

~~((g))~~ ~~Except for functions or capabilities unique to this state;))~~ ~~((f))~~ Has been tested and approved by the appropriate independent testing authority approved by the United States election assistance commission; ~~and~~

~~((g))~~ For a partisan primary, prevents the counting of votes for candidates of more than one political party.

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct; ~~((and))~~

(d) Produces precinct and cumulative totals in printed form; ~~and~~

(e) Produces legislative and congressional district totals for statewide races and issues in electronic and printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

(4) Transfer of information from a remote tabulating system may be made by telephonic transmission only after the creation of a disk, paper tape, or other physical means of recording ballot results.

(5) The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal independent testing authority and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. In lieu of placing them in escrow, the source code and the working or compiled version may be deposited with the national software reference library. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-190 Restricted period.** No modification, change, or other alteration to voting or vote tabulating system, equipment, or component may ~~((receive administrative approval or certification))~~ be installed in a county between July 15th and ((December 31st)) November 30th of the same year.

REPEALER

The following sections of the Washington Administrative Code are repealed:

|                 |   |
|-----------------|---|
| WAC 434-335-380 | Logic and accuracy test preparation—State primary and general election—Punchcard systems. |
| WAC 434-335-390 | Punchcard test deck maintenance and storage.  |
| WAC 434-335-400 | Punchcard adjustment standards and tests.   |
| WAC 434-335-410 | Punchcard test precinct selection—State primary and general elections.                    |
| WAC 434-335-420 | Punchcard testing requirements prior to official logic and accuracy test.                 |
| WAC 434-335-600 | Parallel monitoring test.   |
| WAC 434-335-610 | Parallel monitoring test decks.   |
| WAC 434-335-620 | Parallel monitoring test observers.   |
| WAC 434-335-630 | Parallel monitoring test certification.   |
| WAC 434-335-640 | Post election test.   |

**WSR 06-07-164****PROPOSED RULES****SECRETARY OF STATE**

(Elections Division)

[Filed March 22, 2006, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-112.

Title of Rule and Other Identifying Information: Initiative and referenda filing petitions.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on April 25, 2006, at 1:30 p.m.

Date of Intended Adoption: May 8, 2006.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec-state.wa.gov, fax (360) 586-5629, by April 25, 2006.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule allows people who have signed an initiative or referenda petition to submit a letter to the secretary of state requesting the withdrawal of his/her signature.

Reasons Supporting Proposal: Voters may be confused about which petition they have signed.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Pam Floyd, 520 Union Avenue S.E., (360) 725-5781.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes do not appear to have an impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 22, 2006

Sam Reed

Secretary of State

NEW SECTION**WAC 434-379-008 Voluntary withdrawal of one's signature from an initiative or referendum petition.**

Before the deadline for filing petitions has passed, a person who has signed an initiative or referenda petition may submit a letter to the secretary withdrawing his or her signature from the petition. This letter must be included as part of the public record for the petition and does not require the secretary to physically remove the person's name from the petition.

**WSR 06-07-165****PROPOSED RULES****HOP COMMISSION**

[Filed March 22, 2006, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-133.

Title of Rule and Other Identifying Information: Hop labeling requirements, WAC 16-532-120.

Hearing Location(s): Washington State Department of Agriculture, Ag Conference Room, 21 North First Avenue, Yakima, WA 98902, on April 27, 2006, at 2:30 p.m.

Date of Intended Adoption: July 17, 2006.

Submit Written Comments to: Ann George, Administrator, Washington Hop Commission, 301 West Prospect Place, Moxee, WA 98936, e-mail ann@wahops.org, fax (509) 453-457-8561 [457-8561], by April 27, 2006, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Rochelle Painter at (360) 902-2060, by April 19, 2006, TTY (360) 902-1996.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington hop commission is proposing to remove the requirement to stencil all hop bales with "WASHINGTON" OR "WASHINGTON GROWN."

Reasons Supporting Proposal: Reducing the bale stencil requirements will save growers the expense of applying the stencil, and will improve recycling of burlap bale cloth.

Statutory Authority for Adoption: RCW 15.65.050, 15.65.330, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 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 proposed change will update the regulation to reflect changes in hop marketing procedures, which have resulted in more in-state processing of raw hops prior to shipment to end users. Removal of the requirement to label hop bales as "grown in Washington" will save producers time and expense, while having no impact on marketing of the crop.

Name of Proponent: Washington hop commission, governmental.

Name of Agency Personnel Responsible for Drafting: Ann George, Moxee, (509) 453-4749; Implementation and Enforcement: Washington hop commission, Moxee, (509) 453-4749.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Technical amendments being proposed do not require a small business economic impact statement pursuant to RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington hop commission is not a named agency in RCW 34.05.328 (5)(a)(i).

March 22, 2006  
Ann E. George  
Administrator

AMENDATORY SECTION (Amending WSR 04-10-059, filed 4/30/04, effective 5/31/04)

**WAC 16-532-120 Labeling.** ~~((+))~~ Each lot of hops must be identified by the crop year produced, grower number and lot designation, and variety stenciled on each bale.

~~((+))~~ (1) A three-digit grower number will be assigned by the Washington hop commodity board (commission) prior to the annual harvest.

~~((+))~~ (2) The first marking will consist of the last digit of the crop year, the letter "G" and a hyphen, followed by the three-digit grower number and lot designation (example: 8G-000-01).

~~((+))~~ (3) The first marking shall be affixed on the head or top of the bale and shall be in characters approximately two inches high.

~~((+))~~ (4) The second marking will consist of the hop variety, utilizing a two-letter abbreviation. A list of approved two-letter abbreviations will be approved annually by the Washington state hop commodity board.

~~((+))~~ (5) The second marking shall be affixed immediately below the first marking on the head or top of the bale, and shall be in characters approximately two inches high.

~~((2))~~ In addition to any other brands, labels, stencils or other marks customarily used by hop handlers to identify their own trademarks, labels or firm names, all baled hops shall be branded, labeled, stenciled or marked with one distinctive identifying marking, defined or designated by the hop commodity board (commission), which shall identify the hops as having been grown in the state of Washington.

~~(a)~~ This mark or identification shall be stenciled in letters at least one inch in height and shall read: "Washington," or "grown in Washington," as prescribed by the hop commodity board (commission).

~~(b)~~ This mark or identification shall be affixed in a suitable position on the head or top of the bale, in the area generally used by the federal/state inspectors to stencil their own identification mark and in the same general area where the grower's "G" number and variety identification are applied.

~~(c)~~ At no time shall the identification marking appear on the face or sides of the bales, as these areas are considered to be for the use of the dealer or handler for trademarks, shipping markings, bale numbers, firm insignias, etc.

~~(d)~~ The approved identification marking shall be affixed by the federal/state inspector prior to the drawing of samples for federal/state inspection, and, no hops may be sampled for this purpose unless the markings have been affixed thereto in compliance with the regulations prescribed by the hop commodity board (commission).

~~(e)~~ Handlers who offer hops for sale in foreign countries where only shipping markings are permitted on the bales or containers, may apply to the hop commodity board (commission) for permission to blot out or remove the identifying marking.)

## WSR 06-07-166

### PROPOSED RULES

### DEPARTMENT OF AGRICULTURE

[Filed March 22, 2006, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-036.

Title of Rule and Other Identifying Information: WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains and 16-319-041 Application for certification of forest reproductive material.

Hearing Location(s): Washington State Department of Agriculture, 21 North First Avenue, Suite 103 Conference Room, Yakima, WA 98902, on May 1, 2006, at 11:00 a.m.

Date of Intended Adoption: May 12, 2006.

Submit Written Comments to: Debbie Hacker, P.O. Box 42560, Olympia, WA 98504-2560, e-mail dhacker@agr.wa.gov, fax (360) 902-2085, by 5:00 p.m. on May 1, 2006.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend chapter 16-303 WAC to ensure that certification fees charged by the Washington State Crop Improvement Association, for crops which they are responsible for, are sufficient to cover operating costs.

Reasons Supporting Proposal: The proposed fee increases are necessary to help offset inflationary increases in the cost of operating the Washington State Crop Improvement Association. This proposal is supported by the board of directors for the Washington Crop Improvement Association

and is necessary to maintain the current level of operations of the association.

Statutory Authority for Adoption: RCW 15.49.310, 15.49.370(3), and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.49.370(3).

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

Name of Proponent: The Washington State Crop Improvement Association board of directors, private.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Even though the Washington state department of agriculture (WSDA) has an exemption to Initiative 601, which limits the rate of increase of fees charged, the proposed increase in the fees charged by the Washington State Crop Improvement Association are calculated upon the office of financial management fiscal growth factor for the fiscal year 2006. WSDA concludes that this fee increase does not impose "more than a minor" cost upon the seed industry and therefore an SBEIS is not required according to RCW 19.85.030 (1)(a).

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency in RCW 34.05-328 (5)(a)(i).

Robert W. Gore
Assistant Director

AMENDATORY SECTION (Amending WSR 05-05-052, filed 2/14/05, effective 3/17/05)

WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains. (1) Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains are as follows:

Table with 2 columns: Description and Fee. Rows include Application fee per variety per grower, Field inspection fee per acre except millet and hybrid sorghum, Millet - first acre, Hybrid sorghum - first acre, Special field inspection fee per acre, Late application fee, and Reinspection fee.

minimum for each field which did not pass field inspection plus \$((0.43)) 0.44 for each acre over twenty-five. The reinspection fee for isolation requirements only for a field of any size is \$((39.93)) 41.05.

(h) Final certification fee ... \$((0.245)) 0.25

per cwt. of clean seed sampled, which is charged to conditioning plant, or production fee ... \$0.105

per cwt. of production from fields inspected which is utilized for seed, which is charged to the grower or the final seller prior to brokerage, retail sale, sale to plant not approved for conditioning certified seed, or transshipment out-of-state.

(i) Sampling fee ... \$0.105

per cwt. of clean seed sampled, with minimum charge of \$10.30 per sample, which is charged to conditioning plant in lieu of mechanical sampling.

(2) A field may be withdrawn upon notification by the applicant to the certifying agency's office before field inspection. In such case, the field inspection fee is refunded upon request until June 30 of the year following harvest.

(3) Harvest before field inspection causes forfeitures of both the application and field inspection fees, and completion of certification.

AMENDATORY SECTION (Amending WSR 05-05-051, filed 2/14/05, effective 3/17/05)

WAC 16-319-041 Application for certification of for-reproductive material. (1) The conditions of applicant's submittal and of certifying agency's acceptance of application are:

(a) The application should show all classes for which certification services are requested.

(b) All reproductive material acquired or distributed by applicant of a type for which certification is requested is subject to audit.

(c) Applicant shall be responsible for payment of fees for certification services.

(d) Applicant is responsible for developing a record keeping system and labels available and satisfactory to the certifying agency.

(e) Certifying agency reserves the right to refuse certification service to applicant.

(f) Application for audit certification reproductive material shall be filed with certifying agency of the state in which warehouse, nursery, etc., is located with a copy to the certifying agency in the state where the reproductive material is collected.

(2) Timing of application requests for certification services:

(a) Application requests for source identified subclass B and lower classes for the current year's production of repro-

ductive material shall be received by certifying agency from applicant not later than three days prior to initiation of collection, production, or propagation of forest reproductive material.

(b) For source identified subclass A and higher certification class, the applicant shall make application for service, and present a written plan to the certifying agency two weeks prior to the beginning of the collection season. The written plan will include the following:

(i) For subzone collection, areas shall be defined by legal description.

(ii) Details of the collection organization including names of buyers and field supervisors, estimated harvest volume, receiving station location(s), and other pertinent information.

(c) Application requests for all other services shall be received by certifying agency from applicant not later than seven days before need.

(3) The certifying agency establishes the fee schedule for certification services. These may be adjusted at the beginning of a crop year if certifying agency determines that costs are significantly more or less than anticipated: Provided, That increases shall not exceed twenty-five percent.

(a) Cones and seed:

(i) Tested and selected - the service includes review of test plans, audit of pertinent records and field inspection at the hourly job time rate shown in current fee schedule.

(ii) Source identified classes - the fee includes field inspection at the per bushel rate shown in the current fee schedule and audit of conditioning at the hourly rate also shown in the current fee schedule.

The fee for each lot containing less than sixty bushels shall be a maximum of thirty-six dollars: Provided, That the certifying agency, due to specific circumstances, may waive this maximum fee or a part thereof.

(iii) Audit class - the fee includes audit of applicant's field and conditioning records at the hourly rate shown in the current fee schedule.

(b) Trees: The fee includes the verification of the source of the trees from the seed source, stratification, sowing, bed identification, lifting, sorting, package identification, storing and/or transplanting.

(c) Not entered for certification: The fee for audit of reproductive material not entered for certification service is performed as required by and satisfactory to certifying agency to exercise said audit simultaneously with audit of reproductive material which applicant has requested certification service.

(d) The fee for certification classes applied for shall be charged whether or not offered material qualifies.

(e) The certifying agency may provide other services, such as training to comply with these standards, advising on the development of recordkeeping systems directly connected with certification needs if requested by the applicant.

(4) Fee schedule:

(a) Tree cones and seed -

| Certification Classes      | Field                                |              | Fee Due     |
|----------------------------|--------------------------------------|--------------|-------------|
|                            | Inspection                           | Audit        |             |
| Source Identified Classes: |                                      |              |             |
| Lots 11 bu. and more       | \$ <del>((0.88))</del><br>0.90/bu.   | \$ 27.00/hr. |             |
| Lots 6-10 bu.              | \$ <del>((21.89))</del><br>23.00/lot | \$ 27.00/hr. |             |
| Lots 0-5 bu.               | \$ 13.00/lot                         | \$ 27.00/hr. |             |
| Audit                      | None                                 | \$ 27.00/hr. | When billed |

(b) Tree certification - \$ 27.00/hr.

Seedling certification - experience has shown that seedling certification normally requires a minimum of five nursery visits totaling approximately thirty-two hours. Plantation certification procedures shall be billed at the hourly rate.

(c) Other services including education to comply with the standards, development of record system, verification of source of pollen, cuttings, audit of forest reproductive material not offered for certification by applicant or other services requested, etc. at \$ 27.00/hr. payable when billed.

(d) OECD certification (certificates of provenance) - \$ 0.60 per certificate plus the hourly audit rate. (Auditors shall issue certificates.)

**WSR 06-07-167**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed March 22, 2006, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-04-100.

Title of Rule and Other Identifying Information: The Washington state department of agriculture's (WSDA) fruit and vegetable inspection program is proposing to amend chapter 16-436 WAC, Peach standards.

Hearing Location(s): WSDA Yakima Office, Second Floor Conference Room, 21 North First Avenue, Yakima, WA, on April 27, 2006, at 1:30 p.m.

Date of Intended Adoption: May 11, 2006.

Submit Written Comments to: Debbie Hacker, P.O. Box 42560, Olympia, WA 98504-2560, e-mail dhacker@agr.wa.gov, fax (360) 902-2085, by 5:00 p.m. on April 27, 2006.

Assistance for Persons with Disabilities: Contact the WSDA receptionist by April 21, 2006, at TTY (360) 902-1996 or (360) 902-1996 [902-1976].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to chapter 16-436 WAC includes repealing WAC 16-436-186 Containers, removing all container requirements associated with peaches.

Reasons Supporting Proposal: Removing the container requirements would allow growers/packers and shippers to pack and market various types of containers that may be requested or required by the buyers and the consuming public.

Statutory Authority for Adoption: Chapter 15.17 RCW, Standards of grades and packs, chapter 34.05 RCW, Administrative Procedure Act.

| Certification Classes | Field        |              | Fee Due     |
|-----------------------|--------------|--------------|-------------|
|                       | Inspection   | Audit        |             |
| Tested and Selected   | \$ 27.00/hr. | \$ 27.00/hr. | When billed |

Statute Being Implemented: Chapter 15.17 RCW, Standards of grades and packs.

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

Name of Proponent: The Washington state fruit commission, private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Quigley, Olympia, (360) 902-1833.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no economic impact associated with this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency in RCW 34.05.-328 (5)(a)(i).

Robert W. Gore  
Assistant Director

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-436-186 Containers.

**WSR 06-07-168**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Basic Health)

[Order 05-06—Filed March 22, 2006, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-036.

Title of Rule and Other Identifying Information: Basic health rules regarding eligibility based on income and other factors.

Hearing Location(s): Health Care Authority, 676 Woodland Square Loop S.E., The Center Conference Room, Lacey, WA, on April 25, 2006, at 1:30 p.m.

Date of Intended Adoption: April 26, 2006.

Submit Written Comments to: Rosanne Reynolds, P.O. Box 42686, Olympia, WA 98504-2686, e-mail Rrey107@hca.wa.gov, fax (360) 923-2605, by April 25, 2006.

Assistance for Persons with Disabilities: Contact Nikki Johnson by April 11, 2006, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules need to be evaluated and possibly revised to ensure that they support the intent of the program. Proposed changes include the definition of income, specifically capital gains, the calculation of self-employment income, and the methodology to be used with one-time payments.

Reasons Supporting Proposal: Stakeholder comments have indicated possible unintended consequences from the current definitions.

Statutory Authority for Adoption: RCW 70.47.050.

Statute Being Implemented: RCW 70.47.020 (6)(e), 70.47.060(11).

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Rosanne Reynolds, Lacey, Washington, (360) 923-2948; Implementation and Enforcement: Beth Dupre, Lacey, Washington, (360) 415-4307.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The health care authority (HCA) is not required by chapter 19.85 RCW to prepare a small business economic impact statement. There will be little, if any, cost to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

March 22, 2006  
Pete Cutler  
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-03, filed 8/12/05, effective 9/12/05)

**WAC 182-25-010 Definitions.** The following definitions apply throughout these rules.

(1) "Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

(2) "Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction.

(3) "Basic health plan" (or "BHP") means the system of enrollment and payment for basic health care services administered by the administrator through managed health care systems.

(4) "BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and basic health plan. Eligibility for BHP Plus is determined by the department of social and health services, based on Medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for Medicare, and may be required to meet additional DSHS eligibility requirements.

(5) "Co-payment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the MHCS.

(6) "Covered services" means those services and benefits in the BHP schedule of benefits (as outlined in the member handbook issued to the enrollee, or to a subscriber on behalf of the enrollee), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, coinsurance and deductible.

(7) "Disenrollment" means the termination of coverage for a BHP enrollee.

(8) "Effective date of enrollment" means the first date, as established by BHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

(9) "Dependent," as it applies to the subsidized or non-subsidized programs, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is:

(i) Younger than age nineteen, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(ii) Younger than age twenty-three, and a registered student at an accredited secondary school, college, university, technical college, or school of nursing, attending full time, other than during holidays, summer and scheduled breaks; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) An unmarried child younger than age nineteen who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support; and

(iv) The child must be on the account for BHP coverage.

(10) "Eligible full-time employee" means an employee who meets all eligibility requirements in WAC 182-25-030 and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

(11) "Eligible part-time employee" means an employee who meets all the criteria in subsection (10) of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

(12) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

(13) "Employer" means an enterprise licensed to do business in Washington state, as defined by RCW 50.04.080,

with employees in addition to the employer, whose wages or salaries are paid by the employer.

(14) "Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP, and for whom applicable premium payments have been made.

(15) "Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment in BHP, an individual cannot be a member of more than one family.

(16) "Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

(17) "Gross family income" means total cash receipts, as defined in (a) of this subsection, before taxes, from all sources, for subscriber and dependents whether or not they are enrolled in BHP, with the exceptions noted in (b) of this subsection. An average of documented income received over a period of several months will be used for purposes of eligibility determination, unless documentation submitted confirms a change in circumstances so that an average would not be an accurate reflection of current income. A twelve-month average will be used when calculating gambling income, lump-sum payments, and income from capital gains. A twelve-month history of receipts and expenses will be required for calculating self-employment or rental income unless the applicant or enrollee has not owned the business for at least twelve months.

(a) Income includes:

(i) Wages, tips and salaries before any deductions;

(ii) Net receipts from nonfarm self-employment (receipts from a person's own business, professional enterprise, or partnership, after deductions for business expenses). A net loss from self-employment will not be used to offset other income sources. In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, ~~((and a net loss from this calculation will not be used to offset other income sources))~~ except that:

(A) A deduction for business use of the home may be allowed in cases where the enrollee has documented that more than fifty percent of their home is used for the business for the majority of the year; or

(B) A deduction for business use of the home may be allowed in cases where the enrollee has documented that they maintain a separate building located on the same property as their home that is used exclusively for the business;

(iii) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from ~~((this calculation))~~ self-employment will not be used to offset other income sources;

(iv) Periodic payments from Social Security, railroad retirement, military pension or retirement pay, military disability pensions, military disability payments, government employee pensions, private pensions, unemployment compensation, and strike benefits from union funds;



~~(v) ((One-time insurance payments other than reimbursement for a loss, periodic insurance or annuity payments, and compensation for injury other than reimbursement for medical costs, including workers' compensation;~~

~~(vi))~~ Public assistance, alimony, child support, and military family allotments;

~~((vii))~~ (vi) Work study, assistantships, or training stipends;

~~((viii))~~ (vii) Dividends and interest accessible to the enrollee without a penalty for early withdrawal;

~~((ix))~~ (viii) Net rental income, net royalties, and net gambling or lottery winnings; and

~~((x))~~ (ix) Lump sum inheritances and periodic receipts from estates or trusts(~~;~~ and

~~(xi) Net income from capital gains).~~

(b) Income does not include the following types of money received:

(i) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(ii) Tax refunds, gifts, loans, one-time insurance payments, other than for punitive damages, and one-time payments or winnings received more than one month prior to application;

(iii) Noncash receipts, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, goods or services received due to payments a trust makes to a third party, and such noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, state supplementary payment income that is specifically dedicated to reimburse for services received, and housing assistance;

(iv) Income earned by dependent children with the exception of distributions from a corporation, partnership, or business;

(v) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(vi) College or university scholarships, grants, and fellowships;

(vii) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145;

(viii) Capital gains, with the exception of short-term capital gains, such as from the sale of stock or real estate;

(ix) Crime victims' compensation;

(x) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction:

(A) The subscriber and the spouse listed as a dependent on the account, if any, must be employed or attending school full-time during the time the child care expenses were paid; and

(B) Payment may not be paid to a parent or stepparent of the child or to a dependent child of the subscriber or his/her spouse.

(18) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, Medicaid Personal Care, Community Options Program Entry System (COPES) or Respite Care (up to level three).

(19) "Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions; government-funded acute health care or mental health facilities except as provided above; chemical dependency facilities; and nursing homes.

(20) "Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in subsection (19) of this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

(21) "Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

(22) "Managed health care system" (or "MHCS") means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide basic health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(23) "Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all Medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on Medicaid eligibility criteria.

(24) "Medicaid" means the Title XIX Medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

(25) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(26) "Nonsubsidized enrollee" or "full premium enrollee" means an individual who enrolls in BHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in BHP, without subsidy from the HCA.

(27) "Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

(28) "Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage under BHP.

(29) "Participating employer" means an employer who has been approved for enrollment in BHP as an employer group.

(30) "Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment in BHP:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

(31) "Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes to BHP for enrollment in BHP.

(32) "Program" means subsidized BHP, nonsubsidized BHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within this chapter.

(33) "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

(34) "Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP health care benefits to enrollees.

(35) "Schedule of benefits" means the basic health care services adopted and from time to time amended by the administrator, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, as described in the member handbook.

(36) "Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

(37) "Subscriber" is a person who applies to BHP on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom BHP sends notices and communications. The subscriber may be a BHP enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for cov-

erage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

(38) "Subsidized enrollee" or "reduced premium enrollee" means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA. Full-time students who have received a temporary visa to study in the United States are not eligible to enroll as subsidized enrollees. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(39) "Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(40) "Washington state resident" or "resident," for purposes of this chapter, means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who meet the requirements of subsection (9)(b)(ii) of this section and are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person is staying in lieu of a home; or

(iii) Another person's home.

**AMENDATORY SECTION** (Amending Order 05-03, filed 8/12/05, effective 9/12/05)

**WAC 182-25-040 Enrollment in the plan.** (1) Any individual applying for enrollment in BHP must submit a signed, completed BHP application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or guardian, who shall also be held responsible for payment of premiums due on

behalf of the child. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the member handbook. Applications for BHP Plus enrollment on behalf of children under the age of nineteen will be referred to the department of social and health services for Medicaid eligibility determination.

(2) Each applicant for subsidized enrollment or BHP Plus must list all eligible dependents, whether or not the dependents will be enrolled, and must supply other information and documentation as required by BHP and, where applicable, DSHS medical assistance.

(a) Applicants for subsidized enrollment must provide documentation showing the amount and sources of their gross family income. Income documentation must include a copy of the applicant's most recently filed federal income tax form or verification of nonfiling status, and copies of pay stubs or other documents showing income for the most recent thirty days or complete calendar month as of the date of application. Applicants who were not required to file a federal income tax return may be required to provide other documentation showing year-to-date income. As described in WAC 182-25-010(17), BHP may use an average of documented income when determining eligibility.

(b) Applicants for subsidized or nonsubsidized enrollment must provide documentation of Washington state residence, displaying the applicant's name and current address, for example, a copy of a current utility bill or rent receipt. Other documentation may be accepted if the applicant does not have a physical residence, for example, a signed statement from a person or other entity who is providing temporary shelter.

(c) BHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility or MHCS selection.

(d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in BHP. Intentional submission of false information will result in disenrollment of the subscriber and all enrolled dependents.

(3) Each member may be enrolled in only one BHP account. Each family applying for enrollment must designate a MHCS from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must receive covered services from the same MHCS (with the exception of cases in which a subscriber who is paying for BHP coverage for his/her dependent who lives in a different service area). No applicant will be enrolled for whom designation of a MHCS has not been made as part of the application for enrollment. Procedures for the selection of MHCS are set forth in the BHP member handbook. Generally, enrollees may change from one MHCS to another only during open enrollment or if they are able to show good cause for the transfer, for example, when enrollees move to an area served by a different MHCS or where they would be billed a higher premium for their current MHCS.

(4) When a MHCS assists BHP applicants in the enrollment process, it must provide them with the toll-free number for BHP and information on all MHCS available within the

applicant's county of residence and the estimated premiums for each available MHCS.

(5) If specific funding has been appropriated for that purpose, insurance brokers or agents who have met all statutory and regulatory requirements of the office of the insurance commissioner, are currently licensed through the office of the insurance commissioner, and who have completed BHP's training program, will be paid a commission for assisting eligible applicants to enroll in BHP.

(a) Individual policy commission: Subject to availability of funds, and as a pilot program, BHP will pay a one-time fee to any currently licensed insurance broker or agent who sells BHP to an eligible individual applicant if that applicant has not been a BHP member within the previous five years.

(b) Group policy commission: Subject to availability of funds, and as a pilot program, fees paid for the sale of BHP group coverage to an eligible employer will be based on the number of employees in the group for the first and second months of the group's enrollment.

(c) Insurance brokers or agents must provide the prospective applicant with the BHP toll-free information number and inform them of BHP benefits, limitations, exclusions, waiting periods, co-payments, all MHCSs available to the applicant within his/her county of residence and the estimated premium for each of them.

(d) All statutes and regulations of the office of the insurance commissioner will apply to brokers or agents who sell BHP, except they will not be required to be appointed by the MHCS.

(e) BHP will not pay renewal commissions.

(6) Except as provided in WAC 182-25-030(7), applications for enrollment will be reviewed by BHP within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(7)(a) Eligible applicants will be enrolled in BHP in the order in which their completed applications, including all required documentation, have been received by BHP, provided that:

(i) At least one MHCS is accepting new enrollment in the program for which the applicant is applying and from the geographic area where the applicant lives; and

(ii) The applicant also remits full payment of the first premium bill to BHP by the due date specified by BHP.

(b) In the event a waiting list is implemented, eligible applicants will be enrolled in accordance with WAC 182-25-030(6).

(8) An open enrollment period of at least twenty consecutive days will be held annually. During this open enrollment period, enrollees may apply to enroll additional family members or to transfer their enrollment to a different MHCS, provided the MHCS selected is accepting new enrollment for the enrollee's program in the geographic area where the enrollee lives.

(9) Not all family members are required to apply for enrollment in BHP; however, any family member for whom application for enrollment is not made at the same time that other family members apply, may not subsequently enroll as a family member until the next open enrollment period,

unless the subscriber has experienced a "qualifying change in family status." "Qualifying changes in family status" include:

(a) The loss of other health care coverage, for a family member who has previously waived coverage, provided BHP receives the family member's application within thirty days of the loss of other coverage, along with proof of the family member's continuous medical coverage from the date the subscriber enrolled in BHP;

(b) Marriage or assuming custody or dependency of a child or adult dependent (other than newborn or newly adopted children), provided BHP receives the new family member's application within thirty days of the change in family status;

(c) Addition of an eligible newborn child or a child newly placed for adoption provided BHP receives the child's application for enrollment within sixty days of the date of birth or placement for adoption. These children may be enrolled effective from the date of birth or placement for adoption; or

(d) Addition of a family member who was not previously eligible for coverage, and who has become eligible.

(10) Subscribers must notify BHP of any changes that could affect their eligibility or subsidy or their dependents' eligibility or subsidy:

(a) Within thirty days of the end of the first month of receiving an increased income; or

(b) Within thirty days of a change other than an income change (for example, a change in family size or address).

(11) BHP will verify the continuing eligibility of subsidized enrollees through the recertification process at least once every twelve months. Upon request of BHP, subsidized enrollees must submit evidence satisfactory to BHP, proving their continued eligibility for enrollment and for the premium subsidy they are receiving.

(a) BHP will verify income of subsidized enrollees through comparison with other state and federal agency records or other third-party sources.

(b) If the enrollee's income on record with other agencies or third-party source differs from the income the enrollee has reported to BHP, or if questions arise concerning the documentation submitted, BHP will require updated documentation from the enrollee to prove continued eligibility for the subsidy they are receiving. At that time, BHP may also require updated documentation of residence to complete the recertification process.

(c) Subsidized enrollees who have been enrolled in BHP six months or more and have not provided updated income documentation for at least six months will be required to submit new income documentation if their wage or salary income cannot be compared to an independent source for verification.

(d) Enrollees who have documented that they are not required to file a federal income tax return for previous years will not be required to provide additional verification of non-filing unless their circumstances appear to have changed or other information received indicates they have filed a federal income tax return.

(12) In addition to verification of income, subsidized and nonsubsidized enrollees must annually submit documentation satisfactory to BHP of the following:

(a) Washington state residence;

(b) Full-time student status for dependent students age nineteen through twenty-two; and

(c) Medicare ineligibility for enrollees age sixty-five or over.

(13) When determining eligibility for subsidized enrollment, noncitizens may be required to provide proof of immigration status, to verify whether they are here on a temporary visa to study in the United States.

(14) For good cause such as, but not limited to, when information received indicates a change in income or a source of income the enrollee has not reported, BHP may require enrollees to provide verification required in subsections (11) and (12) of this section more frequently, regardless of the length of time since their last recertification.

(15) Enrollees who fail to comply with a recertification request will be disenrolled, according to the provisions of WAC 182-25-090 (2)(e).

(16) If, as a result of recertification, BHP determines that an enrollee has not reported income or income changes accurately, the enrollee will be subject to the provisions of WAC 182-25-085.