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, 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 proposed 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

AMENDATORY SECTION

350-81-108. Commercial Events

(1) Commercial events include weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel.

(2) Commercial events may be allowed in the GMA except on lands designated Open Space or Commercial Forest, subject to compliance with the following conditions and the scenic, cultural, natural and recreation resources guidelines:

(a) The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast inn, or commercial use~~, or dwelling listed in the National Register of Historic Places.~~ If the use is proposed on a property with a building on or eligible for the National Register of Historic Places, it shall be subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114), and not the guidelines of this section.

(b) The owner of the subject parcel shall live on the parcel and shall operate and manage the use.

(c) A single commercial event shall host no more than 100 guests.

(d) The use shall comply with the following parking requirements:

(A) A single commercial event shall include no more than 50 vehicles for guests.

(B) All parking shall occur on the subject parcel.

(C) At least 200 square feet of parking space shall be required for each vehicle.

(D) Parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other imperious materials shall be prohibited.

(E) All parking areas shall be fully screened from key viewing areas.

(e) The owner of the subject parcel may conduct 18 single events up to one day in length per year.

(f) The owner of the subject parcel shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject parcel of each planned event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Tents, canopies, portable restrooms and other similar temporary structures necessary for a commercial event may be allowed, provided all such structures are erected or placed on the subject parcel no more than two days before the event and removed no more than two days after the event. Alternatively, temporary structures may remain in place for up to 90 days if they are fully screened from key viewing areas.

(h) The use may be allowed upon demonstration that the following conditions exist to protect any nearby agricultural and forest operations:

(A) The use would not force a change in or increase the cost of accepted agricultural practices on surrounding lands. [350-81-190 (1)(q)(A)]

(B) The use would be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in 350-81-076 or designated Commercial Forest Land or Large or Small Woodland, as required in 350-81-310. [350-81-190 (1)(q)(C)]

(C) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland. [350-81-190 (1)(q)(D)]

(D) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision. [350-81-190 (1)(q)(E)]

(i) Counties may impose additional requirements to address potential impacts to surrounding neighbors. For example, they may limit noise, lighting and operating hours.

(j) Land use approvals for commercial events shall not be valid for more than two years. Landowners must reapply for the use after a land use approval expires.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

350-81-114. Special Uses in Historic Buildings

(1) Special uses in historic buildings may be allowed as follows and subject to "Additional Resource Protection Guidelines for Special Uses in Historic Buildings" (350-81-114(2)).

(a) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places shall be permitted to be open for public viewing, interpretive displays, and an associated gift shop that is no larger than 100 square feet and incidental and subordinate to the primary use of the property, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the "Additional Resource Protection Guidelines for Special Uses in Historic Buildings": Cultural Resources Guidelines (350-81-114 (2)(a)(B)(i) and (ii), and 350-81-114 (2)(a)(C) through 350-81-114 (2)(a)(E)); and all Scenic, Recreation, Agriculture and Forest Lands Guidelines (350-81-114 (2)(b) through 350-81-114 (2)(d)). Voluntary donations and/or fees to support maintenance, preservation and enhancement of the cultural resource may be accepted by the landowner.

(b) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places, and which were former restaurants and/or inns shall be permitted to re-establish these former uses, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the "Additional Resource Protection Guidelines for Special Uses in Historic Buildings": Cultural Resources Guidelines (350-81-114 (2)(a)(B)(i) and (ii), and 350-81-114 (2)(a)(C) through 350-81-114 (2)(a)(E)); and all Scenic, Recreation, Agriculture and Forest Lands Guidelines (350-81-114 (2)(b) through 350-81-114 (2)(d)). The capacity of restaurant use and overnight accommodations shall be limited to that existing in the former use, and the former use shall be contained within the limits of the building as of January 1, 2006. Banquets, private parties and other special events that take place entirely within an approved restaurant facility shall be considered a restaurant use allowed under this section.

(c) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places shall be permitted to hold commercial events, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the "Additional Resource Protection Guidelines for Special Uses in Historic Buildings": Cultural Resources Guidelines 350-81-114 (2)(a)(B) through (E); and all Scenic, Recreation, Agriculture and Forest Lands Guidelines (350-81-114 (2)(b) through 350-81-114 (2)(d)).

(d) The following additional review uses may be allowed in all GMA land use designations except Open Space and Agriculture-Special on a property with a building either on or eligible for the National Register for Historic Places and that was 50 years old or older as of January 1, 2006, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and "Additional Resource Protection Guidelines for Special Uses in Historic Buildings":

(A) Establishments selling food and/or beverages, limited to historic buildings that originally had kitchen facilities. The seating capacity of such establishments shall be limited to the building, as the building existed as of January 1, 2006, including any decks, terraces or patios also existing as of that date. Banquets, private parties and other special events that take place entirely within approved establishments selling food and/or beverages shall be considered a part of the approved use.

(B) Overnight accommodations. The room capacity of such accommodations shall be limited to the total number of existing rooms in the historic building as of January 1, 2006.

(C) Commercial events in the building or on the subject property, incidental and subordinate to the primary use of the property

(D) Wineries upon a showing that processing of wine is from grapes grown on the subject parcel or the local region, within a historic building, as the building existed as of January 1, 2006.

(E) Sales/tasting rooms in conjunction with an on-site winery, within a historic building, as the building existed as of January 1, 2006.

(F) Conference and/or retreat facilities within a historic building, as the building existed as of January 1, 2006.

(G) Artist studios and galleries within a historic building, as the building existed as of January 1, 2006.

(H) Gift shops within a historic building, as the building existed as of January 1, 2006 that are:

(1) incidental and subordinate to another approved use included in 350-81-114 (1)(a); and

(2) no larger than 100 square feet in area.

(I) Interpretive displays, picnic areas or other recreational day use activities on the subject property.

(J) Parking areas on the subject property to support any of the above uses.

(e) For the purposes of the guidelines in this section, the term "historic buildings" refers to buildings either on or eligible for the National Register of Historic Places. Eligibility

for the National Register shall be determined pursuant to Cultural Resources Guideline 350-81-114 (2)(a)(A) of "Additional Resource Protection Guidelines for Special Uses in Historic Buildings."

(f) Uses listed in 350-81-114 (1)(c) and 350-81-114 (1)(d)(C) are not subject to the "Commercial Events" provisions in 350-81-114. Commercial events at historic properties will be regulated by the guidelines contained in this section. Applications for commercial events shall include all information in the "Operational Plan for Commercial Events" as specified in 350-81-114 (2)(B)(iv) of "Additional Resource Protection Guidelines for Special Uses in Historic Buildings". The following apply to commercial events at historic properties:

(A) Commercial events include weddings, receptions, parties and other gatherings that are incidental and subordinate to the primary use on a parcel.

(B) The owner of the subject property shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject property of each event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Uses listed in 350-81-114 (1)(a) and 350-81-114 (1)(d)(I) are not subject to the parking limits and associated "Facility Design Guidelines" in the Recreation Intensity Classes.

(h) Land use approvals for special uses in historic buildings shall be subject to review by the local government every five years from the date the original approval was issued. As part of this review, the applicant shall submit documentation to the local government on the progress made in implementing the "Protection and Enhancement Plan" required in Cultural Resources (350-81-114 (2)(a)) of "Additional Resource Protection Guidelines for Special Uses in Historic Buildings". The local government shall submit a copy of the applicant's documentation to the State Historic Preservation Agency (SHPA). The SHPA shall have 30 calendar days from the date this information is mailed to submit written comments to the local government. If the local government's determination contradicts comments from the SHPA, the local government shall justify how it reached an opposing conclusion. The local government shall revoke the land use approval if the owner has failed to implement the actions described in the "Protection and Enhancement Plan" according to the schedule for completing such actions in this plan. The local government may, however, allow such a use to continue for up to one additional year from the date a local government determines the applicant has failed to implement the actions if the applicant submits a written statement describing unforeseen circumstances that prevented the applicants from completing the specified actions according to the approved schedule, what progress the applicants have made towards completing such actions, and a proposed revised schedule for completing such actions.

(2) Additional Resource Protection Guidelines for Special Uses in Historic Buildings. The following guidelines apply to proposed uses listed under "Special Uses for Historic Buildings" in addition to all other relevant guidelines for protection of scenic, cultural, natural and recreation resources:

(a) Cultural Resources

(A) All applications for uses listed in 350-81-114 (1)(d), shall include a historic survey and evaluation of eligibility for the National Register of Historic Places, to be prepared by a qualified professional hired by the applicant. The evaluation of eligibility shall not be required for buildings previously determined to be eligible. For such properties, documentation of a prior eligibility determination shall be included in the application. The historic survey shall meet the requirements specified in "Historic Surveys and Reports" (350-81-540 (1)(c)(H). The evaluation of eligibility shall follow the process and include all information specified in the National Register Bulletin "How to Apply the National Register Criteria for Evaluation" [National Park Service, National Register Bulletin #15].

Eligibility determinations shall be made by the local government, based on input from the state historic preservation Agency (SHPA). The local government shall submit a copy of any historic survey and evaluation of eligibility to the SHPA. The SHPA shall have 30 calendar days from the date this information is mailed to submit written comments on the eligibility of the property to the local government. If the local government's determination contradicts comments from the SHPA, the local government shall justify how it reached an opposing conclusion.

(B) Applications for Special Uses for Historic Buildings shall include a "Protection and Enhancement Plan" which shall include the following:

(i) A description of how the proposed use will significantly contribute to the protection and enhancement of the historic resource, including specific actions that will be taken towards restoration, protection and enhancement, and adequate maintenance of the historic resource, and a proposed schedule for completion of such actions.

(ii) A statement addressing consistency of the proposed use with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties and the Secretary of the Interior's Standards for Preservation of Historic Properties*.

(iii) Detailed architectural drawings and building plans that clearly illustrate all proposed exterior alterations to the building associated with the proposed use. Any exterior additions to the building or outdoor components of the proposed use (e.g. parking areas, site for temporary structures, interpretive displays) shall be shown on the site plan.

(iv) Any proposal for commercial events at a historic property shall include an Operation Plan for Commercial Events, to be incorporated into the "Protection and Enhancement Plan". The Operational Plan shall include sufficient information to demonstrate how the commercial events will remain incidental and subordinate to the primary use of the property, and shall, at minimum, address:

(I) Number of events to be held annually.

(II) Maximum size of events, including number of guests and vehicles at proposed parking area.

(III) Provision for temporary structures, including location and type of structures anticipated.

(IV) How the proposed commercial events will contribute to protection and enhancement of the historic resource.

(C) The local government shall submit a copy of the "Protection and Enhancement Plan" to the State Historic Preservation Agency (SHPA). The SHPA shall have 30 cal-

endar days from the date this information is mailed to submit written comments to the local governments. The SHPA comments shall address consistency of the proposed use with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the Interior's Standards for Preservation of Historic Properties,* and the effect of the proposed use on the historic resource.

(D) Any alterations to the building or surrounding area associated with the proposed use have been determined by the local government to be consistent with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the Interior's Standards for Preservation of Historic Properties*. If the local government's final decision contradicts the comments submitted by the State Historic Preservation Agency, the local government shall justify how it reached an opposing conclusion.

(E) The proposed use has been determined by the local government to have no effect or no adverse effect on the historic character of the property, including features of the property contributing to its historic significance. If the local government's final decision contradicts the comments submitted by the State Historic Preservation Agency, the local government shall justify how it reached an opposing conclusion.

(b) Scenic Resources

(A) New parking areas associated with the proposed use shall be located on the subject property as it existed as of January 1, 2006. Such parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other impervious materials shall be prohibited.

(B) New parking areas associated with the proposed use shall be visually subordinate from Key Viewing Areas, and shall to the maximum extent practicable, use existing topography and existing vegetation to achieve visual subordinance. New screening vegetation may be used if existing topography and vegetation are insufficient to help make the parking area visually subordinate from Key Viewing Areas, if such vegetation would not adversely affect the historic character of the building's setting.

(C) Temporary structures associated with a commercial event (e.g. tents, canopies, portable restrooms) shall be placed on the subject property no sooner than two days before the event and removed within two days after the event. Alternatively, temporary structures may remain in place for up to 90 days after the event if the local government determines that they will be visually subordinate from Key Viewing Areas.

(c) Recreation Resources

(A) The proposed use shall not detract from the use and enjoyment of existing recreation resources on nearby lands.

(d) Agricultural and Forest Lands

(A) The proposed use is compatible with and will not interfere with accepted forest or agricultural practices on nearby lands devoted to such uses.

(B) The proposed use will be sited to minimize the loss of land suitable for production of crops, livestock or forest products.

(C) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, or Large or Small Woodland.

(D) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, or Large or Small Woodland that are within 500 feet of the perimeter of the subject property on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision on an application for a Special Use for a Historic Building.

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

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

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AMENDATORY SECTION

350-81-190. Review Uses—Agricultural Land

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(b) Agricultural structures, except buildings, in conjunction with agricultural use.

(c) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(d) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(e) and (f) below.

(e) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(f) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area.

This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(g) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(h) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:

(A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy subsection (h)(C)(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its constituent parcels, must be capable of producing at least $40,000 in gross annual income. This determination can be made using the following formula:

$$(A)(B)\ (C) = I$$

where:

A	=	Average yield of the commodity per acre or unit of production
B	=	Average price of the commodity
C	=	Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch
I	=	Income capability

(i) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling that is included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria listed in 350-81-540 (1)(e).

(j) On lands designated Small-Scale Agriculture, a single-family dwelling on any legally existing parcel.

(k) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative provided that all of the following conditions exist:

(A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister.

(B) The dwelling would be located on the same parcel as the dwelling of the principal operator.

(C) The operation is a commercial enterprise, as determined by an evaluation of the factors described in 350-81-190 (1)(h)(C).

(l) Construction, reconstruction, or modifications of roads not in conjunction with agriculture.

(m) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(n) Structures associated with hunting and fishing operations.

(o) Towers and fire stations for forest fire protection.

(p) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops or livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(q) On lands designated Large-Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:

(A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location, and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be used in conjunction with other agricultural operations in the area.

(C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required by 350-81-076, or designated Commercial Forest Land or Large or Small Woodland, as required in "Siting of Dwellings on Forest Land" (350-81-310).

(D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the

owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, Large or Small Woodland.

(E) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(r) On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

(s) Life estates, subject to the guidelines in "Approval Criteria for Life Estates," (350-81-210).

(t) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(u) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(v) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(w) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(z) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(2) The following uses may be allowed on lands designated SMA Agriculture subject to review for compliance with the scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620). The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.

(a) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-81-270 (2)(x).

(b) Forest uses and practices, as allowed for in 350-81-270.

(c) A single-family dwelling necessary for and accessory to agricultural use upon a demonstration that all of the following conditions exist:

(A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots/parcels.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy C(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following criteria:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of producing at least $40,000 in gross annual income. This determination can be made using the following formula, with periodic adjustments for inflation:

$$(A)(B)(C) = I$$

where:

A	=	Average yield of the commodity per acre or unit of production
B	=	Average price of the commodity
C	=	Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch
I	=	Income capability

(D) Minimum parcel size of 40 contiguous acres.

(d) Farm labor housing on a parcel with an existing dwelling under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use, and the operation is a commercial agricultural enterprise as determined by 350-81-190 (2)(c)(C).

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary for the current agricultural use. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

(e) Agricultural structures, except buildings, in conjunction with agricultural use.

(f) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(g) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 2(h) or 2(i), below.

(h) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(i) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(j) Home occupations and cottage industries, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(k) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(l) Fruit stands and produce stands, upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(m) Aquaculture.

(n) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the SMA.

(o) Utility facilities necessary for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Agriculture lands.

(B) The size is the minimum necessary to provide the service.

(p) Temporary asphalt/batch plant operations related to public road projects, not to exceed 6 months.

(q) Community facilities and nonprofit facilities related to agricultural resource management.

(r) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(s) Expansion of existing nonprofit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(t) Public recreation, commercial recreation, interpretive, and educational developments and uses, consistent with the guidelines in 350-81-620.

(u) Road and railroad construction and reconstruction.

(v) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.

(w) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(z) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(aa) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

AMENDATORY SECTION

350-81-270. Review Uses—Forest Land

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) On lands designated Large Woodland, a single-family dwelling upon a demonstration that all of the following conditions exist:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The principal purpose for locating a dwelling on lands designated Large Woodland is to enable the resident to conduct efficient and effective forest management. This requirement indicates a relationship between ongoing forest management and the location of a dwelling on the subject parcel. A dwelling may not always be required for forest management.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate local government. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor and expenses; and how the dwelling will contribute toward the successful completion of the operations.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forestry and that could be used as the principal forest dwelling.

(E) The dwelling complies with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(b) On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel's enrollment in the appropriate state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300). A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(c) One single-family dwelling if shown to be in conjunction with and substantially contributing to the current agricultural use of a farm. Guideline 350-81-190 (1)(h) shall be used to determine whether a dwelling is a farm dwelling. The siting of the dwelling shall comply with the "Approval Criteria for Fire Protection" in 350-81-300.

(d) Temporary onsite structures that are auxiliary to and used during the term of a particular forest operation. "Auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(e) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous land in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.

(f) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(g) Structures associated with hunting and fishing operations.

(h) Towers and fire stations for forest fire protection.

(i) Agricultural structures, except buildings, in conjunction with agricultural use, subject to the "Approval Criteria for Fire Protection" (350-81-300).

(j) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the "Approval Criteria for Fire Protection" (350-81-300) and the standards in "Agricultural Buildings" (350-81-090).

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(l) or (1)(m) below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092) and the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-31-300).

(o) A second single-family dwelling for a farm operator's relative, subject to 350-81-190 (1)(k) and the "Approval Criteria for Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(p) Private roads serving a residence, subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(q) Recreation development, subject to the guidelines established for the recreation intensity classes (350-81-610) and the Recreation Development Plan (Management Plan, Part III, Chapter 1).

(r) Construction or reconstruction of roads or modifications not in conjunction with forest use or practices.

(s) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(t) On lands designated Commercial Forest Land, a temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or to protect the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the mobile home is subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(u) On parcels in Small Woodland, a land division creating parcels smaller than the designated minimum parcel size, subject to guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40 or 80 acres, this provision will apply to parcels 80 acres or larger or 160 acres or larger, respectively.

(v) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(w) On lands designated Large or Small Woodland, life estates, subject to the guidelines in "Approval Criteria for Life Estates" (350-81-320).

(x) Land divisions in Small Woodland, subject to the minimum lot sizes designated on the Land Use Designation Map. Land divisions in Commercial Forest Land and Large Woodland, subject to the standards and minimum lot sizes in Policies 4 through 9 in the "Land Use Policies" in Part II, Chapter 2: Forest Land of the Management Plan.

(y) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(z) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(aa) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(bb) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(cc) Commercial events on lands designated Large Woodland or Small Woodland, subject to the guidelines in "Commercial Events" (350-81-108).

(dd) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(2) The following uses may be allowed on lands designated SMA Forest subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-81-520 through 350-81-620). The use or development shall be sited to minimize the loss of land suitable for the production of forest products:

(a) All review uses allowed for in 350-81-190(2).

(b) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of subsection (2)(x), below.

(c) Railroad and road construction or reconstruction.

(d) Exploration, development, and production of sand, gravel, or crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products in the SMA.

(e) Silvicultural nurseries.

(f) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Forest Land.

(B) The size is the minimum necessary to provide the service.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Fish hatcheries and aquaculture facilities.

(i) Public recreation, commercial recreation, interpretive and educational developments, and uses consistent with the provisions of 350-81-620.

(j) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved forest management plan demonstrates that such a dwelling is necessary for and accessory to forest uses. The forest management plan shall demonstrate the following:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of trees. The principal purpose for allowing a dwelling on forest lands is to enable the resident to conduct efficient and effective management. This requirement indicates a relationship between ongoing forest management and the need for a dwelling on the subject property.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate county. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor, and expenses; and how the dwelling will contribute toward the successful management of the property.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.

(E) The dwelling complies with county dwelling, siting, and state/county fire protection guidelines.

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(l) or (2)(m), below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) Home occupations and cottage industries, subject to the "Home Occupations and Cottage Industries" guidelines in 350-81-098.

(o) Temporary portable facilities for the processing of forest products.

(p) Towers and fire stations for forest fire protection.

(q) Community facilities and nonprofit facilities related to forest resource management.

(r) Expansion of existing nonprofit group camps, retreats, or conference or education centers, necessary for the successful operation of the facility on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(s) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(t) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(u) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(v) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(w) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

(x) Clearing trees for new agricultural use with the following steps and subject to the following additional guidelines:

(A) A Stewardship Plan shall be submitted and deemed complete by the Executive Director and submitted to the Forest Service for review. (350-81-270 (2)(y)(C).

(B) Clearing trees for new agricultural use shall be limited to 15 acres.

(C) If the Stewardship Plan proves that the above guideline is detrimental to the proposed agricultural use, the final size of the clearing shall be determined by the application of 350-81-270 (2)x)(D)(i-iv) below and subject to guideline 350-81-270 (2)(x)(I).

(D) After a 30-day public comment period, the Forest Service shall review the Stewardship Plan using the following criteria:

(i) Scenic Resource guidelines in 350-81-270 (2)(y)(D) (i) and (vii).

(ii) Applicable guidelines of 350-81-550, 350-81-600 and 350-81-620.

(iii) The Natural Resource Conservation Service (NRCS) soil unit description shall indicate that soils are suitable for the proposed agricultural use. The woodland management tables shall be used as part of the analysis of suitability for both agricultural and forest uses.

(iv) The size, shape and pattern on the landscape of the clearing for the new agricultural use shall blend with the surrounding landscape pattern either because the existing pattern includes agricultural openings or because the new agricultural opening is designed to appear natural.

(E) The Forest Service shall send the review statement to the Executive Director. The Forest Service shall state whether or not the new agricultural use should proceed including any conditions that are recommended to be required by the Executive Director.

(F) The Executive Director will accept an application for new agricultural use on forested lands after receipt of a positive review statement from the Forest Service.

(G) The forest practice portion of the new agricultural use shall not be approved by the state forestry department or Executive Director until a decision on the new agricultural use is issued by the Executive Director.

(H) The new agricultural use shall be operational within two years of the time frame described in the approved Stewardship Plan.

(I) New agricultural uses with an approved Stewardship Plan requiring more than 15 acres shall attain the final approved size sequentially. After the first 15 cleared acres is operational, each subsequent clearing shall not occur until the previous clearing is operational.

(y) Forest practices in accordance with an approved forest practices application (see 350-81-032) and subject to the additional guidelines in 350-81-270.

(A) The following information, in addition to general site plan requirements (350-81-032) shall be required:

(i) Delineate the following on a recent aerial photo or detailed map:

(I) The size, shape, and exact location of the proposed treatment area including any clumps of leave trees to remain. If more than one silvicultural prescription is to be used, code each on the photo.

(II) Other important natural features of the subject parcel such as steep areas, streams, wetlands, rock outcrops, etc.

(III) Road and structure construction and/or reconstruction location.

(IV) Location of proposed rock or aggregate sources.

(V) Major skid trails, landings, and yarding corridors.

(VI) Commercial firewood cutting areas.

(VII) Protection measures for scenic, cultural, natural, and recreation resources, such as road closures.

(ii) Describe the existing forest in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(iii) Describe how the forest practice will fit into the existing landscape pattern and how it will meet scenic and natural resource standards in 350-81-270 (2)(y)(D) and 350-81-270 (2)(y)(E).

(iv) Written silvicultural prescriptions with projected post-treatment forest condition specified in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(v) Road and structure construction and/or reconstruction design.

(vi) Existing and proposed rock pit development plans.

(vii) A discussion of slash disposal methods.

(viii) A reforestation plan as reviewed by the appropriate state forest practices agency.

(B) As part of the application, flag, stake or mark buffers, any trees or downed wood to be retained or removed (whichever makes the most sense), and areas for placing fill or removing material in preparation for a field visit by the reviewer.

(C) Stewardship Plan Requirements: The following information, in addition to the applicable portions of the forest practice application requirements above and general site plan requirements (350-81-032) shall be provided:

(i) Outline the long term goals, proposed operations, and future sustainability of the subject parcel.

(ii) Describe the time frame and steps planned to reach the long term goals.

(iii) For Forest Practices, describe how the proposed activities fit into the long term goals and sustainability of the parcel and/or forest health. The following shall be addressed:

(I) Describe the range of natural conditions expected in the forest in terms of tree species, structure, and landscape pattern.

(II) Describe what the resulting tree species, structure, and landscape pattern will be after the proposed activities.

(III) Give a clear explanation how a deviation from the applicable guidelines may better achieve forest health objectives

(IV) Give a clear explanation how and why the proposed activities will lead the forest towards its range of natural variability and result in reaching sustainability, resiliency to disturbances.

(iv) For clearing trees for new agricultural use, the following shall be addressed in addition to 350-81-270 (2)(y)(C) (i) and (ii) above:

(I) Submit NRCS soil unit description and map for each soil unit affected by the proposed clearing or treatment.

(II) Based on the needs of the operation, give a clear explanation as to the exact size of the clearing needed and how it will meet the natural and scenic requirements set forth in 350-81-270 (2)(x)(D)(i-iv).

(III) Describe in sufficient detail for evaluation the proposed agricultural use, the improvements needed on the parcel, time line for its establishment, and its marketability.

(IV) Show evidence that an agricultural specialist, such as the county extension agent, has examined and found the proposed agricultural use reasonable and viable.

(D) For forest practices, the following scenic resource guidelines shall apply:

(i) Forest practices shall meet the design guidelines and scenic standards for the applicable landscape setting and zone (See Required SMA Scenic Standards table in 350-81-530-(2)(c).

(ii) In the western portion (to White Salmon River) of the SMA Coniferous Woodland Landscape Setting, no more than 8% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iii) In the western portion (to the White Salmon River) of the SMA Gorge Walls, Canyonlands and Wildlands Landscape Setting, no more than 4% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iv) For all other landscape settings, created forest openings visible at one time shall be within the desired range for the vegetation type as set forth in Natural Resources guidelines in 350-81-270 (2)(y)(E)(i) through (iii).

(v) Size, shape, and dispersal of created forest openings shall maintain the desired natural patterns in the landscape as set forth in Natural Resources guidelines in 350-81-270 (2)(y)(E)(i) through (iii).

(vi) The maximum size of any created forest opening is set forth by the "Desired" vegetation type in the Forest Structure and Pattern Table.

(I) If the treatment is proposed to go beyond the above guideline based on forest health or ecosystem function requirements, a Stewardship Plan shall be required.

(II) If the Stewardship Plan proves that the above guideline is detrimental to either forest health or ecosystem function, the size of the created forest opening shall be within the natural range for the vegetation type as listed in the Desired Forest Structure and Pattern Table for each vegetation type, shall not mimic catastrophic fires, and shall maintain scenic standards.

(vii) Created forest openings shall not create a break or opening in the vegetation in the skyline as viewed from a key viewing area.

(E) Forest practices shall maintain the following in addition to applicable natural resources guidelines in 350-81-600.

(i) Silvicultural prescriptions shall maintain the desired natural forest stand structures (tree species, spacing, layering, and mixture of sizes) based on forest health and ecosystem function requirements. Forest tree stand structure shall meet the requirements listed in the Desired Forest Structure and Pattern Table for each vegetation type. Forest tree stand structure is defined as the general structure of the forest in each vegetation type within which is found forest openings.

(ii) Created forest openings shall be designed as mosaics not to exceed the limits defined as Desired in the Desired Forest Structure and Pattern Table unless proposed as a deviation as allowed under the scenic resource guideline in 350-81-270 (2)(y)(D)(vi).

(iii) Snag and down wood requirements shall be maintained or created as listed in the Desired Forest Structure and Pattern Table for each vegetation type.

(iv) If the treatment is proposed to deviate from the snag and down wood requirements based on forest health or ecosystem function requirements, a Stewardship Plan shall be required and shall show and prove why a deviation from the snag and down wood requirements is required.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-370. Review Uses—Residential Land

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) One single-family dwelling per legally created parcel. If the subject parcel is located adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, the use shall comply with the buffer and notification requirements for agricultural land [350-81-076 and 350-81-190 (1)(q)(E)], or forest land [(350-81-290 (1)(a) and 350-81-310 (1)(a)]. If the subject parcel is located within a Residential designation that is adjacent to lands designated Commercial Forest Land or Large or Small Woodland, the placement of a dwelling shall also comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-81-300).

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, subject to guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(e) Construction or reconstruction of roads.

(f) On parcels 10 acres or larger in the 5-acre Residential designation, or 20 acres or larger in the 10-acre Residential designation, a land division creating new parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124).

(g) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 590).

(h) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(i) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(j) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(k) Agricultural structures, except buildings, in conjunction with agricultural use.

(l) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(o) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(q) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(2) The following uses may be allowed on lands designated SMA-Residential subject to review for compliance with scenic, cultural, natural, and recreation resources guidelines (350-81-520 through 350-81-620):

(a) One single-family dwelling per legally created lot or consolidated parcel. The placement of a dwelling shall comply with fire protection standards developed by the county, in accordance with Management Plan SMA Policy 13 in Part II, Chapter 2: Forest Land.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) New utility facilities.

(e) Fire stations.

(f) Home occupations and cottage industries subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(g) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100).

(h) Community parks and playgrounds.

(i) Road and railroad construction and reconstruction.

(j) Forest practices, as specified in 350-81-270(2).

(k) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(l) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(o) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(p) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-81-270 (2)(x).

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

350-81-450. Review Uses—Commercial Designations

(1) The following uses may be allowed on lands designated Commercial, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620) and "Approval Criteria for Specified Review Uses," (350-81-460):

(a) Travelers' accommodations, bed and breakfast inns.

(b) Restaurants.

(c) Gift shops.

(d) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(e) One single-family dwelling per legally created parcel.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed as accessory buildings larger than 200 square feet in area or 10 feet in height.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel, subject to the following standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Utility facilities and railroads.

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(k) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(l) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(m) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(n) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(o) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

AMENDATORY SECTION

350-81-490. Review Uses—Public Recreation and Commercial Recreation

(1) The following uses may be allowed on lands designated GMA-Public Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620) and compliance with 350-81-610 (5)(a) and (c) through (g), where applicable, of the "Approval Criteria for Recreation Uses" contained in the recreation intensity class guidelines (350-81-610):

(a) Publicly-owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-81-610).

(b) Commercial uses and non-resource based recreation uses that are part of an existing or approved resource-based public recreation use, consistent with the guidelines for such uses contained in this section.

(c) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(d) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(2) The following uses may be allowed on lands designated GMA Public Recreation, subject to compliance with the "Approval Criteria for Non-Recreation Uses in Public Recreation designations," (350-81-500), and (350-81-520 through 350-81-620):

(a) One single-family dwelling for each parcel legally created prior to adoption of the Management Plan. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 350-81-490 (2)(c).

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(f) Utility transmission, transportation, communication, and public works facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(3) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural and recreation resources (350-81-520 through 350-81-620) and compliance with 350-81-610 (5)(a) and (c) through (g) of the "Approval Criteria for Recreation Uses" guidelines (350-81-610):

(a) Commercially owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-81-610).

(b) Overnight accommodations that are part of a commercially owned, resource-based recreation use, where such resource-based recreation use occurs on the subject site or on adjacent lands that are accessed through the site, and that meet the following standards:

(A) Buildings containing individual units shall be no larger than 1,500 square feet in total floor area and no higher than 2-1/2 stories.

(B) Buildings containing more than one unit shall be no larger than 5,000 square feet in total floor area and no higher than 2-1/2 stories.

(C) The total number of individual units shall not exceed 25, unless the proposed development complies with standards for clustered accommodations in subsection (4) of this guideline.

(D) Clustered overnight travelers accommodations meeting the following standards may include up to 35 individual units:

(i) Average total floor area of all units is 1,000 square feet or less per unit.

(ii) A minimum of 50 percent of the project site is dedicated to undeveloped, open areas (not including roads or parking areas).

(iii) The facility is in an area classified for high-intensity recreation (Recreation Intensity Class 4).

(c) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and non-resource based recreation uses that are part of an existing or approved resource-based commercial recreation use, consistent with the policies, guidelines, and conditional use criteria for such uses contained in this section.

(d) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(e) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-81-114).

(4) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with the "Approval Criteria for Non-Recreational Uses in Commercial Recreation," (350-81-510), and the guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620):

(a) One single-family dwelling for each lot or parcel legally created prior to adoption of the Management Plan.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 2.C below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(f) Utility transmission, transportation, and communication facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (Part II, Chapter 7: General Policies and Guidelines).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(5) Land divisions may be allowed in GMA-Public Recreation, subject to compliance with 350-81-500 (1)(c), and in GMA Commercial Recreation, subject to compliance with 350-81-510 (1)(c).

(6) Lot line adjustments may be allowed in GMA Public Recreation and GMA Commercial Recreation, subject to compliance with the guidelines in "Lot Line Adjustments" (350-81-126).

(7) The following uses may be allowed on lands designated SMA-Public Recreation subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines:

(a) Forest uses and practices, as allowed for in 350-81-270(2).

(b) Public trails, consistent with the provisions in 350-81-620.

(c) Public recreational facilities, consistent with the provisions in 350-81-620.

(d) Public nonprofit group camps, retreats, conference or educational centers, and interpretive facilities.

(e) One single-family dwelling on a parcel of 40 contiguous acres or larger when it meets the conditions described for Agricultural Land (350-81-190) or Forest Land (350-81-270(2)), or when shown to be necessary for public recreation site management purposes.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(g) below.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Home occupation and cottage industries, as specified in "Home Occupations and Cottage Industries" (350-81-098).

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Road and railroad construction and reconstruction.

(k) Utility facilities for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Public Recreation land.

(B) The size is the minimum necessary to provide the service.

(l) Agricultural review uses, as allowed for in 350-81-190(2).

(m) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(n) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(o) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

WSR 06-09-029
PROPOSED RULES
DEPARTMENT OF HEALTH
(Medical Quality Assurance Commission)
[Filed April 12, 2006, 4:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-095.

Title of Rule and Other Identifying Information: WAC 246-919-360 Examinations accepted for reciprocity or waiver.

Hearing Location(s): Holiday Inn Select, One South Grady Way, Renton, WA 98055, on July 14, 2006, at 8:00 a.m.

Date of Intended Adoption: July 14, 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) 236-4788, by June 15, 2006.

Assistance for Persons with Disabilities: Contact Beverly Thomas by June 15, 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: Prior to 1974, each state used their own medical licensure examination to determine a minimum level of competency of applicants. According to the current rule, Washington state accepts all other state examination with the exception of Hawaii and Florida. The medical quality assurance commission (commission) is proposing amending the rule to repeal the exclusionary language regarding the Florida and Hawaii state examinations. The proposed rule amendment will allow all applicants who met all licensure requirements and have taken and passed a state examination to be licensed in Washington state. This will provide greater access to health care practitioners.

Reasons Supporting Proposal: Beginning in 1974, all states require passing one of the national examinations known as the National Board of Medical Examiners (NBME), the Federation Licensure Examination (FLEX), or the United State[s] Licensure Examination (USMLE), as the acceptable tool to determine a minimal level of competency. Competency is also reviewed through Washington's physician application process which verifies the examination scores, reviews all state licenses for disciplinary history, verifies residency completion and hospital privileges, and confirms the status of good standing in all states by the Federation of State Medical Boards and the American Medical Association. Any applicant that had disciplinary action taken against their license in another state, regardless of the examination, is reviewed by a panel of the commission before denying or granting a license.

Statutory Authority for Adoption: RCW 18.71.017 and 18.130.050.

Statute Being Implemented: RCW 18.71.090 and [18.71.]095.

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

Name of Proponent: Department of health, medical quality assurance commission, 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 proposed rule amendment does not impose more than minor costs on small businesses under RCW 19.85.030, rather it allows all applicants who meet all licensure requirements and have taken and passes a state or national examination to be licensed in Washington state.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Beverly A. Thomas, Program Manager, P.O. Box 47866, Olympia, WA 98504, phone (360) 236-4788, fax (360) 236-4768, e-mail beverly.thomas@doh.wa.gov.

March 29, 2006
Blake T. Maresh
Executive Director

AMENDATORY SECTION (Amending WSR 04-04-067, filed 2/2/04, effective 3/4/04)

WAC 246-919-360 Examinations accepted for reciprocity or waiver. (1) The commission may accept certain examinations as a basis for licensure. These examinations include USMLE, FLEX, NBE, or those given by the other states, or territories of the United States((~~, with the exception of Florida and Hawaii~~)). Those who have taken the Licentiate of the Medical Council of Canada (L.M.C.C.) and holds a valid LMCC certification obtained after 1969, may be granted a license without examination.

(2) Examination combination acceptable. Any applicant who has successfully completed Part I (NBE) or Step 1 (USMLE) plus Part II or Step 2 plus Part III or Step 3; or FLEX Component 1 plus Step 3; or Part I or Step 1, plus Part II or Step 2, plus FLEX Component 2 shall be deemed to have successfully completed a medical licensure examination as required by RCW 18.71.070. (For clarification, see Table 1.)

Accepted Examinations taken in Sequence	Other Acceptable Combinations
NBME Part I *plus* NBME Part II *plus* NBME Part III	NBME Part I or USMLE Step 1 *plus* NBME Part II or USMLE Step 2 *plus* NBME Part III or USMLE Step 3

Accepted Examinations taken in Sequence	Other Acceptable Combinations
FLEX Component 1 *plus* FLEX Component 2	FLEX Component 1 *plus* USMLE Step 3 or NBME Part I or USMLE Step 1 *plus* NBME Part II or USMLE Step 2 *plus* FLEX Component 2
USMLE Step 1 *plus* USMLE Step 2 *plus* USMLE Step 3	

WSR 06-09-039
WITHDRAWAL OF PROPOSED RULES
HORSE RACING COMMISSION
[Filed April 14, 2006, 8:40 a.m.]

The Washington horse racing commission (WHRC) would like to withdraw our CR-102 proposed rule making to chapter 260-40 WAC, WSR 06-05-115. 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 06-09-041
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees' Benefits Board)
[Order 06-02—Filed April 14, 2006, 11:25 a.m.]

Continuance of WSR 06-06-079.

Preproposal statement of inquiry was filed as WSR 06-02-091.

Title of Rule and Other Identifying Information: Change in the hearing date and start time of the hearing from the original filed on March 1, 2006, under WSR 06-06-079.

Hearing Location(s): Health Care Authority, The Center Conference Room, 676 Woodland Square Loop S.E., Olympia, WA, on May 18, 2006, at 2:30 p.m.

Date of Intended Adoption: May 23, 2006.

Submit Written Comments to: Barbara Scott, 676 Woodland Square Loop S.E., P.O. Box 42684, Olympia, WA 98504-2684, e-mail bsco107@hca.wa.gov, fax (360) 923-2602, by May 18, 2006.

Assistance for Persons with Disabilities: Contact Nikki Johnson by May 12, 2006, TTY (888) 923-5622 or (360) 923-2805.

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

April 14, 2006
Pete Cutler
Rules Coordinator

WSR 06-09-042
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed April 14, 2006, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-05-016.

Title of Rule and Other Identifying Information: WAC 468-38-425 Permitting for emergency responses.

Hearing Location(s): Transportation Building, Commission Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA, on May 30, 2006, at 9:00 a.m.

Date of Intended Adoption: May 30, 2006.

Submit Written Comments to: Barry Diseth, P.O. Box 47367, Olympia, WA 98504-7367, e-mail disethb@wsdot.wa.gov, fax (360) 705-6836, by May 26, 2006.

Assistance for Persons with Disabilities: Contact Jessica Alexander by May 26, 2006, TTY (360) 705-7796 or fax (360) 705-6808.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new rule will provide an explanation of need and minimal process requirements for permitting over-legal vehicles when responding to a declared emergency.

Reasons Supporting Proposal: The term "emergency" often times creates a perception that rules governing routine or normal conditions no longer apply. The new rule will reinforce the need for special permits and outline the minimal process requirements for acquiring a special permit during emergent conditions.

Statutory Authority for Adoption: RCW 46.44.090.

Statute Being Implemented: RCW 46.44.090, [46.44.]091, [46.44.]092, and [46.44.]093.

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

Name of Proponent: WSDOT maintenance and operations, commercial vehicle service office, governmental.

Name of Agency Personnel Responsible for Drafting: Barry Diseth, Goodrich Building, 7345 Linderson Way S.W., Tumwater, WA, (360) 705-7805; Implementation: Jim Stuart, Goodrich Building, 7345 Linderson Way S.W., Tumwater, WA, (360) 705-7987; and Enforcement: Captain Coral Estes, General Administration, 210 11th Street, Olympia, WA, (360) 753-0350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal meets several of the criteria stated in RCW 34.05.310(4) which exempt the proposal from the small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. There are no added costs as a result of the new rule.

April 12, 2006
John F. Conrad
Assistant Secretary
Engineering and Regional Operations

NEW SECTION

WAC 468-38-425 Permitting for emergency responses. (1) **What constitutes an emergency?** The term "emergency," as used in this section, shall mean an event or set of circumstances that meet the following criteria:

(a) Demand immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or

(b) Reaches such a degree of destructiveness as to warrant the governor declaring a "state of emergency."

Notification will normally come to the department from the public agency responsible for responding to the emergency, but may also be made by a utility or railroad entity when applying for a permit.

(2) **Do oversize and/or overweight vehicles responding to an emergency require a special motor vehicle permit?** Yes. RCW 46.44.090 provides for the authorization to move oversize or overweight vehicles by special permit only after application and good cause being shown. "Good cause," in the event of an emergency, is interpreted to mean that by issuing a special motor vehicle permit to a responding oversize and/or overweight vehicle it is reasonable to assume that said vehicle will provide relief of the conditions causing the declaration of emergency.

(3) **Why is acquiring a permit important for emergency responders?** The infrastructure was designed to be used by vehicles that fall within the specific size and weight parameters of RCW 46.44.010, 46.44.020, 46.44.030, 46.44.036, 46.44.037, 46.44.041 and 46.44.042. Vehicles exceeding these parameters must be screened to determine if they can safely move on a specific route given their overdimension or overweight status. A permit provides for the authorization and may also contain any restrictions or special conditions that apply to the overlegal vehicle using a specific route.

(4) **What processes are available for acquiring a permit in an emergent situation?** Application for emergency permits can be requested directly from the office of motor carrier services during normal business hours Monday through Friday. During nonbusiness hours requests must be submitted through one of the department's traffic management centers (TMCs). Contact information and specific procedures will be maintained, and posted electronically, by the office of motor carrier services. Certain carriers that perform emergency response on a routine basis may contact the office of motor carrier services to explore other permitting options.

(5) **Are there specific compliance requirements for obtaining an emergency special motor vehicle permit?** Yes. The emergency must be verifiable through the entity declaring the emergency. The vehicle configuration to be permitted must comply with all size and weight criteria for permitted moves as provided in chapter 46.44 RCW and chapter 468-38 WAC, except for WAC 468-38-175 Highway travel restrictions—Days, times and highway use subsections (1), (2), (3) and (6).

WSR 06-09-048
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed April 14, 2006, 1:52 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 196-31 WAC, Practice permits.

Hearing Location(s): Department of Licensing, Business and Professions Division, Room 209, 405 Black Lake Boulevard, Olympia, WA 98502, on May 26, 2006, at 9:30 a.m.

Date of Intended Adoption: May 30, 2006.

Submit Written Comments to: George 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 May 23, 2006.

Assistance for Persons with Disabilities: Contact Kim King by May 23, 2006, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal chapter 196-31 WAC in its entirety, as practice permits were authorized on an interim basis, and ended on June 30, 2003.

Reasons Supporting Proposal: Practice permits are no longer valid as of June 30, 2003.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.210 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 A. 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 impact to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no impact to licensees.

April 14, 2006
George A. Twiss
Executive Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 196-31-010	Declaration of purpose.
WAC 196-31-020	Definition.
WAC 196-31-030	Applications—Qualifications.
WAC 196-31-040	Application—Procedures.
WAC 196-31-050	Permit issuance—Renewals.
WAC 196-31-060	Scope of practice.
WAC 196-31-070	Brief adjudicative proceedings—Denials based on failure to meet prerequisites for licensure, practice permit, or examination.

WSR 06-09-059
PROPOSED RULES
SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

[Filed April 17, 2006, 2:30 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Spokane County Air Pollution Control Authority (SCAPCA) Regulation I; Revise Regulation I, Article II, Sections 2.12 - Restraining Orders—injunctions; Revise Regulation I, Article II, Section 2.13 - Federal Regulation Reference Date; and add Section 2.24 - Washington Administrative Codes (WACS).

Hearing Location(s): Spokane County Public Works Building, 1206 West Broadway, Hearing Room, Lower Level, Spokane, WA 99201, on July 7, 2006, at 9:00 a.m.

Date of Intended Adoption: July 7, 2006.

Submit Written Comments to: Charles E. Studer, Spokane County Air Pollution Control Authority, 1101 West College, Suite #403, Spokane, WA 99201, e-mail cestuder@scapca.org, fax (509) 459-6828, by 4:30 p.m. Thursday, May 20, 2006.

Assistance for Persons with Disabilities: Contact Charles Studer by 4:30 p.m. Friday, June 30, 2006, (509) 4727 [477-4727] ext. 107.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revise Section 2.12 by adding the title "Restraining Orders—Injunctions" to clarify the purpose of the section.

Revise Section 2.13 by changing the federal rules and regulations effective date to July 1, 2006, from March 04, 2004, for those federal rules and regulations that SCAPCA implements and enforces. These rules and regulations are listed in SCAPCA Regulation 1, Article IV, "Exhibit R items #7, #8.a., and #8.b.".

Added Section 2.14, this section was added [to] clarify which Washington state WACs that SCAPCA implements and enforces and which sections of the Washington state WACs that SCAPCA does not implement and enforce.

Anticipated Effects: Section 2.12, clarification of what the section addresses.

Section 2.13, allows SCAPCA engineering and compliance staff to reference the latest revisions of existing or new federal rules and regulations.

Section 2.14, clarifies what sections of the WACs that SCAPCA implements and enforces and those sections that it does not.

Reasons Supporting Proposal: Clarity, allows SCAPCA staff to implement and enforce the latest revisions to existing and new rules and regulations that have been promulgated since March 4, 2004.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq.

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

Name of Proponent: Spokane county air pollution control authority, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Spokane County Air Pollution Control Authority, 1101 West College, #403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule. Chapter 19.85 RCW does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule amendment.

Friday, April 10, 2006
Charles E. Studer
Environmental Engineer

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

SECTION 2.12 RESTRAINING ORDERS—INJUNCTIONS (SEE RCW 70.94.425)

The Authority implements and enforces RCW 70.94.425.

SECTION 2.13 FEDERAL REGULATION REFERENCE DATE

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

Whenever federal laws or regulations are referenced in this Regulation, the effective date shall be ((~~March 04, 2004~~)) July 1, 2006, unless otherwise noted.

NEW SECTION

SECTION 2.14 WASHINGTON ADMINISTRATIVE CODES (WACS)

The Authority implements and enforces the following Washington State WACs, except where noted below or where a section is exclusively reserved for Ecology:

A. Chapter 173-400 WAC - General regulations for air pollution sources

1. Exceptions

a. WAC 173-400-035 - Portable and temporary sources,

b. WAC 173-400-045 - Control technology fees,

c. WAC 173-400-104 - Registration fees,

d. WAC 173-400-110 - New source review (NSR),

e. WAC 173-400-116 - New source review fees,

f. WAC 173-400-730 Prevention of significant deterioration application processing procedures,

g. WAC 173-400-740 PSD permitting public involvement requirements, and

h. WAC 173-400-750 Revisions to PSD permits.

B. Chapter 173-401 WAC - Operating Permit Regulation

C. Chapter 173-425 WAC - Outdoor burning.

D. Chapter 173-430 WAC - Agricultural burning.

E. Chapter 173-433 WAC - Solid fuel burning devices.

F. Chapter 173-434 WAC - Solid waste incinerator facilities

G. Chapter 173-435 WAC - Emergency episode plan.

H. Chapter 173-460 WAC - Controls for new sources of toxic air pollutants

I. Chapter 173-470 WAC - Ambient air quality standards for particulate matter.

J. Chapter 173-474 WAC - Ambient air quality standards for sulfur oxides.

K. Chapter 173-475 WAC - Ambient air quality standards for carbon monoxide, ozone, and nitrogen dioxide.

L. Chapter 173-490 WAC - Emission standards and controls for sources emitting volatile organic compounds (VOC)

M. Chapter 173-491 WAC - Emission standards and controls for sources emitting gasoline vapors

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

WSR 06-09-060

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed April 17, 2006, 3:35 p.m.]

The department of revenue has withdrawn its proposal to amend WAC 458-20-229 Refunds, filed on September 26, 2005, and published in the Washington State Register as WSR 05-20-017.

Alan R. Lynn

Rules Coordinator

WSR 06-09-061

WITHDRAWAL OF PROPOSED RULES

NOXIOUS WEED CONTROL BOARD

(By the Code Reviser's Office)

[Filed April 18, 2006, 9:17 a.m.]

WAC 16-750-015, proposed by the noxious weed control board in WSR 05-20-031 appearing in issue 05-20 of the State Register, which was distributed on October 19, 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 06-09-062

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed April 18, 2006, 9:18 a.m.]

WAC 388-450-0100, 388-450-0106, 388-450-0116, 388-450-0155, 388-450-0156, 388-450-0157 and 388-450-0160, proposed by the department of social and health services in WSR 05-20-052 appearing in issue 05-20 of the State Register, which was distributed on October 19, 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 06-09-063

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

(By the Code Reviser's Office)

[Filed April 18, 2006, 9:18 a.m.]

WAC 220-16-320, 220-56-282 and 232-12-019, proposed by the department of fish and wildlife in WSR 05-20-114 appearing in issue 05-20 of the State Register, which was distributed on October 19, 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 06-09-069
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed April 18, 2006, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-104.

Title of Rule and Other Identifying Information: Chapter 296-24 WAC, Part J-3, Powered platforms; chapter 296-155 WAC, Part J-1, Elevating work platforms; and chapter 296-869 WAC, Elevating work platforms.

Hearing Location(s): Department of Labor and Industries, Auditorium, 7273 Linderson Way S.W., Tumwater, WA, on May 31, 2006, at 9:00 a.m.

Date of Intended Adoption: July 7, 2006.

Submit Written Comments to: Jim Hughes, Project Manager, P.O. Box 44620, Olympia, WA 98507-4620, e-mail hugw235@lni.wa.gov, fax (360) 902-5619, by noon, June 9, 2006.

Assistance for Persons with Disabilities: Contact Kimberly Johnson by May 24, 2006, at (360) 902-5008, TTY (360) 902-4645, or e-mail rhok235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Portions of chapter 296-24 WAC, Part J-3, Powered platforms and chapter 296-155 WAC, Part J-1, Elevating work platforms, have been rewritten for clarity and usability, while making housekeeping revision. Existing rules will be combined into a single book titled elevating work platforms, chapter 296-869 WAC.

Reasons Supporting Proposal: Rewritten rules will be easier to use and understand for both employers and employees.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires a small business economic impact statement (SBEIS) only when a rule will "impose more than a minor cost on businesses in an industry." An analysis of the proposed rule reveals that in addition to not imposing new costs on businesses, these revisions will make WISHA rules easier for employers and employees to understand and use, and thus save time and resources. Therefore, no SBEIS is required.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs to assess within these proposed rules.

April 18, 2006
Gary Weeks
Director

Chapter 296-869 WAC

ELEVATING WORK PLATFORMS

NEW SECTION

WAC 296-869-100 Scope. This chapter applies to the following types of elevating work platforms:

• Aerial lifts

• Manually propelled elevating work platforms that have a platform that cannot be positioned completely beyond the base

• Self-propelled elevating work platforms that have a platform that cannot be positioned completely beyond the base

• Boom-supported elevating work platforms that have a boom-supported platform that can be positioned completely beyond the base

Exemption: This chapter does not apply to elevating work platforms used:
• By the fire services for fire combat that are covered by Safety standards for fire fighters, chapter 296-305 WAC;
OR
• For agriculture activities covered by Safety standards for agriculture, chapter 296-307 WAC

Definitions:

• Aerial lift:

– An aerial device mounted on a vehicle such as a truck, trailer, or all-terrain vehicle.

• Aerial device:

– A vehicle-mounted device, telescoping or articulating, or both, which is used to position personnel.

• Elevating work platform:

– A device used to position personnel, along with their necessary tools and materials, at work locations. It includes a platform and an elevating assembly and may be either:

■ Vehicle mounted;

OR

■ Have an integral chassis providing mobility and a means of support

• Platform:

– The portion of an elevating work platform intended to be occupied by personnel. It may also be called a basket, bucket, stand, or similar term.

NEW SECTION

WAC 296-869-200 Section contents.

IMPORTANT:

This section applies to the following types of vehicle-mounted aerial devices:

• Extensible-boom work platforms
• Articulating-boom work platforms
• Vertical towers
• Aerial ladders
• A combination of any of the above types of elevating work platforms

Your responsibility:

To meet these requirements when using aerial lifts.

WAC 296-869-20005

Design and construction

NEW SECTION

WAC 296-869-20005 Design and construction.

You must:

• Make sure aerial lifts manufactured on or after July 1, 2006, meet the design and construction requirements of ANSI A92.2-2001, American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices.

• Make sure aerial lifts manufactured before July 1, 2006, meet the design and construction requirements of ANSI A92.2-1969, American National Standard for Vehicle-Mounted Elevating and Rotating Work Platforms.

Definition:

• Aerial lift:

– An aerial device mounted on a vehicle such as a truck, trailer, or all-terrain vehicle.

• Aerial device:

– A vehicle-mounted device, telescoping or articulating, or both, which is used to position personnel.

NEW SECTION

WAC 296-869-20010 Modifications.

You must:

• Have written approval from the manufacturer before making any modification or addition that affects the safe operation, stability, intended use, or the mechanical, hydraulic, or electrical integrity of the aerial lift. Make sure the modified aerial lift is:

– At least as safe as it was before being modified;

AND

– Any change to the insulated portion of the aerial lift does not reduce the insulating value

Note: If the original manufacturer is no longer in business, an equivalent entity such as a nationally recognized testing laboratory may approve modification.

NEW SECTION

WAC 296-869-20015 Owned, rented, or leased aerial lifts.

IMPORTANT:

This section applies if you own, rent, or lease an aerial lift.

You must:

• Meet the requirements of the Responsibilities of Owners, section 8, of ANSI A92.2-2001, American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices, if you own an aerial lift.

• Meet the requirements of the Responsibilities of Renters, Lessors or Lessees, section 11, of ANSI A92.2-2001, American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices, if you rent or lease an aerial lift.

NEW SECTION

WAC 296-869-20020 Operator requirements.

You must:

• Permit only trained and authorized personnel to operate aerial lifts.

NEW SECTION

WAC 296-869-20025 Operator training.

You must:

• Make sure personnel are trained before they are permitted to operate an aerial lift. Cover at least the following items:

– General instruction on the inspection, application, and operation of aerial lifts

■ Include recognizing and avoiding hazards associated with their operation

– Purpose and use of manuals

■ Include proper storage of the manuals on the vehicle when not in use

– Prestart inspection

– Responsibilities associated with problems or malfunctions affecting the operation of the aerial lift

– Factors affecting stability

– Purpose of placards and decals

– Workplace survey

– Safety rules and regulations pertinent to the industry

– Authorization to operate an aerial lift

– Operator warnings and instructions

– Proper use of personal fall protection equipment

• Have operator trainees actually operate the aerial lift, under the direction of a qualified person, for enough time to demonstrate proficiency.

• Retrain an operator if evaluation and observation of the operator indicates retraining is necessary.

• Instruct operators in all of the following before they are directed to operate an aerial lift with which they are not familiar:

– Location of the manuals.

– Purpose and function of all controls.

– Safety devices and operating characteristics specific to the aerial lift

NEW SECTION

WAC 296-869-20030 Operator prestart inspection.

You must:

• Make sure the operator does a prestart inspection of the aerial device as shown in Table 1, Operator Prestart Inspection.

• Have a qualified person examine or test any items found during the inspection that are thought to be unsafe to determine if they constitute a safety hazard.

• Replace or repair all unsafe items before use.

Table 1
Operator Prestart Inspection

Component or system:	Test or inspect for the following:
Operating controls and associated mechanisms	Conditions interfering with proper operation
Visual and audible safety devices	Malfunctions
Hydraulic or pneumatic systems	Visible deterioration or excessive leaks
Fiberglass and other insulating components	Visible damage or contamination
Operational and instructional markings	That they are present and legible
Electrical systems of or related to the aerial device	Malfunction and for signs of excessive deterioration, dirt, and moisture accumulation
Locking devices, bolts, pins, and other fasteners	That they are in-place and not loose or deformed

NEW SECTION

WAC 296-869-20035 Workplace survey.

You must:

• Have the operator survey the area, before using an aerial lift, for hazards such as:

– Untamped earth fills
– Ditches
– Drop-offs and floor obstructions
– Debris
– Overhead obstructions and electrical conductors
– Weather conditions
– Unauthorized persons in the area

NEW SECTION

WAC 296-869-20040 Before and during use.

You must:

• Set the brakes and make sure outriggers, when used, are positioned on pads or a solid surface.

• Install wheel chocks when using the aerial lift on an incline if they can be installed safely.

NEW SECTION

WAC 296-869-20045 Working from the platform.

You must:

• Make sure boom and platform load limits specified by the manufacturer are not exceeded.

• Make sure persons stand firmly on the floor of the platform and do not:

– Sit or climb on the edge of the platform;

OR

– Use guardrails, planks, ladders, or any other device to gain additional height or reach

• Prohibit wearing climbers when working from the platform.

• Make sure all persons on the platform wear a full body harness with a lanyard attached to either:

– The manufacturer's recommended attachment point;

OR

– The boom or platform if the manufacturer does not specify an attachment point

• Never attach a lanyard to an adjacent pole, structure, or equipment.

NEW SECTION

WAC 296-869-20050 Moving the aerial lift.

You must:

• Make sure the boom is properly cradled and the outriggers are in the stowed position before moving the aerial lift.

Exemption: The aerial lift may be moved with the boom elevated and personnel on the platform only if the equipment was specifically designed for this type of operation.

NEW SECTION

WAC 296-869-20055 Aerial ladders.

You must:

• Secure aerial ladders in the lower traveling position, using the locking device or other means provided by the manufacturer, before moving it for highway travel.

• Make sure all persons working from an aerial ladder wear a full body harness and lanyard attached to either:

– The manufacturer's recommended attachment point;

OR

– The ladder rail if the manufacturer does not specify an attachment point

NEW SECTION

WAC 296-869-300 Section contents.

IMPORTANT:

This section applies to manually propelled, self-propelled, and boom-supported elevating work platforms.

Your responsibility:

To make sure elevating work platforms meet these design, construction, and equipment requirements

WAC 296-869-30005
Manually propelled elevating work platforms
WAC 296-869-30010
Self-propelled elevating work platforms
WAC 296-869-30015
Boom-supported elevating work platforms
WAC 296-869-30020
Modifications

NEW SECTION

WAC 296-869-30005 Manually propelled elevating work platforms.

IMPORTANT:

This section applies to manually propelled, integral chassis, elevating work platforms with a platform that cannot be positioned completely beyond the base.

You must:

• Make sure manually propelled elevating work platforms meet the design and construction requirements of American National Standards Institute (ANSI) A92.3-1990, American National Standard for Manually Propelled Elevating Aerial Platforms.

• Make sure the manufacturer provides instructions and markings that meet the requirements of ANSI A92.3-1990, American National Standard for Manually Propelled Elevating Aerial Platforms, on each elevating work platform.

• Make sure manuals that meet the requirements of ANSI A92.3-1990, American National Standard for Manually Propelled Elevating Aerial Platforms, are:

– Provided for each elevating work platform;

AND

– Kept in the weather-resistant storage compartment provided by the manufacturer

Note: Required manuals include the manufacturer's operating and maintenance manuals and a manual that defines the responsibilities of dealers, owners, lessors, lessees, users, and operators.

NEW SECTION

WAC 296-869-30010 Self-propelled elevating work platforms.

IMPORTANT:

This section applies to self-propelled, integral chassis, elevating work platforms with a platform that cannot be positioned completely beyond the base.

You must:

• Make sure self-propelled elevating work platforms manufactured on or after July 1, 2006, meet the design and construction requirements of ANSI A92.6-1999, American National Standard for Self-Propelled Elevating Work Platforms.

• Make sure self-propelled elevating work platforms manufactured before July 1, 2006 meet the design and construction requirements of ANSI A92.6-1990, American National Standard for Self-Propelled Elevating Work Platforms.

• Make sure the manufacturer provides instructions and markings that meet the requirements of ANSI A92.6-1990 or A92.6-1999, American National Standard for Self-Propelled Elevating Work Platforms, as appropriate, on each elevating work platform.

• Make sure manuals that meet the requirements of ANSI A92.6-1990 or A92.6-1999, American National Standard for Self-Propelled Elevating Work Platforms, as appropriate, are:

– Provided for each elevating work platform;

AND

– Kept in the weather-resistant storage compartment provided by the manufacturer

Note: Required manuals include the manufacturer's operating and maintenance manuals and a manual that defines the responsibilities of dealers, owners, lessors, lessees, users, and operators.

NEW SECTION

WAC 296-869-30015 Boom-supported elevating work platforms.

IMPORTANT:

This section applies to self-propelled, integral chassis, elevating work platforms with a boom-supported platform that can be positioned completely beyond the base.

You must:

• Make sure boom-supported elevating work platforms meet the design and construction requirements of American National Standards Institute (ANSI) A92.5-1992, American National Standard for Boom-Supported Elevating Work Platforms.

• Make sure the manufacturer provides instructions and markings that meet the requirements of ANSI A92.5-1992, American National Standard for Boom-Supported Elevating Work Platforms, on each elevating work platform.

• Make sure manuals that meet the requirements of ANSI A92.5-1992, American National Standard for Boom-Supported Elevating Work Platforms, are:

– Provided for each elevating work platform;

AND

– Kept in the weather-resistant storage location provided by the manufacturer

Note: Required manuals include the manufacturer's operating and maintenance manuals and a manual that defines the responsibilities of dealers, owners, lessors, lessees, users, and operators.

NEW SECTION

WAC 296-869-30020 Modifications.

You must:

• Prohibit altering or disabling interlocks or other safety devices.

• Have written permission from the manufacturer before making any modification to an elevating work platform.

Note: If the original manufacturer is no longer in business, an equivalent entity such as a nationally recognized testing laboratory may approve modification.

NEW SECTION

WAC 296-869-400 Section contents.

IMPORTANT:

This section applies to manually propelled, self-propelled, and boom-supported elevating work platforms.

Your responsibility:

To inspect, repair, maintain, and service elevating work platforms to keep them in safe operating condition.

WAC 296-869-40005
Condition
WAC 296-869-40010
Inspections

WAC 296-869-40015
Repairs and adjustments
WAC 296-869-40020
Manufacturer's safety bulletins
WAC 296-869-40025
Inspection and repair records
WAC 296-869-40030
Fueling and battery charging

NEW SECTION

WAC 296-869-40005 Condition.
You must:

• Inspect and maintain elevating work platforms to keep them in proper operating condition.

• Immediately remove from service any elevating work platform that is not in proper operating condition.

NEW SECTION

WAC 296-869-40010 Inspections.
You must:

• Do a prestart inspection of the elevating work platform according to Table 2, Elevating Work Platform Inspections.

• Make sure frequent and annual inspections are done:

– By a person qualified as a mechanic on the specific make and model of elevating work platform;

AND

– According to Table 2, Elevating Work Platform Inspections

Table 2
Elevating Work Platform Inspections

Type of inspection:	When required:	Items to inspect:
Prestart	• At the beginning of each shift.	• Do a visual inspection and functional test including at least the following: – Operating and emergency controls – Safety devices – Personal protective devices, including fall protection – Air, hydraulic and fuel system leaks – Cables and wiring harness – Loose or missing parts – Tires and wheels – Placards, warnings, control markings, and required manuals – Outriggers, stabilizers, and other structures – Guardrail system – Items specified by the manufacturer
Frequent	• Elevating work platforms that have been in service three months or one hundred fifty hours, whichever comes first; **AND** • Before putting elevating work platforms back in service that have been out of service for more than three months **Note:** Newly purchased used equipment should be given the equivalent of a frequent inspection before being put into service.	• All functions and their controls for speeds, smoothness, and limits of motion • Emergency lowering means (manually propelled only) • Lower controls including the provisions for overriding of upper controls (self-propelled and boom-supported) • All chain and cable mechanisms for adjustment and worn or damaged parts • All emergency and safety devices

Type of inspection:	When required:	Items to inspect:
		• Lubrication of all moving parts, inspection of filter element(s), hydraulic oil, engine oil, and coolant as specified by the manufacturer • Visual inspection of structural components and other critical components such as fasteners, pins, shafts, turntable attachment bolts (boom-supported only), and locking devices • Placards, warnings, and control markings • Additional items specified by the manufacturer
Annual	• Not later than thirteen months from the date of the last annual inspection	• All items specified by the manufacturer for an annual inspection

NEW SECTION

WAC 296-869-40015 Repairs and adjustments.

You must:

• Make sure repairs to elevating work platforms are:

– Made by a qualified person;

AND

– Done according to the manufacturer's recommendations

• Make sure the elevating work platform, before beginning adjustments or repairs, meets all of the following requirements that apply:

– All controls in the "off" position

– All operating features secured from inadvertent motion by brakes, blocks, or other means

– Powerplant stopped

– Means of starting is rendered inoperative

– Platform either:

■ Lowered to the full down position, if possible;

OR

■ Blocked or cribbed to prevent dropping

– Hydraulic pressure relieved from all hydraulic circuits before loosening or removing hydraulic components

– Safety props or latches installed, where applicable

– Other precautions as specified by the manufacturer

• Make sure replacement parts or components are identical or equivalent to the original parts or components.

NEW SECTION

WAC 296-869-40020 Manufacturer's safety bulletins.

You must:

• Meet the requirements of safety-related bulletins as received from the manufacturer, dealer, or owner.

NEW SECTION

WAC 296-869-40025 Inspection and repair records.

You must:

• Keep written records documenting:

– Frequent and annual inspections you have done including:

■ Date of inspection

■ Deficiencies found

■ Corrective action recommended

■ Names of the people who did the inspection;

AND

– All repairs done on the elevating work platform, including:

■ Date of repair

■ Description of the work done

■ Names of the people who did the repair

• Retain the records of inspections and repairs for at least:

– Three years for manually propelled and boom-supported elevating work platforms;

AND

– Four years for self-propelled elevating work platforms

Note: It is the responsibility of the owner of the elevating work platform to make sure frequent and annual inspections are done and documented. If you perform either type of inspection, or make repairs to the elevating work platform, send the appropriate records to the owner of the elevating work platform.

NEW SECTION

WAC 296-869-40030 Fueling and battery charging.

You must:

• Shut-down the engine while filling fuel tanks.

• Fill fuel tanks and charge batteries in areas that are:

– Open and well-ventilated;

AND

– Free of flame, sparks, or other hazards that may cause fire or explosion

NEW SECTION

WAC 296-869-500 Section contents.

IMPORTANT:

This section applies to manually propelled, self-propelled, and boom-supported elevating work platforms.

Your responsibility:

To properly train elevating work platform operators

WAC 296-869-50005
Operator authorization and training

WAC 296-869-50010
Specific model training

WAC 296-869-50015
Operator training records

NEW SECTION

WAC 296-869-50005 Operator authorization and training.

You must:

• Permit only trained and authorized personnel to operate elevating work platforms.

• Train operators in all of the following:

– The manufacturer's operating and maintenance manuals

– Your work instructions

– The requirements of this chapter

NEW SECTION

WAC 296-869-50010 Specific model training.

You must:

• Make sure operators:

– Know the required manuals supplied by the manufacturer are stored in a weather resistant compartment and where the compartment is located;

AND

– Refer to the manuals when necessary

• Make sure operators do all of the following before operating an elevating work platform:

– Read and understand the manufacturer's operating instructions and your safety rules, or have them explained by a qualified person

– Understand, by reading or by having a qualified person explain, all decals, warnings, and instructions displayed on the elevating work platform

– Are instructed by a qualified person in the intended purpose and function of each control

• Have operator trainees demonstrate their knowledge and proficiency during actual operation of an elevating work platform under the following conditions:

– Under the direction of a qualified person

– In an area free of obstructions

– Using an elevating work platform that is:

■ The same model that they will be operating;

OR

■ One that has similar controls and operating characteristics

NEW SECTION

WAC 296-869-50015 Operator training records.

You must:

• Retain records of the operators trained on each model of elevating work platform for at least:

– Three years for manually propelled and boom-supported elevating work platforms;

AND

– Four years for self-propelled elevating work platforms

NEW SECTION

WAC 296-869-600 Section contents.

IMPORTANT:

This section applies to manually propelled, self-propelled, and boom-supported elevating work platforms.

Your responsibility:

To meet these requirements when operating elevating work platforms

WAC 296-869-60005
Intended use

WAC 296-869-60010
Workplace survey

WAC 296-869-60015
Hazardous locations

WAC 296-869-60020
Travel speed and set-up

WAC 296-869-60025
Driving

WAC 296-869-60030
Elevating and lowering the platform

WAC 296-869-60035
Working from the platform

WAC 296-869-60040
Malfunctions or unsafe conditions

NEW SECTION

WAC 296-869-60005 Intended use.

You must:

• Make sure elevating work platforms are used only for their intended purpose as specified by the manufacturer.

Note: Misuse of an elevating work platform includes, but is not limited to:

• Using the elevating work platform as a crane

• Using the platform to jack the wheels off the ground unless the machine was designed for that purpose by the manufacturer

• Operating the elevating work platform from a truck, trailer, railway car, floating vessel, scaffold, or similar equipment unless the application is approved in writing by the manufacturer

NEW SECTION

WAC 296-869-60010 Workplace survey.

You must:

• Have the operator survey the area before and during use of an elevating work platform for hazards such as:

– Drop-offs or holes

– Slopes

– Bumps and floor obstructions

– Debris
– Overhead obstructions and high voltage conductors
– Hazardous locations
– Inadequate surface and support to withstand the load imposed on them by the elevating work platform in all operating configurations
– Wind and weather conditions
– Unauthorized persons in the area
– Other possible unsafe conditions

NEW SECTION

WAC 296-869-60015 Hazardous locations.

You must:

• Determine the hazard classification of any area where the elevating work platform will operate using National Fire Protection Association (NFPA) 505-2002, Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operations.

• Make sure only approved elevating work platforms are used in Class I, II, or III locations.

• Make sure elevating work platforms are used in hazardous (classified) locations as follows:

– Elevating work platforms authorized to be used in Class 1 locations are shown in Table 3, Approved Elevating Work Platform Use in Class 1 Locations

– Elevating work platforms authorized to be used in Class 2 locations are shown in Table 4, Approved Elevating Work Platform Use in Class 2 Locations

– Elevating work platforms authorized to be used in Class 3 locations are shown in Table 5, Approved Elevating Work Platform Use in Class 3 Locations

• Elevating work platforms authorized to be used in unclassified locations are:

– Approved elevating work platforms designated as Type D, E, G, or LP;

AND

– Elevating work platforms that meet the requirements of Type D, E, G, or LP elevating work platforms.

• Have operators report any hazardous atmosphere or location that becomes apparent while operating the elevating work platform.

Definitions:

• An **unclassified location** is an area that's not designated as a Class 1, 2, or 3 location.

• The **type designation** is a code to identify types of elevating work platforms. It is used to determine if an elevating work platform can be used in a specific classified or unclassified location.

– **D** refers to elevating work platforms that are diesel engine powered that have minimum safeguards against inherent fire hazards.

– **DS** refers to diesel powered elevating work platforms that, in addition to meeting all the requirements for type D elevating work platforms, are provided with additional safeguards to the exhaust, fuel and electrical systems.

– **DY** refers to diesel powered elevating work platforms that have all the safeguards of the DS elevating work platforms and, in addition, any electrical equipment is completely enclosed. They are equipped with temperature limitation features.

– **E** refers to electrically powered elevating work platforms that have minimum acceptable safeguards against inherent fire hazards.

– **ES** refers to electrically powered elevating work platforms that, in addition to all of the requirements for the E elevating work platforms, have additional safeguards to the electrical system to prevent emission of hazardous sparks and to limit surface temperatures.

– **EE** refers to electrically powered elevating work platforms that, in addition to all of the requirements for the E and ES type elevating work platforms, have their electric motors and all other electrical equipment completely enclosed.

– **EX** refers to electrically powered elevating work platforms that differ from E, ES, or EE type elevating work platforms in that the electrical fittings and equipment are designed, constructed and assembled to be used in atmospheres containing flammable vapors or dusts.

– **G** refers to gasoline powered elevating work platforms that have minimum acceptable safeguards against inherent fire hazards.

– **GS** refers to gasoline powered elevating work platforms that are provided with additional exhaust, fuel, and electrical systems safeguards.

– **LP** refers to liquefied petroleum gas-powered elevating work platforms that, in addition to meeting all the requirements for type G elevating work platforms, have minimum acceptable safeguards against inherent fire hazards.

– **LPS** refers to liquefied petroleum gas-powered elevating work platforms that in addition to meeting the requirements for LP type elevating work platforms, have additional exhaust, fuel, and electrical systems safeguards.

Table 3
Approved Elevating Work Platform Use in Class 1 Locations

Class 1 Locations in which flammable gases or vapors are, or may be, present in the air in quantities sufficient to produce explosive or ignitable mixtures							
Division 1 Conditions exist continuously, intermittently, or periodically under normal operating conditions.				**Division 2** Conditions may occur accidentally, for example, due to a puncture of a storage drum.			
Group A Acetylene	**Group B** Hydrogen	**Group C** Ethyl ether	**Group D** Acetone	**Group A** Acetylene	**Group B** Hydrogen	**Group C** Ethyl ether	**Group D** Acetone

Class 1 Locations in which flammable gases or vapors are, or may be, present in the air in quantities sufficient to produce explosive or ignitable mixtures							
Division 1 Conditions exist continuously, intermittently, or periodically under normal operating conditions.				**Division 2** Conditions may occur accidentally, for example, due to a puncture of a storage drum.			
			Alcohols Benzene Gasoline Lacquer Solvent				Alcohols Benzene Gasoline Lacquer Solvent
No type can be used	**No type can be used**	**No type can be used**	**Use this elevating work platform type:** **EX**	**No type can be used**	**No type can be used**	**No type can be used**	**Use this elevating work platform type:** **DS** **DY** **ES** **EE** **EX** **GS** **LPS**

Table 4
Approved Elevating Work Platform Use in Class 2 Locations

Class 2 Locations which are hazardous because of the presence of combustible dust					
Division 1 Explosive mixture may be present under normal operating conditions, or where failure of equipment may cause the condition to exist simultaneously with arcing or sparking of electrical equipment, or where dusts of an electrically conducting nature may be present.			**Division 2** Explosive mixture not normally present, but where deposits of dust may cause heat rise in electrical equipment, or where such deposits may be ignited by arcs or sparks from electrical equipment.		
Group E	**Group F**	**Group G**	**Group E**	**Group F**	**Group G**
Metal dust	Carbon black Coal dust Coke dust	Grain dust Flour dust Starch dust Organic dust	Metal dust	Carbon black Coal dust Coke dust	Grain dust Flour dust Starch dust Organic dust
No type can be used	**Use this elevating work platform type:** **EX**	**Use this elevating work platform type:** **EX**	**No type can be used**	**No type can be used**	**Use this elevating work platform type:** **DS** **DY** **ES** **EE** **EX** **GS** **LPS**

Table 5
Approved Elevating Work Platform Use in Class 3 Locations

Class 3 Locations where easily ignitable fibers or flyings are present but not likely to be in suspension in quantities sufficient to produce ignitable mixtures	
Division 1 Locations in which easily ignitable fibers or materials producing combustible flyings are handled, manufactured, or used.	**Division 2** Locations in which easily ignitable fibers are stored or handled (except in the process of manufacture).
Use this elevating work platform type: **DY** **EE** **EX**	**Use this elevating work platform type:** **DS** **DY** **E** **ES** **EE** **EX** **GS** **LPS**

NEW SECTION

WAC 296-869-60020 Travel speed and set-up.

You must:

• Make sure the operator limits travel speed according to conditions, including:

– Condition of the ground or support surface

– Congestion

– Visibility

– Slope

– Location of personnel

– Other factors that may create a hazard of collision or injury to personnel

• Prohibit positioning the elevating work platform against another object in order to steady the platform.

• Do the following when other moving equipment or vehicles are present:

– Take special precautions to meet the requirements of local ordinances or workplace safety standards;

AND

– Use warnings such as, but not limited to, flags, roped-off areas, flashing lights and barricades

NEW SECTION

WAC 296-869-60025 Driving.

IMPORTANT:

This section does not apply to manually propelled elevating work platforms.

You must:

• Make sure the operator does all of the following before and while driving with the platform elevated:

– Maintains a clear view of the path of travel

– Keeps a safe distance from obstacles, debris, drop-offs, holes, depressions, ramps, and other hazards to safe travel

– Keeps a safe distance from overhead obstacles

• Prohibit stunt driving and horseplay.

NEW SECTION

WAC 296-869-60030 Elevating and lowering the platform.

You must:

• Have the operator make sure all of the following are done before each elevation of the platform:

– The elevating work platform is on a surface that is within the limits specified by the manufacturer

– Outriggers, stabilizers, extendable axes, or other stability enhancing means are used as required by the manufacturer

– Guardrails are installed and access gates or openings are closed per the manufacturer's instructions

– The load and its distribution on the platform and any platform extension does not exceed the manufacturer's rated capacity for the configuration being used

– There is adequate clearance from overhead obstructions

– The minimum safe approach distance (MSAD) to energized power lines and parts listed in Table 6, Minimum Safe Approach Distance, is maintained

– All persons on the platform are wearing fall protection devices and other safety gear if required

• Prevent rope, electric cords, hoses and similar objects from becoming entangled with the platform.

• Have the operator make sure the area is clear of personnel and equipment before lowering the platform.

• Remove all personnel from a platform that has been caught, snagged, or otherwise prevented from normal motion before attempting to free it using ground controls.

Note: If possible, reverse the platform controls to free a platform that is caught, snagged, or otherwise prevented from normal motion by an adjacent structure or other obstacle.

Table 6
Minimum Safe Approach Distance

Voltage	Minimum Safe Approach Distance
Less than 300 volts (insulated lines)	3 feet (0.9 m)
Less than 300 volts (uninsulated lines)	10 feet (3.1 m)
300 volts to 50 kv	10 feet (3.1 m)
More than 50 kv	10 feet (3.1 m) + 0.4 inches (1.0 cm) for each 1 kv over 50 kv

NEW SECTION

WAC 296-869-60035 Working from the platform.

You must:

• Make sure persons working from the platform:

– Keep a firm footing on the platform;

AND

– Do not use guardrails, planks, ladders, or any other device to gain additional height or reach

• Make sure all persons on the platform of boom-supported elevating work platforms wear a full body harness and lanyard fixed to manufacturer provided and approved attachment points.

• Make sure the rated capacities of the platform are not exceeded when transferring loads to the platform at any height.

NEW SECTION

WAC 296-869-60040 Malfunctions or unsafe conditions.

You must:

• Make sure operators, if they suspect a malfunction of the elevating work platform or encounter any hazard or potentially unsafe condition, do all of the following:

– Cease operation

– Report the problem or malfunction

– Discontinue using the elevating work platform until problems or malfunctions that affect safe operation have been corrected

NEW SECTION

WAC 296-869-700 Definitions.

Aerial device:

A vehicle-mounted device, telescoping or articulating, or both, which is used to position personnel.

Aerial ladder:

A vehicle-mounted elevating work platform consisting of a single or multiple-section extensible ladder. It may or may not have a platform at the top.

Aerial lift:

An aerial device mounted on a vehicle such as a truck, trailer, or all-terrain vehicle.

Approved:

Listed or approved by a nationally recognized testing laboratory or a federal agency that issues approvals for equipment such as the Mine Safety and Health Administration (MSHA); the National Institute for Occupational Safety and Health (NIOSH); Department of Transportation; or U.S. Coast Guard, which issue approvals for such equipment.

Articulating-boom work platform:

A vehicle-mounted elevated work platform with two or more hinged boom sections.

Boom-supported elevating work platform:

A self-propelled, integral chassis, elevating work platform with a boom-supported platform that can be positioned completely beyond the base.

Chassis:

The part of a nonvehicle-mounted elevating work platform that provides mobility and support for the elevating assembly and platform.

Elevating work platform:

A device used to position personnel, along with their necessary tools and materials, at work locations. It includes a platform and an elevating assembly. It may be vehicle mounted or have an integral chassis for mobility and as a means of support.

Extensible-boom work platform:

A vehicle-mounted elevating work platform with a telescopic or extensible boom.

Manually propelled elevating work platform:

A manually propelled, integral chassis, elevating work platform with a platform that cannot be positioned completely beyond the base.

Platform:

The portion of an elevating work platform intended to be occupied by personnel. It may also be called a basket, bucket, stand, or similar term.

Rated capacity:

The designed carrying capacity of the elevating work platform as specified by the manufacturer.

Self-propelled elevating work platform:

A self-propelled, integral chassis, elevating work platform with a platform that cannot be positioned completely beyond the base.

Type designation:

A code to identify types of elevating work platforms. It is used to determine if an elevating work platform can be used in a specific classified or unclassified location.

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– **LPS** refers to liquefied petroleum gas-powered elevating work platforms that, in addition to meeting the requirements for LP type elevating work platforms, have additional exhaust, fuel, and electrical systems safeguards.

Vertical tower:

A vehicle-mounted elevating work platform having a platform that can be raised along a vertical axis.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-24-875	Elevating work platforms.
WAC 296-24-87505	Self-propelled elevating work platforms.
WAC 296-24-87510	Boom supported elevating work platforms.
WAC 296-24-87515	Aerial lifts.
WAC 296-24-880	Power platforms for exterior building maintenance.
WAC 296-24-88005	Definitions.
WAC 296-24-88010	Inspections and tests.
WAC 296-24-88015	Powered platform installations—Affected parts of buildings.
WAC 296-24-88020	Powered platform installations—Equipment.
WAC 296-24-88025	Maintenance.
WAC 296-24-88030	Operations.
WAC 296-24-88035	Personal fall protection.
WAC 296-24-88040	Appendix A—Guidelines (advisory).
WAC 296-24-88045	Appendix B—Exhibits (advisory).
WAC 296-24-88055	Appendix D—Existing installations (mandatory).
WAC 296-24-900	Manlifts.
WAC 296-24-90001	Definitions.
WAC 296-24-90003	General requirements.
WAC 296-24-90005	Mechanical requirements.
WAC 296-24-90007	Operating rules.
WAC 296-24-90009	Periodic inspection.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-155-481	Scope and application.
WAC 296-155-482	Definitions applicable to this part.
WAC 296-155-487	Manually propelled elevating work platforms.
WAC 296-155-488	Self propelled elevating work platforms.
WAC 296-155-489	Boom supported elevating work platforms.
WAC 296-155-490	Aerial lifts.
WAC 296-155-496	Non-Mandatory Appendix C to Part J-1, List of National Consensus Standards.

WSR 06-09-073
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed April 18, 2006, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-028.

Title of Rule and Other Identifying Information: Fireworks WAC 212-17-295, 212-17-310, and 212-17-315.

Hearing Location(s): General Administration Building, Commercial Vehicle Division Conference Room, 210 11th Avenue S.W., Olympia, WA 98504, (360) 570-3133, on May 23, 2006, at 10:00 a.m.

Date of Intended Adoption: May 24, 2006.

Submit Written Comments to: Deputy State Fire Marshall Larry Glenn, P.O. Box 42600, Olympia, WA 98504-2600, e-mail Larry.Glenn@wsp.wa.gov, fax (360) 570-3136, by May 22, 2006.

Assistance for Persons with Disabilities: Contact Mr. Larry Glenn by May 22, 2006, (360) 570-3133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify and amend safety rules to meet the 2000 Edition of the National Fire Protection Association standard #1123 for outdoor public fireworks displays shot from barges or floating vessels.

Statutory Authority for Adoption: Chapters 43.43 and 70.77 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Deputy State Fire Marshal Larry Glenn, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 570-3133.

A cost-benefit analysis is not required under RCW 34.05.328. There will be no cost to the industry.

April 17, 2006
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-295 Public display—General. ((~~This section shall apply to the construction, handling, and use of Division 1.3G display or Division 1.4G consumer fireworks intended solely for public display. It shall also apply to the general conduct and operation of the display.~~)) The intent of this chapter shall be to provide requirements for clearances upon which the authority having jurisdiction shall base its approval of an outdoor fireworks display site. Where added safety precautions have been taken, or particularly favorable conditions exist, the authority having jurisdiction shall be permitted to decrease the required separation distances as it deems appropriate, upon demonstration that the hazard has been reduced or the risk has been properly protected. Where unusual or safety-threatening conditions exist, the authority having jurisdiction shall be permitted to increase the required separation distances as it deems necessary.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-310 Public display—Storage of shells. (((~~(1) As soon as the fireworks have been delivered to the display site, they shall not be left unattended and shall be kept dry.~~

~~(2) All shells shall be inspected upon delivery to the display site by the display operators. Any shells having tears, leaks, broken fuses, or showing signs of having been wet shall be set aside and shall not be fired. After the display, any such shells shall either be returned to the supplier or be destroyed according to the supplier's instructions.~~

~~Exception: Minor repairs to fuses shall be allowed. Also, for electrically ignited displays, attachment of electric matches and other similar tasks shall be permitted.~~

~~(3) All shells shall be separated according to diameter and stored in tightly covered containers of metal, wood, or plastic or in fiber drums or corrugated cartons meeting United States Department of Transportation specifications for transportation of fireworks. A flame-resistant tarpaulin shall be permitted to be used as a covering over the containers, if additional protection is desired.~~

~~(4) The shell storage area shall be located at a minimum distance of not less than 25 feet (7.6 m) from the discharge site.~~

~~(5) During the display, shells shall be stored upwind from the discharge site. If the wind should shift during the display, the shell storage area should be relocated so as to again be upwind from the discharge site.~~)) A ready box shall be a portable, weather-resistant container that protects contents from burning debris with a self-closing cover or equivalent means of closure required.

(1) After delivery and prior to the display, all shells shall be separated according to size and their designation as salutes.

(2) Any display fireworks that will be temporarily stored at the display site during the fireworks display shall be stored in ready boxes separated according to size and their designation as salutes. Tarpaulins shall not be considered as ready boxes.

Exception: For electrically ignited displays, or displays where all shells are loaded into mortars prior to the show, there is no requirement for separation of shells according to size, for their designation as salutes, or for the use of ready boxes.

(3) During the performance of an outdoor fireworks display, ready boxes shall be located at a distance not less than twenty-five feet upwind from the mortar placements. If the wind shifts during a display, the ready boxes shall be located again to be upwind from the discharge site.

Exception No. 1: Where permitted by the authority having jurisdiction, alternate measures shall be taken.

Exception No. 2: Where there are no shells requiring storage during a display, such as for an electrically ignited display, no ready boxes shall be required.

AMENDATORY SECTION (Amending Order 90-02, filed 4/19/90, effective 5/20/90)

WAC 212-17-315 Public display—Installation of mortars. (((~~(1) Mortars shall be inspected for dents, bent ends, and cracked or broken plugs prior to ground placement. Mortars found to be defective in any way shall not be used. Any scale on the inside surface of the mortars shall be removed.~~

~~(2) Mortars shall be positioned so that the shells are carried away from spectators and into a clear area acceptable to the authority having jurisdiction.~~

~~(3) Mortars shall be either buried securely into the ground to a depth of 2/3 to 3/4 of their length or fastened securely in mortar boxes or drums. In soft ground, heavy timber (e.g. 4-inch thick) or rock slabs shall be placed beneath the mortars to prevent their sinking or being driven into the ground during firing.~~

~~Exception: Boxed finales and finale racks.~~

~~(4) In damp ground, a weather-resistant bag shall be placed under the bottom of the mortar prior to placement in the ground to protect the mortar against moisture.~~

~~(5) Weather-resistant bags shall be placed over the open end of the mortar in damp weather to keep moisture from accumulating on the inside surface of the mortar.~~

~~(6) Sand bags, dirt boxes, or other suitable protection shall be placed around the mortars to protect the operator from ground bursts. This requirement shall not apply to the down-range side of the discharge site.~~

~~(7) Mortars shall be inspected before the first shells are loaded to be certain no water or debris has accumulated in the bottom of the mortar.~~

~~(8) If steel mortars are placed in troughs or drums, the minimum distance from the mortar to the wall of the trough or drum shall be at least two times the diameter of the mortar.~~

~~(9) If troughs and drums are used, they shall be filled with sand or soft dirt; in no case shall stones or other possibly dangerous debris be present.~~

~~(10) If mortars which are generally considered not capable of generating dangerous flying debris are placed in troughs or drums, the minimum distance from the mortar to the wall of the trough or drum shall be at least equal to the diameter of the mortar. Commonly used mortars which are considered generally not capable of generating dangerous flying debris include paper and high density polyethylene mortars.~~

~~(11) Whenever shells are to be chain fused, such as for barrages and finales, additional measures are required to prevent adjacent mortars from being repositioned in the event that a shell detonates in a mortar causing it to burst. For buried mortars, this shall be accomplished by placing the mortars with a minimum separation of four times their diameter. For mortars in racks this shall be accomplished by using mortar racks that have sufficient strength to successfully withstand such a failure.~~

~~(12) When mortars are to be reloaded during a display, mortars of various sizes shall not be intermixed. Mortars of the same size shall be placed in groups and the groups must be separated from one another.~~

~~To the extent practical, when mortars are to be reloaded during a display, groups of one size mortar should not be placed adjacent to mortars of only one inch different diameter. This will reduce the likelihood that shells will be loaded into oversized mortars. For example, an arrangement of mortar groups such as 5"-3"-6"-4" is greatly preferred over an arrangement such as 3"-4"-5"-6".~~

~~(13) Mortars may be constructed of steel, paper or high-density polyethylene.~~

~~(14) Steel mortars shall be deemed acceptable for use with all shells. Steel mortars shall be either seamed or seamless; however, seamed mortars must be placed such that the seam is facing either right or left as one faces the line of mortars. Steel mortars shall conform to the following:~~

~~MINIMUM MORTAR WALL THICKNESS (INCHES)~~

~~Mortar ID (in)~~	~~Spherical~~	~~Cylindrical Single-Break~~	~~Cylindrical Multi-Break~~
~~3~~	~~0.04~~	~~0.11~~	~~0.21~~
~~4~~	~~0.05~~	~~0.12~~	~~0.23~~
~~5~~	~~0.06~~	~~0.13~~	~~0.25~~
~~6~~	~~0.07~~	~~0.14~~	~~0.27~~
~~8~~	~~0.09~~	~~0.16~~	~~0.31~~
~~10~~	~~0.11~~	~~0.18~~	~~0.35~~
~~12~~	~~0.13~~	~~0.20~~	~~0.39~~

~~The tensile strength of steel pipe shall be at least 40,000 psi.~~

~~(15) Paper mortars shall only be used for discharge of single-break and double-break shells. A thirty second cooling period shall be allowed between firing and reloading of paper mortars. Paper mortars shall be constructed of convolute wound paper, except that spiral wound paper shall be permitted for 3-inch diameter mortars only. Paper mortars shall conform to the following:~~

~~MINIMUM MORTAR WALL THICKNESS (INCHES)~~

~~Mortar ID (in.)~~	~~Spherical~~	~~Cylindrical Single-Break~~	~~Cylindrical Two-Break~~
~~3~~	~~0.25~~	~~0.25~~	~~0.37~~
~~4~~	~~0.25~~	~~0.33~~	~~0.50~~
~~5~~	~~0.31~~	~~0.42~~	~~0.62~~
~~6~~	~~0.37~~	~~0.50~~	~~0.75~~
~~8~~	~~0.50~~	~~0.62~~	
~~10~~	~~0.62~~		
~~12~~	~~0.75~~		

~~The cross-grain tensile strength of the paper shall be at least 2,300 psi.~~

~~(16) Plastic reusable mortars shall be of high density polyethylene pipe, marked with identification markings "high density polyethylene" or "HDPE" and certified by "ASTM" with an accompanying certification standard identifier subscript. Plastic mortars shall conform to the following:~~

~~MINIMUM MORTAR WALL THICKNESS (INCHES)~~

~~Mortar ID~~	~~Spherical~~	~~Cylindrical Single-Break~~
~~3~~	~~0.15~~	~~0.20~~
~~4~~	~~0.20~~	~~0.26~~
~~5~~	~~0.25~~	
~~6~~	~~0.30~~	

~~The tensile strength of plastic shall be at least 3,500 psi.~~

~~(17) Mortars shall be of sufficient length to cause aerial shells to be propelled to safe heights. Mortar lengths shall conform to the following:~~

~~MINIMUM INSIDE MORTAR LENGTH (INCHES)~~

~~Mortar ID (in)~~	~~Single-Break~~	~~Double-Break~~	~~Up To 4 Break~~
~~3~~	~~15~~	~~18~~	~~21~~
~~4~~	~~20~~	~~23~~	~~27~~
~~5~~	~~24~~	~~28~~	~~32~~
~~6~~	~~28~~	~~32~~	~~37~~
~~8~~	~~34~~	~~40~~	~~46~~
~~10~~	~~40~~	~~46~~	~~54~~
~~12~~	~~46~~	~~52~~	~~62~~

~~(18) A cleaning tool shall be provided for cleaning debris out of the mortars between firings.~~

~~Exception: When mortars are not to be reloaded during a display, there is no requirement for a cleaning tool.~~))

(1) Prior to placement, mortars shall be inspected carefully for defects, such as dents, bent ends, damaged interiors, and damaged plugs. Defective mortars shall not be used.

(2) Mortars shall be positioned and spaced so that shells are propelled away from spectators, over the fallout area, and to afford maximum protection to the shooter and loader. Under no circumstances shall mortars be angled toward the spectator viewing area.

(3) Where mortars are to be reloaded during a display, mortars of various sizes shall not be intermixed. Mortars of the same size shall be placed in groups, and the groups shall be separated from one another.

(4) Mortars of any type six inches in diameter or less shall be permitted to be reloaded and fired up to seven times during a performance.

Exception: There shall be no limit to the number of times a steel mortar six inches or less is permitted to be reloaded.

(5) Mortars shall be positioned to afford protection to the spectators and display personnel.

(6) Mortars shall be inspected before the first shells are loaded to ensure that no water or debris has accumulated in the bottom of the mortar.

(7) Mortars shall be of sufficient strength and durability to fire the aerial shells and be used safely.

(8) Paper, HDPE, and fiberglass mortars are among the types of mortar that shall be permitted to be used.

(9) Cast iron, stove pipe, corrugated culvert, clay, bamboo, and wood shall not be used to make mortars.

(10) Metal mortars shall be either seamed or seamless; however, seamed mortars shall be placed so that all seams face either right or left when viewing the line of mortars.

(11) Steel mortars used to fire single break salute shells shall be buried according to WAC 212-17-321.

(12) Mortars shall be of sufficient length to cause aerial shells to be propelled to safe heights.

(13) The dimension of the inside diameter of the mortar shall be conspicuously painted or otherwise marked on the top of the mortar.

Exception: Designation of the inside diameter shall not be required for outdoor fireworks displays fired under the direct control of a professional fireworks display company.

NEW SECTION

WAC 212-17-321 Public display—Installation of buried mortars. (1) Mortars shall be buried to a depth of at least two-thirds to three-quarters of their length, either in the ground or in aboveground troughs or drums.

(2) Where paper mortars are to be placed in damp ground or damp sand or are to be in the display, they shall be placed inside a water-resistant bag prior to placement in the ground.

(3) Wherever there is the likelihood of groundwater leading into the mortar, the mortar shall be placed inside a water-resistant bag prior to placement in the ground.

(4) Weather-resistant coverings shall be placed over the mouth of mortars wherever there is imminent danger of water accumulating inside the mortar.

(5) Buried mortars shall be placed to prevent them from being driven into the ground or reangled when fired.

Exception: Where a mortar is to be used only once, such as for an electrically fired display, added support shall be optional and shall not be required.

(6) Mortars that are buried in the ground, in troughs, or in drums shall be separated from adjacent mortars by a distance at least equal to the diameter of the mortar.

Exception: Where electrical ignition of unchained aerial shells six inches and less in diameter is used, there is no requirement for separation of mortars.

(7) Mortars in troughs and drums shall be positioned to afford the maximum protection to the shooter.

(8) There shall be a separation distance of at least two inches or half the diameter of the mortar, whichever is greater, between the mortar and the trough or drum.

Exception: Where electrical ignition is used, all mortars placed in drums or troughs shall be spaced at least two inches from the wall of the drum or trough.

(9) If troughs and drums are used, they shall be filled with sand or soft dirt: In no case shall stones or other potentially dangerous debris be present.

(10) Troughs shall be reinforced or braced in a minimum of two places on the sides at intervals no greater than every four feet.

(11) Where possible, the narrow side of the trough shall face the greatest number of spectators and the firing progression shall develop in a direction away from the spectators.

NEW SECTION

WAC 212-17-323 Installation of mortar racks. (1) Single break shells not exceeding six inches in diameter shall be permitted to be fired from securely positioned mortar racks.

(2) Firing of single break shells that are seven or eight inches in diameter shall be permitted from securely positioned mortar racks provided the following conditions are met:

(a) The mortar is not metallic;

(b) Electrical or equivalent means of remote ignition is used to fire the shell; and

(c) The shell is not chain fused to any other shells.

(3) Mortar racks or bundles shall be constructed in a thorough and workmanlike manner to be capable of holding multiple mortars in position during normal functioning.

(4) Mortar racks or bundles that are not inherently stable shall be secured or braced to stabilize them. Stabilization shall be accomplished by using stakes, legs, A-frames, sideboards or equivalent means.

(5) Mortar racks of bundles shall be oriented, angled, or oriented and angled in such a way that maximizes the audience's safety.

NEW SECTION

WAC 212-17-327 Requirements for chain fusing. (1) Wherever more than three shells are to be chain fused, such as for sequential firing, additional measures shall be required to prevent adjacent mortars from being repositioned in the event that a shell explodes in a mortar, causing it to burst.

(2) For buried mortars, prevention of repositioning shall be accomplished by spacing the mortars with a minimum separation distance of four times their diameter.

(3) For mortars in racks, prevention of repositioning shall be accomplished by mortar racks that have sufficient strength to withstand such a failure successfully.

(4) Chain-fused mortar racks shall be positioned to maximize the placement of racks perpendicular to spectator viewing areas.

(5) Chain-fused mortar racks containing mortars three inches or less in diameter shall be limited to a maximum of fifteen mortars per unit. Racks containing mortars four inches in diameter shall be limited to a maximum of twelve mortars. Racks containing mortars five to six inches in diameter shall be limited to a maximum of ten mortars. Chain-fused racks shall not be used for mortars greater than six inches.

Exception: Boxed finale items containing tubes two and one-half inches or less in diameter only shall not be required to comply with the limitation above.

(6) All chain-fused aerial fireworks devices, including those not in mortar racks such as roman candle batteries and multitube aerial items, shall be positioned securely to prevent tip over or hazardous movement during operation. This shall be accomplished by the use of stakes, racks, sandbags, earth, or equivalent means.

(7) Staple guns shall not be permitted to be used to secure quick match that is connected to aerial shells, mines, or comets.

(8) Chain-fused aerial shells shall not be permitted to be reloaded.

WSR 06-09-074
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed April 18, 2006, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-045.

Title of Rule and Other Identifying Information: WAC 308-124A-430 Grading of real estate examinations.

Hearing Location(s): Department of Licensing, 2nd Floor Conference Room, 2000 4th Avenue West, Olympia, WA, on May 24, 2006, at 1:00 p.m.

Date of Intended Adoption: May 24, 2006, or after.

Submit Written Comments to: Jerry McDonald, P.O. Box 2445, Olympia, WA 98507, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by May 15, 2006.

Assistance for Persons with Disabilities: Contact Marjorie Hatfield by May 15, 2006, TTY (360) 664-8885 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To ensure the real estate examination encompasses current law and to clarify the six months validity of the passing score.

Reasons Supporting Proposal: To clarify the subject matter of real estate tests and the time limits on validity of an examination.

Statutory Authority for Adoption: RCW 18.85.040.

Statute Being Implemented: RCW 18.85.130.

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

Name of Proponent: Real estate program, department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact on businesses enterprises - only affects individual applicants for licensure as a real estate salesperson or broker.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes have no financial impact on the department.

April 17, 2006
Jerry McDonald
Assistant Administrator

AMENDATORY SECTION (Amending WSR 91-07-029, filed 3/14/91, effective 4/14/91)

WAC 308-124A-430 Grading of examinations. (1) ((~~A minimum scaled score of 70 on each portion of the real estate salesperson examination is required to pass.~~)) To pass the real estate salesperson examination a minimum scaled score of 70 is required on each portion. The real estate salesperson examination shall consist of two portions: (a) The national portion consisting of questions that test general real estate practices and (b) the state portion consisting of questions that test on Washington ((~~licensing~~)) laws and regulations ((~~effective July 1, 1991~~)) related to real estate licensing.

(2) ((~~A minimum scaled score of 75 on each portion of the real estate broker examination is required to pass.~~)) To pass the real estate broker examination a minimum scaled score of 75 is required on each portion. The real estate broker examination shall consist of two portions: (a) The national portion consisting of questions that test general real estate brokerage practices and (b) the state portion consisting of questions that test on Washington ((~~licensing~~)) laws((~~,~~)) and regulations related to real estate licensing, and the closing/settlement process ((~~effective July 1, 1991~~)).

(3) A passing score for a portion of an examination shall be valid for a period not to exceed six months ((~~effective July 1, 1991~~)) from the date of testing.

WSR 06-09-080
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed April 18, 2006, 3:07 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Private investigators, chapter 18-165 WAC, WAC 308-17-150 Private investigative agency, private investigator, armed private investigator fees.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Room 2209, Building 2, Olympia, WA 98507, on May 30, 2006, at 10:30 a.m.

Date of Intended Adoption: June 1, 2006.

Submit Written Comments to: Mary Haglund, Program Manager, P.O. Box 9649, Olympia, WA 98507, e-mail Security@dol.wa.gov, fax (360) 570-7888, by May 29, 2006.

Assistance for Persons with Disabilities: Contact Sherri Lonsbery by May 29, 2006, TTY (360) 664-8885 or (360) 664-6624.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will increase fees. The increase of revenue will bring the program budget into balance.

Reasons Supporting Proposal: The reason for the fee increase is that dedicated fund requires that the program establish and maintain a reasonable fund balance. The fee increase will accomplish meeting this requirement.

Statutory Authority for Adoption: Chapter 18.165 RCW.

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

Name of Proponent: Department of licensing (DOL), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Haglund, Program Manager, Olympia, (360) 664-6624.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DOL is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. Because DOL is not one of the named agencies to which this rule applies. Agencies that are not named can apply this rule to themselves voluntarily. DOL has chosen not to do this.

April 10, 2006
Mary Haglund
Program Manager

AMENDATORY SECTION (Amending WSR 04-12-024, filed 5/26/04, effective 7/1/04)

WAC 308-17-150 Private investigative agency, private investigator, and armed private investigator fees. Licenses issued to private investigator agencies and private investigators expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private investigative agency/principal fee:	
Application/examination/ includes first examination	$ ((~~500.00~~)) 600.00
Principal armed endorsement	100.00
Reexamination	25.00
License renewal	((~~300.00~~)) 350.00
Late renewal penalty	See below*
Change of principal/includes first examination	150.00
Private investigator:	
Original license	((~~150.00~~)) 200.00
Armed endorsement	100.00
Transfer fee	25.00
License renewal	((~~150.00~~)) 175.00
Late renewal with penalty	200.00
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00

*Private investigative agency license renewals filed after the license expiration date will be charged the master license service late renewal fee in compliance with RCW 19.02.085.

WSR 06-09-081
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 04-10—Filed April 18, 2006, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-13-125.

Title of Rule and Other Identifying Information: Update the current rule on agricultural burning, chapter 173-430 WAC. This chapter establishes the requirements for burning related to agricultural activities in Washington.

Hearing Location(s): On May 23, at 7:00 p.m., in Moses Lake, Big Bend Community College, 7662 Chanute Street N.E., Rooms 1870 A&B; on May 24, at 7:00 p.m., in Spokane, Spokane County WSU/Cooperative Extension, 222 North Havana; on May 24, at 7:00 p.m., in Wenatchee, Wenatchee Valley Museum, 127 South Mission; on May 25, at 7:00 p.m., in Walla Walla, Walla Walla Regional Airport, 310 A. Street, Blue Mountain/Mill Creek Rooms; and on May 30, at 7:00 p.m., in Pullman, WSU Campus, Carpenter Building, Room 102.

Date of Intended Adoption: July 26, 2006.

Submit Written Comments to: Melissa McEachron, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail MMCE461@ecy.wa.gov, fax (360) 407-7534, received by June 9, 2006.

Assistance for Persons with Disabilities: Contact Tami Dahlgren by May 12, 2006, TTY (877) 833-6341 or 711 (360) 407-6800.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update the current agricultural burning rule to: (1) Incorporate legislative changes and corrections; (2) clarify technical issues and definitions; (3) integrate agreed upon concepts identified in the 9th Circuit Court of Appeals

Settlement Agreement; (4) describe the procedures ecology or a local air authority with jurisdiction will use to grant specific permission to burn; (5) specify additional permit and permit application requirements; (6) describe changes to and clarify permitting authority responsibilities; and (7) further spell out the criteria ecology or a local air authority with jurisdiction will use to delegate all or part of the agricultural burning permit program.

The anticipated effect is to have an efficient and effective agricultural burning program that meets the needs of both growers and clean air advocates.

Reasons Supporting Proposal: The reasons supporting this proposal include: (1) Ecology fulfills its responsibilities under the 9th Circuit Court of Appeals Settlement Agreement and under the Administrative Procedure Act; (2) the proposal incorporates legislative changes that have been enacted since 1995; and (3) the proposal also clarifies and provides solutions to several types of technical issues associated with administering an agricultural burning permit program.

Statutory Authority for Adoption: RCW 70.94.650, 70.94.743, and 70.94.745.

Statute Being Implemented: RCW 70.94.650, 70.94.-743, and 70.94.745.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa McEachron, Lacey, (360) 407-6860; Implementation and Enforcement: Stuart Clark, Lacey, (360) 407-6800.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

If you need this publication in another format, please call Tami Dahlgren at (360) 407-6800. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call (877) 833-6341.

I. Executive Summary: The purpose of this rule amendment is to incorporate legislative changes, integrate technical topics and include settlement agreement items related to agricultural burning that have occurred since the development of chapter 173-430 WAC in 1994. The proposed amendments will provide clarifications and slight modifications to agricultural burning program requirements in Washington state. As required under chapter 34.05 RCW, ecology is providing this small business economic impact statement (SBEIS) as part of the rule adopting process.

Historically, every SBEIS completed on chapter 173-430 WAC has found that there are disproportionate benefits to small businesses.[1] Burning has many benefits and is a low cost method of handling a variety of agricultural issues including disease, pests, weeds and excess stubble. In some areas, burning may aid in direct seeding practices which is a less soil invasive farming practice than traditional tillage. Additionally, the rule language has been updated to allow burning for "all agricultural products" which, along with recent legislation, may provide additional incentives for biodiesel production in Washington state. One amendment incorporates the "metered burning" system (described in the settlement agreement), which ecology has developed during the past several years. This allows permitting authorities to make burn calls during periods of time when particulate exposure is less likely to occur in populated areas. This amendment reduces the cost impact of the existing rule by allowing agricultural burning to take place while causing minimal effects to public health.

The costs of the rule to small businesses include the burn fee increase proposed for 2008 by the agricultural burning and research task force and additional application documents.

As the following report details, small businesses dominate the industry affected by agricultural burning in Washington state. This analysis estimates potential industry benefits from rule amendments at $7.3 million (detailed in Appendix E). The costs of the rule include fee increases and other burdens and have been determined to disproportionately affect small businesses. Ecology expects that the rule amendments in this analysis will provide net benefits to overall business and will disproportionately benefit small businesses.

II. Legal History: The Washington state legislature established an agricultural burning program in 1991. In following, ecology established rules for a full-scale agricultural burning program that became effective in 1995. Since that time, additional legislation, rule making and litigation related to grass-seed field burning has taken effect. In 1999, a voluntary memorandum of understanding (MOU) agreement with the Washington Association of Wheat Growers to reduce emissions was finalized. Additionally, litigation by Save Our Summers resulted in a 9th Circuit Court of Appeals settlement in November 2001. Ecology initiated rule making to comply with the settlement agreement and fulfill the mandatory regulatory review described in the Washington State Administrative Procedure Act, chapter 34.05 RCW.

III. Description of Changes Created by the Amendments: The majority of the changes in this amendment are required by statute or by the court approved settlement agreement. A crosswalk between the old rule and the amended rule is located in Appendix A. The amendments which rely directly on the statute or court approved settlement agreement are not required to be analyzed under chapter 19.85 RCW and therefore, are not evaluated in this review. The following sections contain amendment components of the rule that provide additional direction beyond the law and court order decisions and therefore, are evaluated in this analysis:

WAC 173-430-030(1), this subsection explains that propane use to remove vegetative material is considered agricultural burning. The law has never been interpreted to allow propane burning to be a basis for avoiding a permit; this addition will clarify the interpretation of the rule language.

WAC 173-430-030(8), the definition of farmer is updated to include any person engaged in the growing or production for sale of any "agricultural product." This will allow agricultural burning by farms that produce products that are inputs for alternative production purposes such as poplar trees used for pulp and paper or seed crop used for biodiesel. This increases access to agricultural burning.

WAC 173-430-040(2), the burn calls and metering amendment incorporates management practices for burning that have developed over the last ten years and in doing so, have moved beyond the straight acreage analysis used in the

voluntary memorandum of understanding (MOU). Metering is a technique that uses meteorological conditions and predictions to manage burning within the capacity of an air shed and may allow increased burning on specific days with minimal affect on people. As the air authorities and ecology have determined how to predict when particulates will be disbursed by the wind, the number of allowable acres burned has increased. This information is used to make daily burn calls that define the quantity of allowable acres to burn in a given area. The metering generates information on the success of the burn and determines how the burn call avoided creating exposure impacts. In order to assure that health effects do not increase, the permit authorities must provide metering, data gathering, and annual reporting.[2]

WAC 173-430-040(3), in this subsection, the burn permit application process has been amended to include a map requirement. This allows the issuers of burn permits to check the burn area more efficiently. As a result, the cost and time required to apply for a burn permit will increase.

WAC 173-430-040(4), this subsection incorporates the maximum fee levels and the authority for fee level changes. The legislature established the authority of fee level changes to the agricultural burning practices and research task force. This section establishes fees set by the agricultural burning practices and research task force that remain below the maximum level by law of $2.50 per acre. The fee will be maintained at the current level of $2 per acre through 2007 and raised to $2.25 from 2008 on. The increase includes the ecology administration fee increase from $0.25 to $0.50 per acre in 2007 and 2008. Additionally, the task force has determined that the research component of the fee will remain at $0.50 per acre in 2006, drop down to $0.25 per acre in 2007 and then rise back up to $0.50 per acre in 2008.

In addition, new fee maximums for orchard tear-out burning are incorporated. According to RCW 70.94.743, outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity, given it has been determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases. The fixed fee for orchard tear-out burning permits of up to twenty acres will increase from $25 to $50.

IV. Affected Industry: The dominant economic impact will occur in North American Industry Classification System 111, Crop Production; however, the following NAICS codes may be affected:

111	Crop Production
112	Animal Production
115	Support Activities for Agriculture and Forestry

Table IVa: Permitted Acres Burned by Crop Type[3]

Sum of ACRES	YEAR				
CROP	2002	2003	2004	2005	Grand Total
barley	820	4,477	2,567	2,388	10,252
beans	-	496	-	-	496
CRP	4,828	10,835	12,596	4,667	32,926
corn	-	116	430	1,893	2,439
grass cover	20	172	695	3,607	4,494
hay					
irrigated	151	2,255	1,864	1,868	6,137
dryland	-	-	45	56	101
oats	27	-	-	-	27
orchard	75	461	247	54	837
pasture	-	289	25	150	464
peas	-	-	617	-	617
spot burning	174	232	223	92	721
turnip - seed	-	30	-	-	30
weed control	54	28	154	128	364
wheat					
irrigated	7,223	16,580	24,593	76	48,471
dryland	72,705	228,726	242,985	100,377	644,794
Totals	86,077	264,696	287,041	115,356	753,170

The increase in burning will most likely not create an increase in particulate exposure or related health effects when burning is timed carefully. However, burning has the potential to affect 1.3 million people on days when the particulates will be brought to highly populated areas. Given accurate timing of the burn calls, data collection and analysis create the primary cost of the rule.

Table IVb. Permitted Acres Burned by County

Sum of ACRES	YEAR				
COUNTY	2002	2003	2004	2005	Population
ADAMS	59		2,320	320	16,428
ASOTIN		73			20,551
CHELAN			20		66,616
COLUMBIA	31,424	109,793	114,045	46,705	4,064
DOUGLAS		695	160		32,603
FERRY				35	7,260
FRANKLIN	3,458	6,766	12,692	1,667	49,347
GARFIELD	60	17,236	16,598	11,565	2,397
GRANT	2,305	3,596	4,250	1,688	74,698
KITTITAS	70	264	277	50	33,362
LINCOLN	492	1,192	1,035	321	10,184
OKANOGAN		39			39,564
STEVENS			30		40,066
WALLA WALLA	27,372	72,946	68,038	18,964	55,180
WHITMAN	20,838	52,097	67,577	34,042	40,740
Grand Total	86,077	264,696	287,041	115,356	493,060

The agricultural sectors affected by this rule are dominated by small businesses. Only 6% of the companies have over fifty employees and 53% have only one to four employees. The average firm employing less than fifty individuals has 9.4 employees.[4] Thus, most of the companies benefiting from the additional flexibility in the burn calls will be smaller companies.

The permit data provides information on each burn; however, it does not segregate out the costs or gains to individual businesses. The following data provides a summary of four years of activity on the part of individuals applying for permits.

Table IVc Individual Permit Data for 2002 through 2005

Applicant Permit Statistics: Fee estimates				
	Number of Acres	Number of Permits	Acres/ permit	2008 fee increase (Based on 2005 numbers)
Total	753,170	6,005		$28,839
Individual				
Maximum	70,045	91	770	$2,715.75
Minimum	11	1	11	$0.25
Average	1,407	5	286	$70.91
Median	254	2	127	$4.25

The majority of the costs of this amendment are imposed on government in the form of researching and documenting the burn calls and providing oversight. The cost imposed on agricultural businesses in exchange for this cost reduction is small relative to the gain from burning. The costs include adding a map to the application and submitting a post burn report. The conservative cost of adding the map is $19.44. When evaluated on a cost per employee basis there is a disproportionate impact to small businesses as seen in Table IVd.

Table IVd. Disproportionate Impacts Estimate for Maps

Disproportionate Impact			
Employment Basis	Cost	SB $/Emp	LB $/Emp
Industry Average	$19.44	$2.06	$0.39
Public Data	$19.44	$2.56	$0.06

In 2008, the fee for agricultural burning will increase from $2.00 to $2.25 per acre. The fees are increasing in order to cover the cost of reviewing atmospheric conditions and creating burn calls. The total annual cost of the fee increase is estimated to be $28,000 in 2008. When evaluated on a cost per employee basis, the fees have a disproportionate impact as seen in Table IVe.

Public data on individual companies is limited to seventeen out of three hundred permitees. The fees have been evaluated with both the industry average and public data and it is suspected that calculations based on the industry average are more likely to be valid. If a company is an average small company and pays the average fee increase of $71 and the 6% of large employers pay the same average fee, then the impact is disproportionate to small businesses. Small companies would pay on average $7.51 per employee and an employer with fifty employees would pay $1.42 per employee.

Table IVe. Disproportionate Impacts Estimate for Fees (Small vs. Large Business)

Disproportionate Impact			
	Cost	SB $/Emp	LB $/Emp
Industry Average	$70.91	$7.51	$1.42
Public Data	$70.91	$9.33	$0.23

The $0.25 fee increase scheduled for 2008 is proportionate to acreage for all companies burning over twenty acres. Acreage burned is a function of crop type rather than number of employees. Acreage burned is highest for wheat and in following, wheat will pay approximately 93% of the fee. 83% of the companies that will pay over $50 more for the fee increase produce wheat. One company producing wheat is predicted to pay 5% of the fee. Peak employment within wheat and grains in 2004 was eight hundred forty-seven in August while the annual average was two hundred twenty-four. There are one thousand two hundred seventy-eight firms in NAICS 111 and oilseed, grain farming and wheat constitutes 20% of the one thousand nine hundred seventy-one employees.[5]

As a result of the fee increase from $25 to $50 for orchard burning permits up to twenty acres, the impact is disproportionate with respect to acreage as well as employment. Those with burn permits for large acreage will have an average fee increase of $6 where those with small burn permits will have an average fee increase of $25 (see Appendix B).

V. Reducing the Cost Impact: Due to the voluntary MOU, burning had been reduced in half by 2000 in comparison with pre 1998 burning. However, burning increased over the last few years under metered burning (see Appendix C). As such, this amendment would have constituted a "method to reduce costs" under RCW 19.85.030 (2)(f). The amendments, taken together, should reduce costs for most companies.

RCW 19.85.030 provides several options for ecology to reduce costs if it is legal and feasible to do so.

(a) Reducing, modifying, or eliminating substantive regulatory requirements;

This amendment modifies the timing of burning and allows more burning.

(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements;

It is not possible to eliminate substantive requirements related to permitting or burning. The legal requirements in RCW 70.94.650 require a permitting program be established. RCW 70.94.743 and 70.94.745 detail exceptions. The 9th Circuit Court of Appeals settlement is detailed. More record-keeping including maps and post burn reports are required in order to allow increased burning without creating significant health effects.

(c) Reducing the frequency of inspections;

It is not possible to eliminate substantive requirements related to permitting or burning. The legal requirements found in RCW 70.94.650 require a permitting program be established. RCW 70.94.743 and 70.94.745 detail exceptions. The 9th Circuit Court of Appeals settlement details additional requirements. Excellent compliance facilitates increased burning, which in turn lowers costs.

(d) Delaying compliance timetables;

It is not possible to eliminate substantive requirements related to permitting or burning. The legal requirements of RCW 70.94.650 require a permitting program be established. RCW 70.94.743 and 70.94.745 detail exceptions. The 9th Circuit Court of Appeals settlement details additional requirements. In order to allow more burning, an excellent understanding of the timing of burning is essential. Farmers may not be able to burn on the day that is most convenient, but they will be allowed to burn when it is safe to do so.

(e) Reducing or modifying fine schedules for noncompliance;

It is not possible to eliminate substantive requirements related to permitting or burning. The legal requirements in chapter 70.94 RCW are detailed. Excellent compliance facilitates increased burning.

(f) Any other mitigation techniques.

This rule amendment constitutes mitigation in that it reduces the costs of the existing rule.

VI. Small Business Involvement in Rule Development: Ecology formed an advisory committee in order to included small businesses in the rule drafting phase. The advisory committee included four growers who represented specific crop types and/or grower organizations. In addition, at least one other advisory committee member is a grower although the interested represented was that of the conservation district. Ecology uses several methods to inform growers including: A web-based information system (through LISTSERV), specific e-mail coordination with delegated permitting authorities, ecology air quality program web postings for permit information and forms, and as time allows, presentations at various local meetings. Local air authorities also use a variety of methods including telephone assistance and web-page information.

[1] Small business economic impact statement for revisions of chapter 173-403 WAC to limit grass seed field burning emissions, July 24, 1996. Small business economic impact statement for revisions of chapter 173-403 WAC to certify alternatives to grass seed field burning, March 31, 1998.

[2] The annual report costs would be attributed to ecology staff time. An estimate would likely be 1/10th of an FTE or 1/10th time for one person working full time: ~ $10,000.

[3] The raw data on applications contains duplicate applications. Applications also exceed final burn values. Ecology staff attempted to clean this data to avoid duplication on March 21, 2006.

[4] County Business Patterns 2003, Census Bureau NAICS 111.

[5] Agricultural Workforce in Washington, 2004, downloaded March 15, 2006, https://www.workforceexplorer.com/admin/uploadedPublications/5435_Ag_Report_2004bdWE.pdf.

A copy of the statement may be obtained by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail CACA461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone

(360) 407-6564, fax (360) 407-6989, e-mail CACA461@ecy.wa.gov.

April 13, 2006
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-010 Purpose of the regulation. ((~~This chapter, promulgated under chapter 70.94 RCW, the Washington Clean Air Act,~~)) Chapter 70.94 RCW, the Washington Clean Air Act, declares it is the intent of the state to protect public health and it is the policy of the state that the responsibilities and costs of protecting the air resource and operating state and local air pollution control programs be shared as equitably as possible among all sources whose emissions cause air pollution. Some of the sources whose emissions contribute to air pollution in the state include industrial sources (large and small), mobile sources such as vehicles, and area sources such as woodstoves, general outdoor burning, and agricultural burning. A variety of strategies to control and reduce the impact of emissions are described throughout chapter 70.94 RCW, including controls on emissions created from agricultural burning. The act intends that public health be protected and also allows for agricultural burning that is reasonably necessary. The act also requires that burning be restricted and regulated to address the potentially competing goals of both limiting air pollution and allowing agricultural burning. Chapter 70.94 RCW authorizes the department of ecology and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes controls for agricultural burning in the state in order to minimize adverse health and the environment effects from agricultural burning in accord with the most reasonable procedures to follow in safeguarding life and property under all circumstances or is reasonably necessary to carry out the enterprise or both. The control strategies include:

(1) Establishing a permit program with minimum statewide requirements and specific burn authorizations.

(2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.

(3) Encouraging and developing economically feasible alternative methods to agricultural burning.

(4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.

(5) Providing for local administration of the permitting program through delegation.

(6) Assessing air quality within a region and incorporating this data into an evaluation tailored to emissions from agricultural burning.

(7) Making use of metering as a component of the agricultural burning permit program. Metering is a technique of limiting emissions from agricultural burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality.

(8) Using improved and proven technology in evaluating the conditions under which burning is authorized, including those related to meteorology, emissions, and air pollution.

(9) Providing for education and communication.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-020 General applicability and conditions. (1) This regulation applies to burning related to agricultural activities ((~~and includes the burning of fields, prunings, weeds, and irrigation ditches, drainage ditches, fence rows or other essential pathways~~)). It does not apply to silvicultural burning or ((~~open~~)) other outdoor burning (chapter 173-425 WAC).

(2) Burning of organic debris related to agricultural activities is allowed when it is reasonably necessary to carry out the enterprise. Agricultural burning is reasonably necessary to carry out the enterprise when it meets the criteria of the best management practices and no practical alternative is reasonably available (RCW 70.94.650).

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and regulations, and burn when wind takes the smoke away from roads, homes, population centers, or other public areas.

(4) Burning related to agricultural activities must not occur during an air pollution episode or any stage of impaired air quality. Definitions of air pollution episode and impaired air quality are found in WAC 173-430-030.

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial activities (RCW 70.94.745). Growers burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, facilitate tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

AMENDATORY SECTION (Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-030 Definition of terms. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different

meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

(1) **Agricultural burning:** Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

(2) **Agricultural operation:** Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or ((~~proof that the land is designated in a classification for agricultural use~~)) its corporate equivalent. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.

(3) **Ag task force:** Means the agricultural burning practices and research task force.

(4) **Air pollution episode:** Means a period when a forecast, alert, warning, or emergency air pollution stage is declared as described in RCW 70.94.715.

(5) **Best management practice:** Means the criteria established by the agricultural burning practices and research task force (Ag task force).

(((~~5~~))) (6) **Certify:** Means to declare in writing, based on belief after reasonable inquiry, that the statements and information provided are true, accurate, and complete.

(((~~6~~))) (7) **Department:** Means the department of ecology.

(((~~7~~))) (8) **Farmer:** Means any person engaged in the business of growing or producing for sale any agricultural product upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons ((~~using such products as ingredients in a manufacturing process, or persons~~)) growing or producing such products primarily for their own consumption.

(((~~8) Open~~)) (9) **Impaired air quality:** Means a first or second stage impaired air quality condition declared by ecology or a local air authority with jurisdiction in accordance with RCW 70.94.715, 70.94.775, and 70.94.473.

(a) A first stage of impaired air quality is reached when:

(i) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four-hour average; and

(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(b) A second stage of impaired air quality is reached when:

(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle pollution trend;

(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four-hour average; and

(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(10) **Outdoor burning:** Means all forms of burning except those listed as exempt in WAC 173-425-020.

(((~~9~~))) (11) **Permitting authority:** Means ecology or its delegate or a local air authority ((~~and the department where no local air authority exists~~)) with jurisdiction or ((~~their~~)) its delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.

(((~~10~~))) (12) **Silvicultural burning:** Means burning on any land the department of natural resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.

AMENDATORY SECTION (Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-040 Agricultural burning requirements. (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available. In certain circumstances, ecology may certify an alternative to burning. Where the certified alternative is reasonably available, burning is not allowed. Certified alternatives are described in WAC 173-430-045.

(2) For allowed agricultural burning, the department of ecology and local air pollution control authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for adverse air quality impacts. Metering is a technique of limiting emission from burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality. The burn decision process will consider: The potential number of burns and their expected size(s) and duration(s); recent and current ambient concentrations of pollutants; other potential emissions sources; and evaluations and judgments about how foreseeable meteorological conditions will affect concentrations of pollutants in the air sheds.

(a) For the purposes of this section: The smoke management index is a set of conditions that guide the production of certain reports as described in (c) of this subsection and evaluations as described in (d) of this subsection. The smoke management index is not an air quality standard as defined in RCW 70.94.030(4) and further identified in RCW 70.94.331. The smoke management index is not an emission standard as defined in RCW 70.94.030(9) and further identified in RCW 70.94.331. The smoke management index is not an air pollution episode as described in RCW 70.94.710.

(b) Ecology and local air authorities making daily or specific fire burn calls in areas where PM2.5 concentrations are regularly monitored will follow the procedures in (c) of this subsection at the time of making the burn decision whenever either of the following smoke management index conditions exist:

(i) A most recent daily average (twenty-four-hour) PM2.5 concentration was equal to or greater than 16 micrograms per cubic meter. This is division between "good" and "moderate" classifications of the U.S. Environmental Protection Agency's Air Quality Index (AQI) for particulate matter based on the National Ambient Air Quality Standard of 65 micrograms per cubic meter.

(ii) A two-hour rolling average PM2.5 concentration, during the most recent twenty-four to thirty hours was equal to or greater than the regional seasonal average PM2.5 concentration plus 15 micrograms per cubic meter.

(c) In authorizing additional burning, a determination will be documented explaining that the decision to allow additional burning is not expected to result in a further significant deterioration of air quality. The determination will be entered on a standard form noting the date, time, the location of the additional burning, the size of the burn(s), and a brief explanation of the opinion as to why the additional burning is not expected to result in a further, significant reduction of air quality. The purpose of the determination and recordkeeping requirements of this section is to enhance agency and public understanding of the effectiveness of the daily burn and metering decision-making process, and to improve its application over time. A notice of such determinations will be made by ecology or a local air authority with jurisdiction at the time the daily burn decision is communicated. Ecology or a local air authority with jurisdiction will also periodically make the determination forms conveniently available to the public.

(d) Following a determination described in (c) of this subsection and a deterioration of air quality to levels equal to or greater than a two-hour rolling average concentration of the regional seasonal average PM2.5 concentration plus 25 micrograms per cubic meter in the specific area during the twenty hours following such determination, ecology or the local air authority with jurisdiction will evaluate the deterioration and document any findings and opinions regarding why the deterioration occurred. Ecology or the local air authority with jurisdiction will make evaluations under this subsection conveniently available to the public.

(e) Ecology or a local air authority with jurisdiction may evaluate emission dispersion impacts in the regular course of business. In addition, ecology or the local air authority with jurisdiction will produce an annual report summarizing determinations and evaluations pursuant to the smoke management index.

(f) Pursuant to RCW 70.94.473 and 70.94.775, no burning shall be authorized when an air quality alert, warning, emergency or impaired air quality condition has been issued.

(g) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis as provided by RCW 70.94.656 and/or by RCW 70.94.650.

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(a) Ecology will provide agricultural burning application forms for agricultural burning.

(b) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

(((~~(b)~~))) (c) A farmer must fill out the information requested on a permit application (((~~(or the permit) and return~~)), pay the permitting fee, and submit it to the permitting authority for review and approval prior to burning.

(i) ((~~The permitting authority may require the farmer to fill out an application prior to issuing a permit.~~

~~(ii)~~)) The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: ((~~Range,~~)) Section, township, range, block and unit number), the crop type, the type or size of the burn, driving directions to the burn, specific reason for the burn, the target date for burning, a map, signature of the responsible party, and any additional information required by the permitting authority. Each permitting authority may require additional information on the application.

(((~~(iii)~~))) (ii) All applications must comply with other state or local regulations.

(((~~(c)~~))) (d) The permitting authority must evaluate the application, ((~~if there is one,~~)) and approve the permit prior to burning.

(((~~(d)~~))) (e) Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(f) Ecology or its delegate, or a local air agency with jurisdiction, or its delegate must approve or deny the permit based on information in the application.

(g) Ecology and its delegate or a local air ((~~agencies (and the department where no local air agency exists)~~)) agency with jurisdiction or its delegate may issue permits for appropriate agricultural burning activities in nonattainment areas, maintenance areas, and urban growth areas as described in RCW 70.94.743.

(((~~(3)~~))) (4) All agricultural burning permits require a fee. ((~~After January 1, 1995, the fee is the greater of:~~

~~(a) A minimum fee of~~)) Maximum fee level is set by statute at two dollars and fifty cents per acre (RCW 70.94.650 (2)) and is established by the agricultural burning practices and research task force (RCW 70.94.650(4)). The fee is the greater of a minimum fee level or a variable fee level.

(a) Minimum fee levels:

(i) Twenty-five dollars per year per farm based on burning up to ten acres or equivalent ((~~which will be used as follows: Twelve dollars and fifty cents of which goes to the agricultural burning research fund and the remainder will be~~

~~kept by the permitting authority to cover the costs of administering and enforcing this regulation; or~~));

(ii) Fifty dollars for orchard tear-out burning per year per farm based on burning up to twenty acres or equivalent.

(b) ((~~A~~)) The variable fee level (based on the acreage or equivalent ((~~of agricultural burning which will be used as follows: Up to one dollar per acre for applied research, twenty-five cents per acre for ecology administration and up to one dollar and twenty-five cents per acre for local permit program~~))):

(i) Through the calendar year 2007, the fee is two dollars per acre.

(ii) Beginning in calendar year 2008, the fee is two dollars and twenty-five cents per acre.

(c) Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration.

(i) Local permitting program administration. ((~~One portion of the fee shall cover the permitting authority's costs of administering and enforcing the program.~~)) The permitting authority may set the fee as an amount per farm per year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department ((~~is the~~)) has not delegated permitting authority, this portion of the fee shall be one dollar and twenty-five cents per acre burned.

(ii) Ecology administration. ((~~Another~~)) This portion of the fee shall be ((~~twenty-five cents per acre burned and cover~~)) used to off-set the statewide administrative, education, and oversight costs of the department for the agricultural burning program. ((~~The amount (if any) by which the annual total, of this portion of the fee, exceeds the annual statewide administrative, education, and oversight costs shall be deposited in the agricultural burning research fund of the air pollution control account.~~))

(iii) Research fund. ((~~A final portion,~~)) The agricultural burning applied research portion((~~,~~)) of the fee shall be no greater than one dollar per acre burned. The amount assessed may be less than one dollar per acre burned as periodically determined by the ((~~Ag~~)) agricultural burning practices and research task force based on applied research needs, regional needs and the research fund budget. ((~~The research portion of the fee assessed shall be fifty cents per acre burned starting in calendar year 1995.~~)) The ((~~Ag~~)) agricultural burning practices and research task force may also establish discounted assessment rates based on the use of best management practices.

(((~~c~~))) (iv) The chart below shows the permit fee breakout per category:

Fee Level	Local Administration	Research	Ecology Administration
$25.00	$12.50	$12.50	-0-
$50.00	$12.50	$12.50	$25.00
2006 - $2.00 per acre	Up to $1.25 per acre	50 cents per acre	25 cents per acre
2007 - $2.00 per acre	Up to $1.25 per acre	25 cents per acre	50 cents per acre
2008 and beyond - $2.25 per acre	Up to $1.25 per acre	50 cents per acre	50 cents per acre

(d) A farmer must pay the fee prior to receiving a permit. Refunds are allowed for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.

(((~~d~~))) (e) The agricultural burning practices and research task force may set acreage equivalents, for nonfield style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.

(((~~4~~))) (5) All agricultural burning permits must ((~~be conditioned~~)) include conditions intended to minimize air pollution.

(a) A farmer must comply with the conditions on the agricultural burning permit.

(b) ((~~For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis, or as provided by RCW 70.94.656.~~

~~(c)~~)) Permits must be conditioned to minimize emissions and impacts insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. When necessary as determined by ecology or the local air authorities to ensure compliance with the act, permit conditions will include the use of a daily burn decision, permit specific decisions and/or metering.

(c) The permitting authority must act on a complete application (as determined by the agency) within seven days of receipt.

(i) The permitting authority must evaluate the application and approve or deny all or part of it.

(ii) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(iii) If the application is denied, the reason must be stated.

(6) Additional requirements for burning of field and turf grasses grown for seed.

The department of ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.656(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.656(4).

(a) Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

(i) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or

(ii) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

(((~~(d) Additional requirements for burning of field and turf grasses grown for seed. Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.~~

~~(e)~~)) (b) Exemptions to ((~~additional~~)) the requirements for burning of field and turf grasses grown for seed ((((~~(d)~~)) (a) of this subsection). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of ((~~(d)~~)) (a) of this subsection shall be limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:

(i) The exemption request must be certified by an agronomic professional;

(ii) The farmer must be able to show full compliance with the emissions reductions in ((~~(d)~~)) (a) of this subsection for the acreage not exempted; and

(iii) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.

((~~(f)~~)) (c) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.656, until another method(s) is shown to be better and meets with the intent of RCW 70.94.656(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.

(d) The department of ecology or local air authority may provide for trading of permits using the method described in ((~~(f)(i), (ii), (iii), (iv), (v), and (vi) of~~)) this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed.

(i) Ecology or the local air authority may develop a system that allows the trading of permits by:

(A) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

(B) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;

(C) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and

(D) Assuring that the permits are used only once in a calendar year.

(ii) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.

(iii) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.

(iv) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1 of the year during which the transaction takes place.

(v) Acreage that is exempted under (e) of this subsection is not eligible for the trading system.

(vi) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.

(((~~(g) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.656, until another method(s) is shown to be better and meets with the intent of RCW 70.94.656(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.~~

~~(h)~~)) (e) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of ((~~(d)~~)) (a) of this subsection provided:

(i) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by ((~~(d)~~)) (a) of this subsection; and

(ii) In no case shall the emission reduction requirement for the field and turf grass grown for seed be less than that required in ((~~(d)~~)) (a) of this subsection.

((~~(5)~~)) (7) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, regulations, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-060 Research into alternatives to agricultural burning. (1) The department shall administer the research portion of the permit fee to carry out the recommendations of the Ag task force. In carrying out the recommendations, the department may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct any such study, the department may contract with public or private entities. Any approved study shall provide for the identification of such alternatives as soon as possible.

(2) No less than every two years, the Ag task force will ((~~annually~~)) review research needs and submitted proposals and make its recommendations to the department.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-070 General agricultural burning permit conditions and criteria. Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out such burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(1) Permits must include the following general conditions:

(a) ((~~No burning~~)) Do not burn at night ((~~except~~)) unless it is specified as a best management practice;

(b) ((~~Complying~~)) Comply with all fire safety regulations of the local fire protection agency including any no-burn directives ((~~they~~)) it may issue;

(c) ((~~Calling~~)) Call the local air authority burning information line (if there is one) before lighting the fire;

(d) ((~~Burning~~)) Burn only during times specified by the permitting authority;

(e) Burn when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

(((~~e) No burning~~)) (f) Do not burn when adverse meteorological conditions exist;

(((~~f) Burning~~)) (g) Burn only natural vegetation;

(((~~g) No burning or adding~~)) (h) Do not burn or add fuel during any stage of an air pollution episode or local air quality burning ban;

(((~~h) Attending~~)) (i) Attend the fire at all times;

(j) Submit a postburn report to the permitting authority.

(2) If the permitting authority determines a specific situation will cause a nuisance under chapter 173-400 WAC or RCW 70.94.640, agricultural burning will not be allowed.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-080 Responsibilities of a permitting authority. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

(((~~1~~))) (2) The permitting authority must act on a complete application (as determined by ((~~the agency~~)) ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities and ecology delegated authorities are required to use applications and permits supplied by ecology.

(b) A map is required to accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, landmarks, etc.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section shall be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

(((~~b~~))) (d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(((~~c~~))) (e) If the application is denied, the reason must be stated.

(((~~2~~))) (3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation agreement.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

(((~~3~~))) (5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

(((~~4~~))) (6) The permitting authority must collect the fee and determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund when a farmer decides to burn fewer acres than identified in the permit on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

(((~~5) The permitting authority must~~)) (7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and ecology administration portion of the fee to the department.

(a) ((~~Funds should be transferred twice a year or as designated in the delegation agreement.~~

~~(b)~~)) Local air authorities and delegated permitting authorities must transfer funds twice a year by July 15 and January 15.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January-June) permits need to be provided by July 15th and all fall (July-December) permits by January 15th.

(c) The department must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to the department. ((~~The portion of the fee designated for research shall be deposited in a special account in the air pollution control account.~~

~~(6)~~)) (8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits.

(10) The permitting authority or its delegate must utilize the web-based data base.

(a) Local air authorities and its delegates must make arrangements with ecology to enter information into the web-based data base.

(b) Ecology-delegated permitting authorities must attend a minimum of one data base training per calendar year or as provided by ecology.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-090 Receiving delegation—Counties, conservation districts, and fire protection agencies. (1) The permitting authority is ((~~the local air authority (or the department where no local air authority exists),~~)) ecology or ((~~their~~)) its delegate or a local air authority with jurisdiction or its delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.

(2) When ecology or a local air authority ((~~(or the department where no local air authority exists)~~)) with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration and/or enforcement authority of the program. Delegation criteria include:

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled; ((~~and~~))

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

(3) Delegation may be withdrawn if the department or the local air authority with jurisdiction finds that the agricultural burning program is not effectively being administered and/or enforced. Before withdrawing delegation, the delegated agency shall be given a written statement of the deficiencies in the program and a compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then the department or the local air authority may withdraw delegation.

(4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for evaluating applications, issuing permits and granting permission to burn.

Once a delegation order has been issued, ecology or the local air authority with jurisdiction must approve of any changes to the agreement prior to implementation.

WSR 06-09-085
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

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Original Notice.

Preproposal statement of inquiry was filed as WSR 06-04-020.

Title of Rule and Other Identifying Information: The DSHS division of child care and early learning is amending WAC 388-290-0045 If I don't get a temporary assistance for needy families (TANF) grant, what activities must I be involved in to be eligible for WCCC benefits? and 388-290-0190 What does the program pay for and when can the program pay more?

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 May 23, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 24, 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, fax (360) 664-6185, by 5:00 p.m., May 23, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by May 19, 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: WAC 388-290-0045, changes to this WAC include:

(1) Deleting references to WAC 388-310-1000, 388-310-1050, and 388-310-1200.

(2) Not allowing child care coverage for prerequisite classes and programs.

(3) Limiting child care coverage for job skills training that is not offered or required by an employer.

(4) Examples of job skills training.

WAC 388-290-0190, changes to this WAC include: Limiting payment of a higher rate, if care cannot be found in the community at the DSHS rate, for mandatory WorkFirst participants only.

Reasons Supporting Proposal: The governor's mandate for WorkFirst redesign prompted changes to WAC specific to WorkFirst activities. Working connections child care WAC references some of the WorkFirst WAC which is no longer appropriate. Proposed WCCC WAC changes will no longer reference specific WorkFirst activity language for non-WorkFirst child care consumers.

Statutory Authority for Adoption: RCW 74.12.340.

Statute Being Implemented: RCW 74.12.340.

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: Under section 505 of 2SHB 2964 (chapter 265, Laws of 2006), the permanent adoption of this proposed rule will be completed by or in conjunction with the new department of early learning.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sheri Bruu-DeLeon, 1009 College Street S.E., Lacey, WA 98504-5480, (360) 725-4675.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule change does not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is not a "significant legislative rule" as defined in chapter 34.05 RCW.

April 17, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-08-021 and 04-08-134, filed 3/29/04 and 4/7/04, effective 5/28/04)

WAC 388-290-0045 If I don't get a temporary assistance for needy families (TANF) grant, what activities must I be involved in to be eligible for WCCC benefits? (1) If you do not receive TANF, you may be eligible for WCCC benefits for up to sixteen hours maximum per day, including travel, study, and sleep time, for the hours of your participation ((~~or enrollment~~)) in the following:

(((~~(1)~~))) (a) Employment or self-employment under WAC 388-290-0050. We consider "employment" or "work" to mean:

(((~~(a) Engaging in any~~)) (i) Legal, income generating activity ((~~that is~~)) taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States((~~; or~~)).

(((~~(b) Working in a~~)) (ii) Federal or state paid work study ((~~program. You may receive WCCC for paid work study and transportation hours (not for the time you are in an unapproved activity), unless you meet requirements in subsection (2) of this WAC;~~)).

(((~~(c)~~))) (b) VISTA volunteers, ((~~Americorps~~)) AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

(((~~(2)~~))) (c) High school (HS) or general equivalency diploma (GED) program until you reach your twenty-second birthday (You can be enrolled in a HS or GED program without a minimum number of employment hours).

(((~~(3) Same-day job search if you are a TANF applicant;~~

~~(4) The~~)) (d) Food stamp employment and training program under chapter 388-444 WAC((~~;~~)).

(2) If you are participating in an activity listed in subsections (3) through (8) of this section, you may be eligible for WCCC benefits as described in subsection (1) of this section if you are actually working either:

(a) Twenty or more hours per week; or

(b) Sixteen or more hours per week in a paid federal or state work study program.

(((~~(5)~~))) (3) Adult basic education (ABE)((~~,~~)).

(4) English as a second language (ESL)((~~,~~)).

(5) High ((~~school/GED,~~)) school or GED completion if you are twenty-two years of age or older.

(6) Vocational education((~~, or~~)) (Voc Ed). The Voc Ed program:

(a) Must lead to a degree or certificate in a specific occupation.

(b) Cannot include prerequisite classes or programs.

(c) Is offered by the following accredited entities only:

(i) Public and private technical college or school.

(ii) Community college.

(iii) Tribal college.

(7) Job skills training ((~~or other program under WAC 388-310-1000, 388-310-1050, 388-310-1200, or 388-310-1800, and you are:~~

~~(a) Working:~~

~~(i) Twenty or more hours per week; or~~

~~(ii) Sixteen or more hours per week in a paid federal or state work study program~~)) for no more than fourteen consecutive days. Job skills training is not tied to a specific occupation but is training in specific skills directly related to employment, such as CPR/First Aid, keyboarding, computer programs, project management, and oral and written communication skills. Training offered or required by a current employer, at or off your job site, may extend past the fourteen consecutive day limit.

(((~~(b)~~))) (8) Post-employment services under WAC 388-310-1800.

(9) ((~~Participating in post secondary education for no longer than thirty-six months.~~)) Child care for ((~~post secondary education in this section~~)) participation in voc ed is limited ((~~up~~)) to thirty-six months ((~~maximum~~)) regardless of the length of the ((~~school~~)) educational program. The thirty-six months includes the months ((~~you attended post secondary~~

~~education,~~)) in which the following occurred at the same time:

(a) WCCC benefits were paid to support((~~ed by WCCC, while receiving~~)) your participation in a voc ed program.

(b) You or someone in your household received TANF benefits.

(((~~6~~))) (10) WCCC may be approved for activities listed in WAC 388-290-0040 (3) through (5), when needed.

AMENDATORY SECTION (Amending WSR 05-20-051, filed 9/30/05, effective 11/1/05)

WAC 388-290-0190 What does the WCCC program pay for and when can the program pay more? (1) We may pay for:

(a) Basic child care hours, either full-day, half-day or hourly. We authorize:

(i) Full-day child care to licensed or certified facilities and DSHS contracted seasonal day camps when your children need care for five or more hours per day;

(ii) Half-day child care to licensed or certified facilities and DSHS contracted seasonal day camps when your children need care for less than five hours per day; and

(iii) Hourly child care for in-home/relative child care.

(b) A registration fee (under WAC 388-290-0245);

(c) A field trip fee (under WAC 388-290-0245); and

(d) Special needs care when the child has a documented need for higher level of care (under WAC 388-290-0220, 388-290-0225, 388-290-0230, and 388-290-0235).

(2) We may authorize up to the provider's usual daily rate if:

(a) The parent is a mandatory WorkFirst participant; and

(b) Appropriate child care, at the DSHS rate, is not available within a reasonable distance ((~~at our daily rate, then we authorize the provider's usual daily rate~~)) from the home or work (activity) site. "Appropriate" means child care approvable under WAC 388-290-0125. "Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

(3) We authorize an additional amount of care if ((~~care is over~~)):

(a) More than ten hours of care is provided per day((~~,~~)); and

(b) The provider's policy is to charge all families for these extra hours((~~, then we authorize an additional amount of care~~)).

WSR 06-09-086
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed April 18, 2006, 4:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-019.

Title of Rule and Other Identifying Information: Amending WAC 388-502-0100 General conditions of payment, 388-519-0100 Eligibility for the medically needy program, and 388-865-0217 Psychiatric indigent inpatient program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on May 23, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 24, 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, fax (360) 664-6185, by 5:00 p.m., May 23, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by May 19, 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: The department is clarifying the existing policy and practice of deducting any amounts required to be paid by clients, such as deductibles, copays, cost-sharing, spend down amounts, and emergency medical expense requirements (EMER), from payments made to providers. There are no "new rules" in this rule-making action. This action does not change current and long-standing department practice; it is intended only to clarify the already existing policy and rule interpretation. The sole purpose is to promote greater understanding of the policy.

Reasons Supporting Proposal: Providers have been operating under current regulations and policy for many years with respect to deductions from payments for services furnished to department clients. Nonetheless, in light of comments from certain providers, the department is restating its rules regarding client financial responsibility and its effect on provider reimbursement.

Statutory Authority for Adoption: RCW 71.05.560, 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: 42 C.F.R. § 435.831(i)(5).

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: Ann Myers, P.O. Box 45533, Olympia, WA 98504, (360) 725-1345; Implementation and Enforcement: Not applicable (not a new policy).

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments do not change current policy or practice; they merely clarify existing policy and make it easier to understand.

A cost-benefit analysis is not required under RCW 34.05.328. The rule meets the criteria in RCW 34.05.328 (5)(b). This section does not apply to: (iv) Rules that only correct typographical errors, make address or name changes, or **clarify language of a rule without changing its effect**.

April 12, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 00-15-050, filed 7/17/00, effective 8/17/00)

WAC 388-502-0100 General conditions of payment. (1) The department reimburses for medical services furnished to an eligible client when all of the following apply:

(a) The service is within the scope of care of the client's medical assistance program;

(b) The service is medically or dentally necessary;

(c) The service is properly authorized;

(d) The provider bills within the time frame set in WAC 388-502-0150;

(e) The provider bills according to department rules and billing instructions; and

(f) The provider follows third-party payment procedures.

(2) The department is the payer of last resort, unless the other payer is:

(a) An Indian health service;

(b) A crime victims program through the department of labor and industries; or

(c) A school district for health services provided under the Individuals with Disabilities Education Act.

(3) The department does not reimburse providers for client financial obligations, and deducts from the payment the costs of those services identified as client financial obligations. Client financial obligations include, but are not limited to, the following:

(a) Co-payments (co-pays);

(b) Deductibles;

(c) Emergency Medical Expense Requirements (EMER); and

(d) Spenddown (see WAC 388-519-0110).

(4) The provider must accept Medicare assignment for claims involving clients eligible for both Medicare and medical assistance before MAA makes any payment.

(((~~(4)~~))) (5) The provider is responsible for verifying whether a client has medical assistance coverage for the dates of service.

(((~~(5)~~))) (6) The department may reimburse a provider for services provided to a person if it is later determined that the person was ineligible for the service at the time it was provided if:

(a) The department considered the person eligible at the time of service;

(b) The service was not otherwise paid for; and

(c) The provider submits a request for payment to the department.

(((~~(6)~~))) (7) The department does not pay on a fee-for-service basis for a service for a client who is enrolled in a managed care plan when the service is included in the plan's contract with the department.

(((~~(7)~~))) (8) Information about medical care for jail inmates is found in RCW 70.48.130.

(((~~(8)~~))) (9) The department pays for medically necessary services on the basis of usual and customary charges or the maximum allowable fee established by the department, whichever is lower.

AMENDATORY SECTION (Amending WSR 05-08-093, filed 4/1/05, effective 5/2/05)

WAC 388-519-0110 Spenddown of excess income for the medically needy program. (1) The person applying for MN medical coverage chooses a three month or a six month base period for spenddown calculation. The months must be consecutive calendar months unless one of the conditions in subsection (4) of this section apply.

(2) A person's base period begins on the first day of the month of application, subject to the exceptions in subsection (4) of this section.

(3) A separate base period may be made for a retroactive period. The retroactive base period is made up of the three calendar months immediately prior to the month of application.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:

(a) A three month base period would overlap a previous eligibility period; or

(b) A client is not or will not be resource eligible for the required base period; or

(c) The client is not or will not be able to meet the TANF-related or SSI-related requirement for the required base period; or

(d) The client is or will be eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The client was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) The amount of a person's "spenddown" is calculated by the department. The MN countable income from each month of the base period is compared to the MNIL. The excess income from each of the months in the base period is added together to determine the "spenddown" for the base period.

(6) If income varies and a person's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC 388-519-0100(5).

(7) Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:

(a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;

(b) Second, medical expenses which would not be covered by the MN program;

(c) Third, hospital expenses paid by the person during the base period;

(d) Fourth, hospital expenses, regardless of age, owed by the applying person;

(e) Fifth, other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the base period; and

(f) Sixth, other medical expenses, potentially payable by the MN program which are owed by the applying person.

(8) If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date

of eligibility would be determined as described in WAC 388-416-0020.

(9) If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount.

(10) To be counted toward spenddown, medical expenses must:

(a) Not have been used to meet a previous spenddown; and

(b) Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:

(i) Forty-five days of the date of the service; or

(ii) Thirty days after the base period ends; and

(c) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period and be for services for:

(A) The applying person; or

(B) A family member legally or blood-related and living in the same household as the applying person.

(ii) Be for medical services either paid or unpaid and incurred during the base period; or

(iii) Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period.

(11) An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period.

(12) The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:

(a) Charges for services which would have been covered by the department's medical programs as described in chapter 388-529 WAC, less any confirmed third party payments which apply to the charges; and

(b) Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and

(c) Medical insurance and Medicare copayments or coinsurance (premiums are income deductions under WAC 388-519-0100(4)); and

(d) Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days.

(13) Medical expenses may be used more than once if:

(a) The person did not meet their total spenddown amount and did not become eligible in that previous base period; and

(b) The medical expense was applied to that unsuccessful spenddown and remains an unpaid bill.

(14) To be considered toward spenddown, written proof of medical expenses for services rendered to the client must be presented to the department. The deadline for presenting medical expense information is thirty days after the base period ends unless good cause for delay can be documented.

(15) The medical expenses applied to the spenddown amount are the client's financial obligation and are not reimbursed by the department (see WAC 388-502-0100).

(16) Once a person meets their spenddown and they are issued a medical identification card for MN coverage, newly identified expenses cannot be considered toward that spenddown. Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a clients failure to identify or list medical expenses.

AMENDATORY SECTION (Amending WSR 03-24-030, filed 11/24/03, effective 12/25/03)

WAC 388-865-0217 Psychiatric indigent inpatient program. (1) The psychiatric indigent inpatient (PII) program is a state funded, limited casualty (LCP) program specifically for mental health clients identified in need of inpatient psychiatric care by the regional support network (RSN).

(2) The psychiatric indigent inpatient (PII) program pays only for ((~~involuntary and~~)) emergent voluntary inpatient psychiatric care in community hospitals within the state of Washington. Psychiatric indigent inpatient (PII) does not cover ancillary charges for physician, transportation, pharmacy or other costs associated with an inpatient psychiatric hospitalization.

(3) To be eligible for the psychiatric indigent inpatient (PII) program, a client is subject to the following conditions and limitations:

(a) The client must have ((~~an involuntary or~~)) a voluntary inpatient psychiatric admission authorized by a regional support network (RSN) in the month of application or within the three months immediately preceding the month of application.

(b) Consumers applying for the psychiatric indigent inpatient (PII) program are subject to the income and resource rules for TANF and TANF-related clients in chapters 388-450 and 388-470 WAC.

(c) If a client's income and/or resources exceed the standard for medically needy (MN), as described in WAC 388-478-0070, the client must spend down the excess amount as described in WAC ((~~388-519-0100~~)) 388-519-0110 for the client to be eligible for the psychiatric indigent inpatient (PII) program. Spenddown is a client financial obligation for medical expenses. The department deducts the spenddown from payments to providers (see WAC 388-502-0100).

(d) A client who is voluntarily admitted must have incurred an emergency medical expense requirement (EMER) of two thousand dollars over a twelve-month period. ((~~A client who is detained under the Involuntary Treatment Act (ITA) is exempt from the emergency medical expense requirement (EMER)~~)) EMER is a client financial obligation. The department deducts the EMER from payments to providers (see WAC 388-502-0100).

(i) Qualifying emergency medical expense requirement (EMER) expenses are psychiatric inpatient services in a community hospital.

(ii) The emergency medical expense requirement (EMER) period lasts for twelve calendar months, beginning on the first day of the month of certification for psychiatric indigent inpatient (PII) and continuing through the last day of the twelfth month.

(e) A client is limited to a single three-month period of psychiatric indigent inpatient (PII) eligibility per twelve-month emergency medical expense requirement (EMER) period.

(4) Clients are not eligible for the psychiatric indigent inpatient (PII) program if they:

(a) Are eligible for, or receiving, any other cash or medical program; or

(b) Entered the Washington state specifically to obtain medical care; or

(c) Are inmates of a federal or state prison; or

(d) Are committed under the Involuntary Treatment Act (ITA).

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 06-09-087
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed April 18, 2006, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-074.

Title of Rule and Other Identifying Information: WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL) and 388-478-0085 Medicare savings programs—Monthly income standards.

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 May 23, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 24, 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, fax (360) 664-6185, by 5:00 p.m., May 23, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by May 19, 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: The department is amending these WACs to explain what each standard is based on and to remove the actual numbers since these standards are based on the federal poverty level.

Reasons Supporting Proposal: These amendments reduce the administrative burden of updating these rules several times a year when the federal standards increase.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 42 U.S.C. 9902(2).

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 42 U.S.C. 9902(2).

Rule is necessary because of federal law, 42 U.S.C. 9902(2).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Beth Ingram, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1327.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This change does not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This revision is exempt from the cost-benefit analysis requirement per RCW 34.05.328 (5)(b)(vii) regarding rules related to DSHS financial or medical eligibility.

April 17, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-03-080, filed 1/12/06, effective 2/12/06)

WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL). (1) The department bases the income standard upon the federal poverty level (FPL) published by the federal government yearly for the following medical programs:

(a) Children's health program is one hundred percent of FPL;

(b) Pregnant women's program up to one hundred eighty-five percent of FPL;

(c) Children's categorically needy program up to two hundred percent of FPL;

(d) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and

(e) The state children's health insurance program (SCHIP) is over two hundred percent of FPL but not over two hundred fifty percent of FPL.

(2) The department uses the FPL income standards to determine:

(a) The mandatory or optional Medicaid status of an individual; and

(b) Premium amount, if any, for a Medicaid child.

(3) There are no resource limits for the programs under this section.

((~~(4) Beginning April 1, 2005, the monthly FPL standards are:~~))

((

~~FAMILY SIZE~~	~~100% FPL~~	~~133% FPL~~	~~150% FPL~~	~~185% FPL~~	~~200% FPL~~	~~220% FPL~~	~~250% FPL~~
~~1~~	~~$798~~	~~$1061~~	~~$1197~~	~~$1476~~	~~$1595~~	~~$1755~~	~~$1994~~
~~2~~	~~$1070~~	~~$1422~~	~~$1604~~	~~$1978~~	~~$2139~~	~~$2353~~	~~$2673~~
~~3~~	~~$1341~~	~~$1784~~	~~$2012~~	~~$2481~~	~~$2682~~	~~$2950~~	~~$3353~~
~~4~~	~~$1613~~	~~$2145~~	~~$2419~~	~~$2984~~	~~$3225~~	~~$3548~~	~~$4032~~
~~5~~	~~$1885~~	~~$2506~~	~~$2827~~	~~$3486~~	~~$3769~~	~~$4146~~	~~$4711~~
~~6~~	~~$2156~~	~~$2868~~	~~$3234~~	~~$3989~~	~~$4312~~	~~$4743~~	~~$5390~~
~~7~~	~~$2428~~	~~$3229~~	~~$3642~~	~~$4491~~	~~$4855~~	~~$5341~~	~~$6069~~
~~8~~	~~$2700~~	~~$3590~~	~~$4049~~	~~$4994~~	~~$5399~~	~~$5939~~	~~$6748~~
~~9~~	~~$2971~~	~~$3952~~	~~$4457~~	~~$5497~~	~~$5942~~	~~$6536~~	~~$7428~~
~~10~~	~~$3243~~	~~$4313~~	~~$4864~~	~~$5999~~	~~$6485~~	~~$7134~~	~~$8107~~
~~Add to the ten person standard for each person over ten:~~							
	~~$272~~	~~$362~~	~~$408~~	~~$503~~	~~$544~~	~~$598~~	~~$680~~

))

AMENDATORY SECTION (Amending WSR 05-17-157, filed 8/22/05, effective 9/22/05)

WAC 388-478-0085 Medicare savings programs—Monthly income ((~~and countable resources~~)) standards. (1) The qualified Medicare beneficiary (QMB) program income standard is up to one hundred percent of the federal poverty level (FPL). ((~~Beginning April 1, 2005, the QMB program's income standards are:~~))

((

~~(a) One person~~	~~$798~~
~~(b) Two persons~~	~~$1070~~

))

(2) The ((~~special~~)) specified low-income Medicare beneficiary (SLMB) program income standard is over one hundred percent of FPL, but not more than one hundred twenty percent of FPL. ((~~Beginning April 1, 2005, the SLMB program's income standards are:~~))

((

	~~Minimum~~	~~Maximum~~
~~(a) One person~~	~~$798.01~~	~~$957~~
~~(b) Two persons~~	~~$1070.01~~	~~$1283~~

))

(3) The qualified individual (QI-1) program income standard is over one hundred twenty percent of FPL, but not more than one hundred thirty-five percent of FPL. ((~~Beginning April 1, 2005, the QI-1 program's income standards are:~~))

((

	~~Minimum~~	~~Maximum~~
~~(a) One person~~	~~$957.01~~	~~$1077~~
~~(b) Two persons~~	~~$1283.01~~	~~$1444~~

))

(4) The qualified disabled working individual (QDWI) program income standard is two hundred percent of FPL. ((~~Beginning April 1, 2005, the QDWI program's income standards are:~~))

((

~~(a) One person~~	~~$1595~~
~~(b) Two persons~~	~~$2139~~

))

(((~~5) The resource standard for the Medicare savings programs in this section is:~~))

(((~~(a) One person~~))	((~~$4000~~))
(((~~(b) Two persons~~))	((~~$6000~~))

WSR 06-09-088
PROPOSED RULES
HIGHER EDUCATION COORDINATING BOARD
[Filed April 19, 2006, 8:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-036.

Title of Rule and Other Identifying Information: Chapter 250-20 WAC, State need grant (SNG).

Purpose: Permit the SNG award amount to recognize the higher tuition rate charged to students engaged in the community college applied baccalaureate degree program.

Add a definition of "less-than-halftime" pilot project as authorized in chapter 229, Laws of 2005.

Add former foster youth to the definition of eligible student.

Make technical changes and corrections.

Hearing Location(s): Higher Education Coordinating Board, 917 Lakeridge Way, 3rd Floor Conference Room, Olympia, WA 98502, on May 23, 2006, at 9:00 a.m.

Date of Intended Adoption: July 27, 2006.

Submit Written Comments to: Julie Japhet, 917 Lakeridge Way, P.O. Box 43430, Olympia, WA 98504-3430, e-mail juliej@hecb.wa.gov, fax (360) 704-6250.

Assistance for Persons with Disabilities: Contact Karola Longoria by May 9, 2006, (360) 753-7850.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend pro-

gram rules to match the revised statute that now places a priority on serving former foster youth; to add definition of "less-than-halftime" pilot project, authorized in chapter 229, Laws of 2005; permit SNG award amount to recognize the higher rate charged for applied baccalaureate degree programs at community colleges; and clarify provisions.

Reasons Supporting Proposal: HB 1345 enacted into law in 2005. The proposed rules change would allow students participating in the pilot program to receive grant while enrolled in only four or five credits.

E2SHB enacted in 2005. The change would allow the SNG award for community college students enrolled in applied bachelor's programs to equal the SNG award for student enrolled at the public comprehensive universities.

SHB 1079 enacted in 2005. The change would make former foster youth a priority for SNG awards.

Statute Being Implemented: Chapter 28B.92 RCW.

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

Name of Proponent: Higher education coordinating board, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Japhet, 917 Lakeridge Way, Olympia, WA 98502, (360) 753-7840.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule affects student participation in the SNG program. The rule does not affect small business in Washington.

A cost-benefit analysis is not required under RCW 34.05.328. The higher education coordinating board is not named in the RCW.

April 18, 2006
John Klacik, Director
Student Financial Assistance

AMENDATORY SECTION (Amending WSR 99-16-015, filed 7/23/99, effective 8/23/99)

WAC 250-20-011 Student eligibility. For a student to be eligible for a state need grant he or she must:

(1) Be a "needy student" as determined by the higher education coordinating board in accordance with RCW 28B.10.802. These students must also meet the "income cutoff," be a "former foster youth" or be a "disadvantaged student" ((~~who has completed a board approved program designed to promote early awareness of, and aspiration to, higher education~~)).

(2) Be a resident of the state of Washington in accordance with RCW 28B.15.012 (2)(a) through (d).

(3) Be enrolled or accepted for enrollment as an undergraduate student at a participating postsecondary institution or be a student under an established program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington.

(a) For purposes of need grant eligibility, the student must be enrolled, at time of disbursement, in a course load of at least six credits per quarter or semester or, in the case of institutions which do not use credit hours, in a program of at least six hundred clock hours requiring at least twelve clock hours of instruction per week.

(b) A student enrolled less than half time may not receive this grant for the term in question (except as specified in WAC 250-20-021 less-than-half-time pilot project), but is eligible for reinstatement or reapplication for a grant upon return to at least a half-time status. Correspondence courses may not comprise more than one-half of the student's minimum credit load for which aid is being considered.

(c) Have a high school diploma or its equivalent. Equivalent standards include a general education development certificate, a certificate of completion of a home study program recognized by the student's home state. For a student without a high school diploma or its equivalent, he or she must pass a federally recognized ability-to-benefit test as is required for the receipt of federal student aid.

(4) Maintain satisfactory progress as defined in WAC 250-20-021(19).

(5) Not be pursuing a degree in theology.

(6) Not have received a state need grant for more than the equivalent of ten full-time semesters or fifteen full-time quarters or equivalent combination of these two, nor exceed one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. A student shall be deemed to have received an associate degree as a state need grant recipient if the student received state need grant payments in more than three quarters, two semesters, or equivalent clock hours while pursuing an associate((~~s~~)) degree. Upon receipt of a bachelor's degree or its foreign equivalent, a student is no longer eligible.

(7) Have ((~~made a bona fide application~~)) submitted the Free Application for Federal Student Aid to receive consideration for a Pell grant.

(8) Certify that he or she does not owe a refund on a state need grant, a Federal Pell Grant or a Federal Supplemental Educational Opportunity Grant, and is not in default on a loan made, insured, or guaranteed under the Federal Family Education Loan Program, the Federal Perkins Loan Program, or the Federal Direct Student Loan Program.

AMENDATORY SECTION (Amending WSR 95-17-045, filed 8/11/95, effective 9/11/95)

WAC 250-20-013 Institutional eligibility. (1) For an otherwise eligible student to receive a state need grant, he or she must be enrolled in an eligible program at a postsecondary institution approved by the higher education coordinating board for participation in the state need grant program (except as specified in WAC 250-20-021 less-than-half-time pilot project). To be eligible to participate, a postsecondary institution must:

(a) Be a public university, college, community college, or vocational-technical institute operated by the state of Washington, or any political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level with full institutional accreditation by an accrediting association recognized by rule of the board.

(b) Participate in the federal Title IV student financial aid programs, including, at a minimum, the Federal Pell Grant program.

(2) In addition, a for-profit institution must:

(a) Be certified for participation in the federal Title IV student financial aid programs. A for-profit institution that is provisionally certified for participation in the federal Title IV student financial aid programs due to its failure to meet the factors of administrative capability or financial responsibility as stated in federal regulations, or whose participation has been limited or suspended, is not eligible to participate in the state need grant program until its full eligibility has been reinstated.

(b) Demonstrate to the satisfaction of the board that it is capable of properly administering the state need grant program. In making a determination of administrative capability, the board will consider such factors as the adequacy of staffing levels, staff training and experience in administering student financial aid programs, standards of administrative capability specified for purposes of federal Title IV program eligibility, its student withdrawal rate, its federal student loan cohort default rate, and such other factors as are reasonable. In determining the administrative capability of participating institutions, the board will also consider the institution's compliance with state need grant program regulations and guidelines.

(c) Demonstrate to the satisfaction of the board that it has the financial resources to provide the services described in its official publications and statements, provide the administrative resources necessary to comply with program requirements, and that it meets the financial responsibility standards for participation in the federal Title IV programs.

(d) Renew its eligibility each year under these standards.

(3) Nothing in this section shall prevent the board, in the exercise of its sound discretion, from denying eligibility or terminating the participation of an institution which the board determines is unable to properly administer the program or to provide advertised services to its students.

AMENDATORY SECTION (Amending WSR 02-24-041, filed 12/2/02, effective 1/2/03)

WAC 250-20-021 Program definitions. (1) The term "needy student" shall mean a post-high school student of an institution of postsecondary education who demonstrates to the higher education coordinating board the financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter. The determination of need shall be made in accordance with federal needs analysis formulas and provisions as recognized and modified by the board.

(2) The term "disadvantaged student" shall mean a student who by reasons of adverse cultural, educational, environmental, experiential, or familial circumstance is unlikely to aspire to, or enroll in, higher education. Generally, this shall mean a dependent student whose parents have not attained a college education and/or whose family income is substantially below the state's median or has participated in a means tested early awareness program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington.

(3) The term "postsecondary institution" shall mean:

(a) Any public university, college, community college, or vocational-technical institute operated by the state of Washington political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an approved accrediting association.

(b) If such institution agrees to participate in the program in accordance with all applicable rules and regulations.

(c) Any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of an approved accrediting association.

(d) The separate accreditation requirement is waived for branch campuses of out-of-state institutions if the branch campus:

(i) Is eligible to participate in federal student aid programs; and

(ii) Has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington; and

(iii) Has an annual enrollment of at least seven hundred full-time equivalent students.

(4) The term "approved accrediting association" shall mean the following organizations:

(a) Northwest Association of Schools and Colleges;

(b) Middle States Association of Colleges and Schools, Commission on Higher Education;

(c) New England Association of Schools and Colleges;

(d) North Central Association of Colleges and Schools;

(e) Southern Association of Colleges and Schools;

(f) Western Association of Schools and Colleges;

(g) Accrediting Bureau of Health Education Schools;

(h) Accrediting Council for Continuing Education and Training;

(i) Accrediting Commission of Career Schools and Colleges of Technology;

(j) Accrediting Council for Independent Colleges and Schools;

(k) National Accrediting Commission of Cosmetology Arts and Sciences.

(5) "Washington resident" shall be defined as an individual who satisfies the requirements of RCW 28B.15.012 (2)(a) through (d) and board-adopted rules and regulations pertaining to the determination of residency.

(6) "Dependent student" shall mean any post-high school student who does not qualify as an independent student in accordance with WAC 250-20-021(6).

(7) "Independent student" shall mean any student who qualifies as an independent student for the receipt of federal aid. These qualifications include a student who has either:

(a) Reached his or her twenty-fourth birthday before January 1st of the aid year; or((,))

(b) Is a veteran of the U.S. Armed Forces; or((,))

(c) Is an orphan or ward of the court; or((,))

(d) Has legal dependents other than a spouse; or((,))

(e) Is a married student or a graduate/professional student; or((,))

(f) Is determined to be independent for the receipt of federal aid on the basis of the professional judgment of the aid administrator.

(8) Definitions of "undergraduate students" will be in accord with definitions adopted for institutional use by the board.

(9) "Student budgets" ((~~shall~~)) are determined by institutions and approved by the board. The student budget consists of that amount required to support an individual as a student for nine months and may take into consideration cost factors for maintaining the student's dependents. This should be the amount used to calculate the student's total need for all state and federal funds.

(10) "State need grant cost-of-attendance" is the standard student cost per sector, as developed by the board.

(a) The costs-of-attendance for each sector are calculated by adding together a standard maintenance allowance for books, room, board, transportation and personal items, for all undergraduate students statewide as developed by the Washington Financial Aid Association, and the sector's regular tuition and fees for full-time, resident, undergraduate students.

(b) In no case may the costs-of-attendance exceed the statutory ceiling established by RCW ((~~28B.10.808~~)) 28B.92.060(4). The ceiling is calculated by adding together the same standard maintenance allowance used in determining the state need grant cost-of-attendance, plus the regular tuition and fees charged for a full-time resident undergraduate student at a research university, plus the current average state appropriation per student for operating expenses in all public institutions.

(c) For example, in the 1992-93 academic year, the value of the statutory ceiling is $13,783. This value is composed of the Washington Financial Aid Association's maintenance budget of $6,964, plus the regular tuition and fees charged for a resident undergraduate student at a research university of $2,274, plus the current average state appropriation per student for operating expenses in all public institutions of $4,545.

(d) The value of each element used in the construction of the statutory ceiling will be updated annually.

(e) The higher education coordinating board will consult with appropriate advisory committees and the representative association of student financial aid administrators, to annually review and adjust the costs-of-attendance. The costs-of-attendance for each sector will be published concurrent with annual guidelines for program administration.

(11) "Family income" is the student's family income for the calendar year prior to the academic year for which aid is being requested.

(a) Income means adjusted gross income and nontaxable income as reported on the federally prescribed application for federal student aid.

(b) For the dependent student family income means parental income.

(c) For the independent student family income means the income of the student and any other adult, if any, reported as part of the student's family.

(d) The institutional aid administrator may adjust the family's income up or down to more accurately reflect the family's financial situation during the academic year. When such adjustments are made they shall be consistent with guidelines for making changes to determine federal student aid eligibility.

(12) "Income cutoff" means the amount of family income below which a student is determined to be eligible for the state need grant.

(a) The cutoff shall be expressed as a percent of the state's median family income. The exact point of cutoff shall be determined each year by the board based on available funding.

(b) The board will endeavor to award students, in order, from the lowest income to the highest income, within the limits of available funding.

(c) At the discretion of the institution's aid administrator, a student who is eligible for a state need grant in a given academic year may be deemed eligible for the ensuing academic year if his or her family income increases by no more than three percent, even if the stated median family income cutoff for grant eligibility is lower than that amount.

(13) "Median family income" is the median income for Washington state, adjusted by family size and reported annually in the federal register.

(14) "Base grant" is the state need grant award for each sector before the addition of a dependent care allowance. The base grant per student will be no less than the published base grant in 1998-1999. The base grant may be further adjusted according to the student's family income level and rate of enrollment as described in WAC 250-20-041.

For certain students who have completed board approved early awareness and preparation programs such as ((~~the Washington National Early Intervention Scholarship Program, its successor program~~)), GEAR-UP or a Trio program, the base grant will be an amount fixed annually by the board. Generally the base grant, in these cases, will be no less than the current value of the federal PELL grant program.

(15) "Dependent care allowance" is a flat grant amount, to be determined by the board, which is in addition to the eligible student's base grant.

(a) The allowance is awarded to those students who have dependents in need of care. The dependent must be someone (other than a spouse) living with the student.

(b) Care must be that assistance provided to the dependent by someone outside of the student's household and not paid by another agency.

(c) Eligible grant recipients must document their need for the dependent care allowance.

(16) "State need grant award" is the base grant adjusted according to level of family income, plus a dependent care allowance, if applicable.

(17) "Academic year" is that period of time between July 1 and the following June 30 during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters of instruction.

(18) "Clock hours" means a period of time which is the equivalent of either:

(a) A 50 to 60 minute class, lecture, or recitation((,)); or

(b) A 50 to 60 minute period of faculty-supervised laboratory shop training or internship.

(19) "Gift equity packaging policy" is the institution's policy for assigning gift aid to all needy, eligible students.

(20) "Satisfactory progress" is the student's successful completion of a minimum number of credit or clock hours for each term in which the grant was received. Each school's policy for measuring progress of state need grant recipients must define satisfactory as the student's completion of the minimum number of credit or clock hours for which the aid was disbursed.

(a) The minimum satisfactory progress standard for full-time students is twelve credits per term or 300 clock hours per term. Satisfactory progress for three-quarter time students is nine credits per term or 225 clock hours per term. Satisfactory progress for half-time students is six credits per term or 150 clock hours per term.

(b) Each school's policy must deny further disbursements of the need grant at the conclusion of any term in which he or she fails to complete at least one-half of the minimum number of credits or clock hours for which the aid was disbursed or otherwise fails to fulfill the conditions of the institution's satisfactory progress policy.

(c) The school may make disbursements to a student who is in a probationary status. "Probation" is defined as completion of at least one-half, but less than all of the minimum number of credits for which the aid was calculated and disbursed. The school must have a probation policy, approved by the board, which limits the number of terms in which a student may receive the need grant while in a probationary status.

(d) The school's aid administrator may at any time, using professional judgment exercised on a case-by-case basis, reinstate a student back into a satisfactory progress status, in response to an individual student's extenuating circumstances.

(21) The term "full institutional accreditation" shall mean the status of public recognition that an accrediting agency recognized by the U.S. Department of Education grants to an educational institution that meets the agency's established standards and requirements. Institutional accreditation applies to the entire institution, indicating that each of an institution's parts is contributing to the achievement of the institution's objectives.

(22) The term "eligible program" for a public or private nonprofit educational institution, shall mean an associate or baccalaureate degree program; at least a two-year program that is acceptable for full credit toward a bachelor's degree, or at least a one-year educational program that leads to a degree or certificate and prepares the student for gainful employment in a recognized occupation. The term "eligible program" for a for-profit or a postsecondary vocational institution shall mean a program which provides at least a 15-week undergraduate program of 600 clock hours, 16 semester hours, or 24 quarter hours. The program may admit students without an associate degree or equivalent. The term "eligible program" for a for-profit or a postsecondary vocational institution may also be a program that provides at least a 10-week program of 300 clock hours, 8 semester hours, or 12 quarter hours. A program in this category must be an undergraduate program that admits only students with an associate degree or equivalent. To be an "eligible program," a program must be encompassed within the institution's accreditation and be an eligible program for purposes of the federal Title IV student financial aid programs.

(23) The three "public sectors of higher education" are the research universities, comprehensive universities, and the community and technical colleges.

(24) A "for-profit institution" is a postsecondary educational institution other than a public or private nonprofit institution which provides training for gainful employment in a recognized profession.

(25) A "postsecondary vocational institution" is a public or private nonprofit institution which provides training for gainful employment in a recognized profession.

(26) The "less-than-half-time pilot project" is defined as follows:

(a) The pilot project is authorized for 2005-2007 in chapter 299, Laws of 2005 and is meant to test the feasibility of providing state need grant awards to students who enroll in four or five credits.

(b) The board shall select up to ten schools to participate in the pilot project.

(c) All rules and guidelines that govern student and school participation in the state need grant program shall apply to pilot project except the following:

(i) The student may enroll for four or five credits per term.

(ii) The grant award is equal to one-quarter of the regular base grant amount.

(iii) Students otherwise enrolled in credit bearing coursework may receive the grant for up to one academic year before being accepted into a program that leads to a degree or certificate.

(27) The term "former foster youth" means a person who is at least eighteen years of age, but no more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen.

WSR 06-09-089
PROPOSED RULES
HIGHER EDUCATION COORDINATING BOARD

[Filed April 19, 2006, 8:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-034.

Title of Rule and Other Identifying Information: WAC 250-40-040 (3)(a) State work study (SWS).

Purpose:

- Revision of RCW 28B.12.060 (3)(a). That creates a placement priority for former foster youth.
- Implement rules changes to match recent legislation.
- Minor technical changes.

Hearing Location(s): Higher Education Coordinating Board, 917 Lakeridge Way, 3rd Floor Conference Room, Olympia, WA 98502, on May 23, 2006, at 9:00 a.m.

Date of Intended Adoption: July 27, 2006.

Submit Written Comments to: Betty Gebhardt, 917 Lakeridge Way, P.O. Box 43430, Olympia, WA 98504-3430, e-mail bettyg@hecb.wa.gov, fax (360) 704-6250.

Assistance for Persons with Disabilities: Contact Karola Longoria by May 9, 2006, (360) 753-7850.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend program rules to match the revised statute that now places a priority on serving former foster youth; and to clarify provisions.

Reasons Supporting Proposal: Passage of SHB 1079 created a statutory amendment creating a priority for serving former foster youth.

Statutory Authority for Adoption: RCW 28B.15.012.

Statute Being Implemented: RCW 28B.15.013.

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

Name of Proponent: Higher education coordinating board, public.

Name of Agency Personnel Responsible for Drafting: Khris Blumer, 917 Lakeridge Way, Olympia, WA 98502, (360) 753-7847; Implementation and Enforcement: Betty Gebhardt, 917 Lakeridge Way, Olympia, WA 98502, (360) 753-7852.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule affects nonprofit educational institutions, does not affect business in Washington.

A cost-benefit analysis is not required under RCW 34.05.328. The higher education coordinating board is not named in the RCW.

April 18, 2006
John Klacik, Director
Student Financial Assistance

AMENDATORY SECTION (Amending WSR 94-14-006, filed 6/23/94, effective 7/24/94)

WAC 250-40-040 Student eligibility and selection. (1) Eligibility criteria. In order to be eligible for employment under this program the student must:

(a) Demonstrate financial need.

(b) Be enrolled or accepted for enrollment as at least a half-time undergraduate, graduate or professional student or be a student under an established program designed to qualify him or her for enrollment as at least a half-time student at an eligible institution of postsecondary education.

(c) Be capable, in the opinion of the institution, of maintaining good standing in a course of study while employed under the program, and demonstrate satisfactory progress toward degree or certificate completion.

(d) Not be pursuing a degree in theology.

(e) Not owe a refund or repayment on a state or federal financial aid grant program and not be in default on a loan made, insured, or guaranteed under federal and state financial aid loan programs.

(2) Criteria for institutional determination of financial need and the making of awards.

(a) Standard budgetary costs will be determined by the institution subject to approval by the higher education coordinating board.

(b) Total applicant resources shall be determined in accordance with the federal methodology system of need analysis. Institutional financial aid officers may make reasonable adjustments to the computed total applicant resources if individual circumstances warrant such adjustments.

Any adjustments must be documented and placed in the student's financial aid records.

(c) The work-study award shall be designed in such a manner that the sum total of financial aid awarded any one student will not exceed the difference between the total applicant's resources and the budgetary cost of education.

(d) Each institution must have a policy relating to the continuance of aid for students who enroll in but do not complete the number of credit or clock hours required to maintain satisfactory progress toward completion of his or her degree or program objective. The institution must submit its policy to the board annually for approval.

(3) Priorities in placing students.

(a) Provide work opportunities for students who are defined to be residents of the state particularly former foster youth as defined in RCW 28B.92.060. Residents of the state are defined in RCW 28B.15.012 and 28B.15.013 except resident students defined in RCW 28B.15.012 (2)(g);

(b) After consideration of (a) of this subsection, then provide job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements wherever appropriate; and

(c) Whenever appropriate, provide opportunities for off-campus community service placements.

(4) Job placements are encouraged in occupations that meet Washington's economic development goals especially those in international trade and international relations.

AMENDATORY SECTION (Amending WSR 94-14-006, filed 6/23/94, effective 7/24/94)

WAC 250-40-050 Restrictions on student placement and compensation. (1) Displacement of employees. Employment of state work-study students may not result in displacement of employed workers or impair existing contracts for services.

(a) State work-study students employed by public institutions of postsecondary education may not fill positions currently or formerly occupied by classified employees.

(b) In cases of governmental employment, state work-study students may fill positions which have been previously occupied but were vacated as a result of implementing previously adopted reduction in force policies in response to employment limitations imposed by federal, state or local governments.

(c) In all other cases, state work-study students may not fill positions which have been occupied by regular employees during the current or prior calendar or fiscal year.

(2) Rate of compensation. All work-study positions shall receive compensation equal to the entry level salary of comparable nonwork-study positions.

Students employed by public postsecondary educational institutions who are filling positions which are comparable to Washington personnel resources board classified positions must be paid entry level Washington personnel resources board wages for the position unless the overall scope and responsibilities of the position indicate a higher level.

Determination of comparability must be made in accordance with state work-study program operational guidelines.

Documentation must be on file at the institution for each position filled by a state work-study student which is deemed by the institution as not comparable to a higher education personnel board position.

(3) Maximum total state work-study compensation. Earnings beyond the student's state work-study eligibility must be reported to the financial aid officer, and resulting adjustments made in the financial aid package in accordance with federal methodology. In the event that a student earns more money from state work-study employment than the institution anticipated when it awarded student financial aid, the excess is to be treated in accordance with the method specified in the state work-study operational guidelines.

(4) State share of student compensation. With the exception of board-approved off campus community service placements, the state share of compensation paid students shall not exceed 80 percent of the student's gross compensation. In the following cases the state share may be established at 80 percent:

(a) When employed by state supported institutions of postsecondary education at which they are enrolled;

(b) When employed as tutors by the state's common school districts;

(c) When employed in tutorial or other support staff positions by nonprofit adult literacy service providers in the state of Washington who meet guideline criteria for participation; and

(d) When employed in an off-campus community service placement. The state share of compensation paid students employed by all other employers shall not exceed 65 percent of the student's gross compensation.

(5) Employer share of student compensation. The employer shall pay a minimum of 20 percent or 35 percent of the student's gross compensation as specified in subsection (4) ((~~above~~)) of this section, plus the costs of any employee benefits including all payments due as an employer's contribution under the state workman's compensation laws, federal Social Security laws, and other applicable laws. The federal work-study program cannot be used to provide employer share of student compensation except when used for placement of students in tutorial or other support staff positions with adult literacy service providers in the state of Washington who meet guideline criteria for participation.

(6) Academic credit for state work-study employment. Students may receive academic credit for experience gained through state work-study employment.

(7) Maximum hours reimbursed. Employment of a student in excess of an average of 19 hours per week, or in the case of on-campus graduate assistants an average of 20 hours per week, over the period of enrollment for which the student has received an award or a maximum of 40 hours per week during vacation periods will not be eligible for reimbursement from state funds.

A student may not be concurrently employed in the same position by the state work-study program and the federal work-study program and exceed the 19 hours per week average.

(8) Types of work prohibited. Work performed by a student under the state work-study program shall not be sectarian related and shall not involve any partisan or nonpartisan political activity.

(9) Relationship to formula staffing percentage. Placement of state work-study students in on-campus positions at public postsecondary educational institutions may not result in a level of employment in any budget program in excess of a formula staffing percentage specifically mandated by the legislature.

AMENDATORY SECTION (Amending WSR 93-20-044, filed 9/29/93, effective 10/30/93)

WAC 250-40-060 Institutional application and allotment procedures. (1) Application. Institutions shall annually apply for and document campus need for student employment funds.

(2) Institutional reserve of funds. The board shall annually develop a reserve of funds for the body of students at each eligible participating institution. Institutions will be notified of funds available for their students by May 1 of the year prior to the academic year in which awards will be given, or within a reasonable period after the legislative appropriation becomes known, whichever is later. The following steps shall govern the determination and allotment of institutional reserves:

(a) A base funding level, or conditional guarantee, shall be adopted for each institution currently participating in the program. The initial allotment of funds to any one institution shall equal its conditional guarantee. The conditional guarantee will equal the amount of funds initially reserved to the institution for the 1992-93 fiscal year.

(b) Eligible institutions currently not participating in the program shall be continually encouraged to enter the program, and will be funded at a reasonable level.

(c) Each institution shall share proportionally in the event of budget reductions.

(d) Institutions displaying a pattern of fund underutilization shall have their allocations reevaluated and reduced if appropriate.

(e) Funding increases shall be distributed on an objective basis among institutions in a manner which, when combined with federal work-study allocations, furthers a parity of work opportunity among students statewide.

(f) No institution will be awarded funds which, in the institution's judgment or judgment reasonably exercised by the board, will exceed what the institution can adequately administer.

(3) The convening of an advisory committee. The board staff will convene its advisory committee annually in accor-

dance with WAC 250-40-070(((~~(5)~~)))(4) to review program policies and procedures.

(4) Reallotments. If it is determined that an institution is unable to award all of the funds allotted it, the board will reduce its allotment accordingly and will redistribute unutilized funds to other eligible institutions. Reallotments however, shall not increase or decrease an institution's conditional guarantee.

WSR 06-09-091
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed April 19, 2006, 9:35 a.m.]

Supplemental Notice to WSR 05-15-146 and 05-20-080.

Preproposal statement of inquiry was filed as WSR 05-01-128.

Title of Rule and Other Identifying Information: New WAC 388-106-0047 When can the department terminate or deny long-term care services to me?

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 May 23, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 24, 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, fax (360) 664-6185, by 5:00 p.m., May 23, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by May 19, 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: New rules are needed to clarify long-term care services eligibility, including denial and termination.

This rule was previously proposed as WSR 05-15-146 and 05-20-080. Public hearings were held on August 23 and November 8, 2005, and comments were received. The department has revised and is reproposing the rule for additional public comment.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 42 C.F.R. 441.302(a); Social Security Act Section 1915 c waiver rules, 42 C.F.R. 440.180.

Statute Being Implemented: RCW 74.08.090, 74.09.-520, 42 C.F.R. 441.302(a); Social Security Act Section 1915 c waiver rules, 42 C.F.R. 440.180.

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: Carol Sloan, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2345.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that no new costs will be imposed on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Exempt, per RCW 34.05.328 (5)(b)(vii), rules of the department of social and health services relating only to client medical or financial eligibility.

April 12, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-106-0047 When can the department terminate or deny long-term care services to me? (1) The department will deny or terminate long-term care services if you are not eligible for long-term care services pursuant to WAC 388-106-0210, 388-106-0310, 388-106-0410, 388-106-0510, or 388-106-0610.

(2) The department may deny or terminate long-term care services to you if, after exhaustion of standard case management activities and an established challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, any of the following conditions exist:

(a) You refuse to accept those long-term care services identified in your plan of care that are vital to your health, welfare or safety;

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider;

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

(i) Threatening, uncontrolled animals (e.g. dogs);

(ii) The manufacture, sale, or use of illegal drugs;

(iii) The presence of hazardous materials (e.g. exposed sewage, evidence of a methamphetamine lab).

WSR 06-09-095
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 19, 2006, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-086.

Title of Rule and Other Identifying Information: Apple maggot and plum curculio quarantine (WAC 16-470-101 through 16-470-118). This proposal amends the current apple maggot and plum curculio quarantine by:

- Expanding the boundaries of the existing area under apple maggot quarantine in Yakima County;
- Excluding commercial cherries from commodities regulated for apple maggot; and
- Modifying the current language to increase its clarity and readability.

An effective date of August 1, 2006, is proposed.

Hearing Location(s): Washington State Department of Agriculture, 21 North 1st Avenue, Conference Room 238, Yakima, WA 98902, on June 8, 2006, at 11:00 a.m.

Date of Intended Adoption: June 22, 2006.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by June 8, 2006.

Assistance for Persons with Disabilities: Contact Henri Gonzales by June 1, 2006, TTY (360) 902-2061.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The apple maggot is an insect native to eastern North America. Its hosts include apples, crabapple, and native hawthorn. In its larval development stage it can cause extensive damage to fruit. Since 1980, the Washington state department of agriculture (WSDA) has conducted annual surveys for apple maggot. During this past summer (2005) WSDA identified several apple maggots originating from multiple sites in Yakima County. Consistent with the recommendations of the apple maggot working group, this proposal amends WAC 16-470-105 by adding a larger portion of Yakima County to the existing apple maggot quarantine area. In addition, it amends WAC 16-470-111 by excluding commercial cherries from the commodities regulated for apple maggot, and modifies the current language in WAC 16-470-101, 16-470-105, 16-470-111, 16-470-115, and 16-470-118 to increase its clarity, readability, and conformity to current industry practices and standards.

Reasons Supporting Proposal: Amending the current apple maggot quarantine is necessary to protect the environmental quality and agricultural crops of the state. Failure to adopt the proposed amendments would jeopardize foreign and domestic markets for Washington apples.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Washington state department of agriculture with the support of the apple maggot working group, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and enforcement: Dr. Brad White, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-2071.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. Analysis of the economic impact of the proposed rule amendments indicates that the amendments will not have a more than minor impact on the regulated industry; therefore, an SBEIS has not been prepared. However, neglecting to amend the current rule as proposed may result in loss of markets and potential exports, which would have a more than minor economic impact on the Washington state commercial tree fruit industry.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

April 19, 2006
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-101 Establishing quarantine for apple maggot and plum curculio. Apple maggot (*Rhagoletis pomonella*) and plum curculio (*Conotrachelus nenuphar*) are insects with a larval (worm) stage that develops within fruit. These insects are capable of attacking many fruit crops grown in Washington. Apple maggot is not established in significant portions of the major fruit production areas east of the Cascade Mountains, and plum curculio is not established anywhere in the state. An increased range for either insect would cause decreased environmental quality and economic loss to the agricultural industries of the state by increasing production inputs and jeopardizing foreign and domestic markets. The director of agriculture, pursuant to chapter 17.24 RCW, has determined that the regulation and/or exclusion of fresh fruits grown or originating from areas infested with apple maggot or plum curculio is necessary to protect the environmental quality and agricultural crops of the state.

AMENDATORY SECTION (Amending WSR 05-09-005, filed 4/7/05, effective 8/15/05)

WAC 16-470-105 Area under order for apple maggot—Pest free area—Quarantine areas. (1) A pest free area for apple maggot is declared for the following portions of Washington state:

(a) Counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Stevens, Walla Walla, and Whitman.

(b) The portion of Kittitas County designated as follows: Beginning at the point where Interstate Highway No. 90 crosses longitude 120°31' W; thence southerly to the Kittitas - Yakima County line; thence easterly along ((~~said~~)) the county line to the Columbia River; thence northerly along ((~~said~~)) the Columbia River to Interstate Highway No. 90; thence westerly along Interstate Highway No. 90 to the point of beginning.

(c) ((~~The portions of~~)) Yakima County ((~~east of longitude 120×48' W~~)), except for the area designated in subsection (2)(c) of this section.

(2) A quarantine for apple maggot is declared for the following portions of Washington state:

(a) Counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Klickitat, Lewis, Mason,

Pacific, Pierce, Snohomish, Spokane, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom.

(b) ((~~The counties of~~)) Kittitas ((~~and Yakima~~)) County, except for the area((~~s~~)) designated in subsection (1)(b) ((~~and (c)~~)) of this section.

(c) The portion of Yakima County designated as follows: Beginning at the northeastern corner of Yakima County on the west bank of the Columbia River; thence southerly along the Columbia River to the Yakima-Benton County line; thence southerly along the county line to latitude N46°30'; thence west to longitude W120°20'; thence north to latitude N46°30.48'; thence west to longitude W120°25'; thence north to latitude N46°31.47'; thence west to longitude W120°28'; thence north to latitude N46°32'; thence west to longitude W120°36'; thence south to latitude N46°30'; thence west to longitude W120°48'; thence southerly to the Klickitat-Yakima County line; thence westerly along the county line to the Yakima-Skamania County line; thence northerly along the county line to the Lewis-Yakima County line; thence easterly and northerly along the county line to the Pierce-Yakima County line; thence northerly and easterly along the county line to the Kittitas-Yakima County line; thence easterly and southerly along the county line to the west bank of the Columbia River and the point of beginning.

(3) A quarantine for apple maggot is declared for all states or foreign countries where apple maggot is established. The area under quarantine includes, but is not limited to, the states of Idaho, Oregon, Utah, and California, and, in the eastern United States, all states and districts east of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and any other areas where apple maggot is established.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-111 What commodities are regulated for apple maggot? All fresh fruit of apple (including crab apple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial ((~~pears~~)) fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, and quince are regulated under quarantine for apple maggot.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-115 Within Washington state, what is required to ship fruit into the pest free area for apple maggot from quarantined ((~~counties~~)) areas? Shipment of regulated commodities, as described in WAC 16-470-111, from an area under quarantine, as described in WAC 16-470-105(2), into the pest free area for apple maggot, as described in WAC 16-470-105(1), is prohibited, unless one of the following conditions is met:

(1) The shipment is accompanied by a permit for movement of fruit issued by the department verifying one of the following:

(a) The fruit came from orchards and production sites that are not threatened with infestation; or

(b) The fruit has completed treatment as specified in WAC 16-470-118(3). If records of treatment verifying compliance with conditions specified in WAC 16-470-118(3) are made available to the department, no reinspection is required by the department.

(2) The shipment is accompanied by a permit issued by the department in fulfillment of WAC 16-470-118 (2) and (3), which specifies conditions for shipment from orchards and production sites that are infested or threatened with infestation.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

WAC 16-470-118 Within Washington state, what is required to ship fruit into, within, or through the pest free area for apple maggot from an orchard or production site that is infested or threatened with infestation? All regulated commodities, as described in WAC 16-470-111, from an orchard or production site that is infested or threatened with infestation by apple maggot must be ((~~sampled and~~)) inspected (except graded culls - see subsection (4) of this section) by the department following accepted agency standards.

(1) If regulated commodities are inspected and found free of apple maggot, the shipment must be accompanied by a permit for movement of fruit issued by the department.

(2) If regulated commodities are found to be infested with apple maggot, a permit from the department, which specifies conditions for handling and shipment, is required to transport the fruit within or through the pest free area. No permit may be issued under this subsection for transportation of regulated commodities found to be infested with apple maggot into the pest free area for apple maggot.

(3) If regulated commodities are found to be infested with apple maggot, one or more of the following treatments must be performed and verified by the department as specified in WAC 16-470-115 (1)(b) before the commodity is moved from area(s) designated or quarantined by the department:

(a) Apples (including crab apples) cold treated as specified in WAC 16-470-113 (1)(a).

(b) Regulated commodities cold treated as specified in WAC 16-470-113 (1)(b).

(c) Other methods as prescribed in writing by the department.

(4) If the shipment contains graded culls, it must comply with the conditions specified in WAC 16-470-113 (1)(a) and (b).

WSR 06-09-096
PROPOSED RULES
BOARD OF INDUSTRIAL INSURANCE APPEALS

[Filed April 19, 2006, 10:55 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 263-12 WAC, Practice and procedure before the board of industrial insurance appeals.

Hearing Location(s): Board of Industrial Insurance Appeals, Main Conference Room, 2430 Chandler Court S.W., Olympia, WA 98502, on May 24, 2006, at 11:00 a.m.

Date of Intended Adoption: May 25, 2006.

Submit Written Comments to: David E. Threedy, P.O. Box 42401, Olympia, WA 98504-2401, e-mail threedy@biia.wa.gov, fax (360) 586-5611, by May 19, 2006.

Assistance for Persons with Disabilities: Contact Donalda Ball by May 12, 2006, (360) 759-6823, ext. 183.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise the board's rules of practice and procedure by amending WAC 263-12-045, 263-12-093, 263-12-097, and 263-12-01501.

WAC 263-12-045, the proposed revision adds a subsection allowing for the appointment of a pro tem industrial appeals judge, when determined necessary by the board or the chief industrial appeals judge.

WAC 263-12-093, the proposed revision deletes language in subsection (2)(b) regarding objections received within ten days to the judge's report of proceedings.

WAC 263-12-097, the proposed revisions add language indicating that the adjudicative proceedings are also governed by the provisions of General Rule GR 11, GR 11.1, and GR 11.2; and that GR 11.3 does not apply; deletes subsection (3) in its entirety; and renumbers accordingly.

WAC 263-12-01501, the proposed revision makes housekeeping changes to subsection (1)(b)(iii)(A) by adding language regarding filing by facsimile in the board's regional offices; separates the language into two sections; and renumbers accordingly.

Reasons Supporting Proposal: Rules are being modified to meet current business needs.

Statutory Authority for Adoption: RCW 51.52.020.

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

Name of Proponent: Board of industrial insurance appeals, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David E. Threedy, 2430 Chandler Court S.W., Olympia, WA 98502, (360) 753-6823.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact on financial issues in the amendments being made. They are basically clarification of procedural rules relating to administrative hearings.

A cost-benefit analysis is not required under RCW 34.05.328. These rule changes are not legislative; they relate to procedures related to agency hearings or clarify language of a rule without changing its effect.

April 18, 2006

David E. Threedy

Executive Secretary

AMENDATORY SECTION (Amending WSR 03-02-038, filed 12/24/02, effective 1/24/03)

WAC 263-12-045 Industrial appeals judges. (1) **Definition.** Whenever used in these rules, the term "industrial appeals judge" shall include any member of the board, the executive secretary, as well as any duly authorized industrial appeals judge assigned to conduct a conference or hearing.

(2) **Duties and powers.** It shall be the duty of the industrial appeals judge to conduct conferences or hearings in cases assigned to him or her in an impartial and orderly manner. The industrial appeals judge shall have the authority, subject to the other provisions of these rules:

(a) To administer oaths and affirmations;

(b) To issue subpoenas on request of any party or on his or her motion. Subpoenas may be issued to compel:

(i) The attendance and testimony of witnesses at hearing and/or deposition, or

(ii) The production of books, papers, documents, and other evidence for discovery requests or proceedings before the board;

(c) To rule on all objections and motions including those pertaining to matters of discovery or procedure;

(d) To rule on all offers of proof and receive relevant evidence;

(e) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

(f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he or she deems necessary to fairly and equitably decide the appeal, including the obtaining of physical, mental, or vocational examinations or evaluations of workers;

(g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;

(h) To issue orders joining other parties, on motion of any party, or on his or her own motion when it appears that such other parties may have an interest in or may be affected by the proceedings;

(i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;

(j) To schedule the presentation of evidence and the filing of pleadings, including the filing of perpetuation depositions;

(k) To close the record on the completion of the taking of all evidence and the filing of pleadings and perpetuation depositions. In the event that the parties do not confirm witnesses or present their evidence within the timelines prescribed by the judge, the judge may consider appropriate sanctions, including closing the record and issuing a proposed decision and order;

(l) To take any other action necessary and authorized by these rules and the law.

(3) **Interlocutory review.** A party may request interlocutory review pursuant to WAC 263-12-115(6) of any exercise of authority by the industrial appeals judge under this rule.

(4) **Substitution of industrial appeals judge.** At any time the board or a chief industrial appeals judge or designee

may substitute one industrial appeals judge for another in any given appeal.

(5) **Pro tem industrial appeals judge.** If the board or the chief industrial appeals judge determines that it may be inappropriate for an industrial appeals judge to hear a particular appeal the board may appoint a pro tem industrial appeals judge to preside over the appeal and, if necessary, issue a proposed decision and order.

AMENDATORY SECTION (Amending WSR 03-02-038, filed 12/24/02, effective 1/24/03)

WAC 263-12-093 Conferences—Disposition of appeals by agreement. (1) If an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts.

(a) In industrial insurance cases, if an agreement concerning final disposition of the appeal is reached by the employer and worker or beneficiary at a conference at which the department is represented, and no objection is interposed by the department, an order shall be issued in conformity with their agreement, providing the board finds that the agreement is in accordance with the law and the facts. If an objection is interposed by the department on the ground that the agreement is not in accordance with the law or the facts, a hearing shall be scheduled.

(b) In cases involving the Washington Industrial Safety and Health Act, an agreement concerning final disposition of the appeal among the parties must include regardless of other substantive provisions covered by the agreement: (i) A statement reciting the abatement date for the violations involved, and (ii) A statement confirming that the penalty assessment for contested and noncontested violations has or will be paid.

(c) Where all parties concur in the disposition of an appeal but the industrial appeals judge is not satisfied that the agreement is in conformity with the facts and the law or that the board has jurisdiction or authority to order the relief sought, the industrial appeals judge may require such evidence or documentation necessary to adequately support the agreement in fact and/or in law.

(2) All agreements reached at a conference concerning final disposition of the appeal shall be stated on the record by the industrial appeals judge and the parties shall indicate their concurrence on the record. The record may either be transcribed by a court reporter or recorded and certified by the industrial appeals judge conducting the conference.

The industrial appeals judge may, in his or her discretion accept an agreement for submission to the board in the absence of one or more of the parties from the conference, or without holding a conference.

(a) In such cases the agreement may be confirmed in writing by the parties to the agreement not in attendance at a conference, except that the written confirmation of a party to the agreement not in attendance at a conference will not be required where the industrial appeals judge is satisfied of the concurrence of the party or that the party received notice of the conference and did not appear.

(b) In cases where no conference has been held but the parties have informed the judge of their agreement, yet no written confirmation has been received, the judge may submit a judge's report of proceedings which encompasses the agreement. ((~~The judge will submit copies of the report to the parties and, if no objection is received within ten days, the agreement may be submitted to the board for approval.~~))

(3) In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of appeals under the Washington Industrial Safety and Health Act, a copy of the proposed agreement shall be posted by the employer at each establishment to which the agreement applies in a conspicuous place or places where notices to employees are customarily posted. The agreement shall be posted for ten days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with WAC 263-12-059. If an objection to the agreement is interposed by affected employees or employee groups prior to entry of the final order of the board, further proceedings shall be scheduled.

(4) The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties or proposed decision and order may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled or an order on agreement of parties or proposed decision and order issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the Board for any fee charged for their failure to attend.

AMENDATORY SECTION (Amending WSR 00-23-022, filed 11/7/00, effective 12/8/00)

WAC 263-12-097 Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in a hearing before the board of industrial insurance appeals, the industrial appeals judge may appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW and General Rule provisions GR 11, GR 11.1, and GR 11.2.

(2) The provisions of General Rule 11.3 regarding telephonic interpretation shall not apply to the board's use of interpreters.

(((~~2~~)) 3) The industrial appeals judge shall make a preliminary determination that an interpreter is able to accurately interpret all communication to and from the impaired

or non-English-speaking person and that the interpreter is impartial. The interpreter's ability to accurately interpret all communications shall be based upon either (a) certification by the office of the administrator of the courts, or (b) the interpreter's education, certifications, experience, and the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding. The parties or their representatives may question the interpreter as to his or her qualifications or impartiality.

(((~~(3) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets when the communication is privileged by law. When a case is still pending in which an interpreter provided services, the interpreter shall not be examined as to any information the interpreter obtained, without the written consent of the parties to the communication.~~)))

(4) The board of industrial insurance appeals will pay interpreter fees and expenses when the industrial appeals judge has determined the need for interpretive services as set forth in subsection 1. When a party or person for which interpretive services were requested fails to appear at the proceeding, the requesting party or the party's representative may be required to bear the expense of providing the interpreter.

AMENDATORY SECTION (Amending WSR 04-22-047, filed 10/28/04, effective 11/28/04)

WAC 263-12-01501 Communications and filing with the board. (1) **Communications with the board.**

(a) **Where to file.** All written communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions, briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(b) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, or by telephone facsimile.

(i) **Filing personally.** The filing of a written communication with the board personally is perfected by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(ii) **Filing by mail.** The filing of a written communication with the board is perfected by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(iii) **Filing by telephone facsimile.**

(A) The filing of a written communication with the board by telephone facsimile is perfected when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment ((~~in Olympia~~)). All facsimile communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions, briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(B) The hours of operation of the board's telephone facsimile equipment are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. If a transmission of a written communication commences after these hours of operation the written communication shall be deemed filed on the next succeeding business day.

(((~~B~~)) C) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission.

(((~~C~~)) D) No written communication should exceed fifteen pages in length, exclusive of the cover page required by this rule.

(((~~D~~)) E) The party attempting to file the written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(((~~E~~)) F) The board may require a party to file an original of any document previously filed by telephone facsimile.

(iv) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's internet site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Otherwise the notice of appeal is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board must notify the filing party of the rejection.

(c) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(d) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number which was assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demon-

strate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

April 19, 2006
Robert W. Gore
Assistant Director

WSR 06-09-097
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 19, 2006, 11:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-037.

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 16-403 WAC, Standards for apples marketed within the state of Washington.

Hearing Location(s): WSU Tree Fruit Research Center, 1100 North Western Avenue, Wenatchee, WA, on May 23, 2006, at 10:00 a.m.; and at the WSDA Yakima Office, Second Floor Conference Room, 21 North First Avenue, Yakima, WA, on May 24, 2006, at 10:00 a.m.

Date of Intended Adoption: June 7, 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 24, 2006.

Assistance for Persons with Disabilities: Contact the WSDA receptionist by May 17, 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: WSDA proposes to (1) update specific areas of the standards for apples marketed within the state of Washington for consistency and continuity with changes in the United States apple grades; and (2) exclude "smooth net-like russet" as a defect for Fuji apples in the Washington state standards.

Reasons Supporting Proposal: These proposed amendments are necessary in order to bring the Washington state grade standards equal to or higher than the existing United States grading standards for apples. In addition, the industry has determined that smooth net-like russeting is indicative of the Fuji variety and should not be considered as a defect.

Statutory Authority for Adoption: Chapter 15.17 WAC, Standards of grades and packs; chapter 34.05 WAC, Administrative Procedure Act.

Statute Being Implemented: Chapter 15.17 WAC, Standards of grades and packs.

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

Name of Proponent: The Washington State Horticultural Association (WSHA), grade and pack committee, 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 these rule amendments.

AMENDATORY SECTION (Amending Order 5033, filed 3/23/94, effective 4/23/94)

WAC 16-403-145 Red, partial red or blushed varieties—Washington extra fancy. Washington extra fancy consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, ((~~carefully hand picked,~~)) clean, fairly well formed; free from decay, internal browning, internal breakdown, scald, scab, ((~~bitter pit, Jonathan spot,~~)) freezing injury, visible watercore, and broken skins and bruises except those which are slight and incident to proper handling and packing. The apples are also free from injury caused by smooth net-like russeting, sunburn or spray-burn, limb rubs, hail, drought spots, scars, disease, insects, or other means; and free from damage by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, Jonathan spot, bitter pit and free from damage by invisible watercore after January 31st of the year following the year of production: Provided, That smooth net-like russeting and/or invisible watercore shall not be a quality factor of Fuji variety at any time of the year. Each apple of this grade has the amount of color specified in WAC 16-403-155 for the variety.

AMENDATORY SECTION (Amending Order 5033, filed 3/23/94, effective 4/23/94)

WAC 16-403-150 Red, partial red or blushed varieties—Washington fancy. Washington fancy consists of apples of one variety (except when more than one variety or commodity is printed on the container) which are mature but not overripe, ((~~carefully hand picked,~~)) clean, fairly well formed; free from decay, internal browning, internal breakdown, ((~~bitter pit, Jonathan spot,~~)) scald, freezing injury, visible watercore, and broken skins and bruises, except those which are incident to proper handling and packing. The apples are also free from damage caused by russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, Jonathan spot, bitter pit, disease, insects, invisible watercore after January 31st of the year following the year of production, or damage by other means: Provided, That smooth net-like russeting and/or invisible watercore shall not be a quality factor of Fuji variety at any time of the year. Each apple of this grade has the amount of color specified in WAC 16-403-155 for the variety.

AMENDATORY SECTION (Amending WSR 92-15-056, filed 7/13/92, effective 8/13/92)

WAC 16-403-160 Green or yellow varieties—Washington extra fancy. Washington extra fancy consists of apples of one variety (except when more than one variety or commodity is printed on the container) which are mature but

not overripe, ((~~carefully hand picked,~~)) clean, fairly well formed; free from decay, internal browning, internal breakdown, scald, scab, ((~~bitter pit, Jonathan spot,~~)) freezing injury, visible watercore, broken skins and bruises except those which are slight and incident to proper handling and packing. The apples are also free from slightly rough or rough russeting, provided, russeting other than rough or barklike russeting materially affecting the appearance of the apple shall be permitted in the stem cavity or calyx basin if it cannot be seen when the apple is placed stem end or calyx end down on a flat surface. The apples are also free from injury caused by smooth net-like russeting, smooth solid russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, stem or calyx cracks, or other means; and free from damage by Jonathan spot, bitter pit and by invisible watercore after January 31st of the year following the year of production. Each apple of this grade has the amount of color specified in WAC 16-403-175 for the variety.

AMENDATORY SECTION (Amending Order 1374, filed 7/26/74, effective 9/1/74)

WAC 16-403-165 Green or yellow varieties—Washington fancy. Washington fancy consists of apples of one variety (except when more than one variety or commodity is printed on the container) which are mature but not overripe, ((~~carefully hand picked,~~)) clean, fairly well formed; free from decay, internal browning, internal breakdown, ((~~bitter pit, Jonathan spot,~~)) scald, freezing injury, visible watercore, and broken skins and bruises except those which are incident to proper handling and packing. The apples are also free from damage caused by russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, Jonathan spot, bitter pit, disease, insects, invisible watercore after January 31st of the year following the year of production, or damage by other means. Each apple of this grade has the amount of color specified in WAC 16-403-175 for the variety.

AMENDATORY SECTION (Amending Order 1635, filed 6/27/79)

WAC 16-403-170 Green or yellow varieties—Washington C grade. The requirements of this grade are the same as for Washington fancy except for color, russeting and invisible watercore. Apples of this grade are free from excessive damage caused by russeting which means that apples meet the russeting requirements for Washington fancy as defined under the definitions of "damage by russeting," except the aggregate area of an apple which may be covered by smooth net-like russeting shall not exceed 25 percent; and the aggregate area of an apple which may be covered by smooth solid russeting shall not exceed 10 percent: Provided, That in the case of the Yellow Newtown((~~,~~)), Granny Smith or similar varieties the aggregate area of an apple which may be covered with smooth solid russeting shall not exceed 20 percent; and the aggregate area of an apple which may be covered with excessively rough or barklike russeting or limb rubs shall not exceed the area of a circle three-fourths of an inch in diameter. Each apple of this grade has the amount of color specified in WAC 16-403-175 for the variety. There is no requirement in this grade pertaining to invisible watercore.

AMENDATORY SECTION (Amending WSR 02-12-011, filed 5/23/02, effective 8/1/02)

WAC 16-403-190 Tolerances. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances are provided as specified:

(1) Defects: Washington extra fancy, Washington fancy and Washington C grade.

Ten percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged, including therein not more than one percent for apples affected by decay or internal breakdown.

(2) When applying the foregoing tolerances to combination grades, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the percent of apples of the higher grade required in the combination.

Combinations requiring 80 percent of the higher grade for the lot shall have not less than 65 percent of the higher grade in individual samples.

Combinations requiring 50 percent of the higher grade for the lot shall have not less than 40 percent of the higher grade in individual samples.

(3) Size. When size is designated by the numerical count for a container, not more than 5 percent of the apples in the lot may vary more than ((~~1/4~~)) 1/2 inch in diameter. When size is designated by minimum or maximum diameter or weight, not more than 5 percent of the apples in any lot may be smaller than the designated minimum and not more than 10 percent may be larger than the designated maximum.

(4) Firmness. Not more than ten percent of the apples in any lot of Red Delicious, Delicious, Golden Delicious, Jonagold, and Gala varieties shall fail to meet the firmness requirements as defined in WAC 16-403-142.

AMENDATORY SECTION (Amending Order 1982, filed 7/6/88, effective 9/1/88)

WAC 16-403-195 Application of tolerances. The contents of individual samples in the lot, are subject to the following limitations: Provided, That the averages for the entire lot are within the tolerances specified for the grade.

Packages which contain more than 10 pounds:

Samples shall have not more than one and one-half times a specified tolerance of 10 percent or more and not more than double a tolerance of less than 10 percent, except that at least one apple which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any sample.

Packages which contain 10 pounds or less:

((~~Not over 10 percent of the samples~~)) No packages may have more than three times the tolerance specified, except that at least ((~~one~~)) three defective apples may be permitted in any ((~~sample~~)) package: Provided, That not more than ((~~one~~)) three apples or more than ((~~6~~)) 18 percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown.

AMENDATORY SECTION (Amending Order 1374, filed 7/26/74, effective 9/1/74)

WAC 16-403-215 Packing requirements. (1) Apples tray packed or cell packed in cartons shall be arranged according to approved and recognized methods. Packs shall be at least fairly tight[a] or fairly well filled[b].

(2) Closed cartons containing apples not tray or cell packed shall be fairly well filled[b] or the pack shall be sufficiently tight to prevent any appreciable movement of the apples.

(3) Apples on the shown face of any container shall be reasonably representative in size, color and quality of the contents.

(4) Tolerances: In order to allow for variations incident to proper packing, not more than 10 percent of the containers in any lot may fail to meet these requirements.

[a] - "Fairly tight" means that apples are of the proper size for molds or cell compartments in which they are packed and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. ((~~The top layer of apples, or any pad or space filler over the top layer of apples shall be not more than 3/4 inch below the top edge of the carton.~~))

[b] - "Fairly well filled" means that the net weight of apples in containers ranging from 2,100 to 2,900 cubic inch capacity is not less than 38 pounds for Jonathan, McIntosh and Golden Delicious varieties and not less than 40 pounds for all other varieties.

AMENDATORY SECTION (Amending WSR 01-12-079, filed 6/5/01, effective 7/6/01)

WAC 16-403-220 Marking requirements—Open or closed containers. (1) The containers shall bear the correct name of the variety or ((~~"variety unknown,"~~)) when more than one variety or commodity is in the container, each variety and commodity must be shown, the name of the grower, packer, or distributor, and his address, the grade, the numerical count or the minimum diameter of apples packed in a closed container, and the net contents either in terms of dry measure or weight. The minimum weight of individual apples within the container may be stated in lieu of, in combination with, or in addition to, minimum diameter as a declaration of size. All open containers and consumer packages must bear statement of net weight or volume.

(a) When the numerical count is not shown, the minimum diameter or minimum weight of individual apples shall be plainly stamped, stenciled, or otherwise marked on the container in terms of whole inches, or whole inches and not less than eight inch fractions thereof or in terms of whole grams.

(b) When used in combination with minimum diameter as a size designation, the following minimum fruit weights shall be used:

Red Delicious		Golden Delicious	
2 1/8 in. or 65	grams	63	grams
2 1/4 in. or 75	grams	70	grams
2 3/8 in. or 84	grams	82	grams
2 1/2 in. or 100	grams	95	grams
2 5/8 in. or 115	grams	109	grams
2 3/4 in. or 139	grams	134	grams

(c) The word "minimum," or its abbreviation, when following a diameter size or weight size marking, means that the apples are of the size marked or larger.

(2) Over-wrapped consumer units may be marked with count, if all specimens can be counted.

(3) Any of these marks may be placed on either the end or side of the container. (California requires end markings.)

(4) When containers are marked as to number, each container shall contain the correct number of apples designated by the markings.

(5) Grade markings on consumer-type packages must be at least one-fourth inch in height.

(6) Apples which were produced outside of the state of Washington and which are graded, packed, or repacked in the state of Washington, shall be correctly labeled as to the state or country of origin, e.g., "Product of Oregon," "Grown in Oregon," "Produced in Canada."

Such marking shall be placed on the same end or side panel of the container as other markings related to grade, variety, net contents, and name and address of the grower, packer, or distributor, and shall be of similar print size. Consumer type packages shall not be required to bear a statement as to origin when such marking has been placed on the master shipping container.

(7) Containers shall be marked with the harvest year beginning on October 1 of each year and be applied only to apples harvested in the previous year; that this marking shall occur at the time of shipment; and be displayed on the principal display panel with letters of a minimum of one-half inch in height.

AMENDATORY SECTION (Amending Order 1374, filed 7/26/74, effective 9/1/74)

WAC 16-403-270 Damage. (1) "Damage" means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects shall be considered as damage:

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether or not an apple is damaged by russeting, except that excessively rough or barklike russeting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russeting outside of the stem cavity or calyx basin shall be considered as damage:

(i) Russeting which is excessively rough or rough on green and yellow varieties.

(ii) Smooth net-like russeting, when an aggregate area of more than 15 percent of the surface is covered, and the color of the russeting shows no very pronounced contrast with the

background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the above amount permitted.

(iii) Smooth solid russeting when an aggregate area of more than 5 percent of the surface is covered and the pattern and color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russeting when the appearance is affected to a greater extent than the above amount permitted.

(iv) Slightly rough russeting which covers an aggregate area of more than one-half inch.

(v) Rough russeting in the red and partial red varieties which covers an aggregate area of more than one-fourth inch in diameter.

(b) Sunburn or sprayburn which has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russeting.

(c) Limb rubs which affect a total area of more than one-half inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of damage by russeting.

(d) Hail marks, drought spots, other similar depressions or scars:

(i) When any unhealed mark is present;

(ii) When any surface indentation exceeds one-eighth inch in depth;

(iii) When the skin has not been broken and the aggregate affected area exceeds one-half inch in diameter; or

(iv) When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth inch in diameter.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-fourth inch.

(f) Invisible watercore existing around the core and extending to watercore in the vascular bundles; or surrounding the vascular bundles when the affected areas surrounding three or more vascular bundles meet or coalesce; or existing in more than slight degree outside the circular area formed by the vascular bundles.

(g) Disease:

(i) Scab spots which affect a total area of more than one-fourth inch in diameter.

(ii) Cedar rust infection which affects a total area of more than one-fourth inch in diameter.

(iii) Sooty blotch or fly speck which is thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(iv) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(v) Bitter pit or Jonathan spot when one or more spots affects the surface of the apple.

(h) Insects:

(i) Any healed sting or healed stings which affect a total area of more than three-sixteenths inch in diameter including any encircling discolored rings.

(ii) Worm holes.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-403-255	Carefully hand picked.

AMENDATORY SECTION (Amending Order 1982, filed 7/6/88, effective 9/1/88)

WAC 16-403-140 Washington state standards for apples. Washington state standard apple grades for extra fancy and fancy shall be equivalent to or better than the U.S. standards for grades of apples, except the Fuji variety, effective September 1, 1964, as amended October 1, 1966, July 25, 1972, and March 25, 1976, for U.S. extra fancy and U.S. fancy. Apples meeting the foregoing grades may be marked either with the proper Washington or U.S. grade, or both. In no case shall the grade and condition requirements thereof be interpreted as less than those standards required by said U.S. standards for grades of apples for the comparable Washington grade and variety.

WSR 06-09-098
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 19, 2006, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-110.

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 16-414 WAC, Washington standards for cherries and chapter 16-461 WAC, Inspection requirements for fruits and vegetables.

Hearing Location(s): WSU Tree Fruit Research Center, 1100 North Western Avenue, Wenatchee, WA, on May 23, 2006, at 1:00 a.m.; and at the WSDA Yakima Office, Second Floor Conference Room, 21 North First Avenue, Yakima, WA, on May 24, 2006, at 1:00 p.m.

Date of Intended Adoption: June 7, 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 24, 2006.

Assistance for Persons with Disabilities: Contact the WSDA receptionist by May 17, 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: Amend WAC 16-414-005 by including Rainier cherries or other light sweet cherry varieties under the "Mature" soluble solids requirements; WAC 16-414-011 thereby including size requirements for the Rainier cherry or other light sweet cherry varieties; and, amend WAC 16-461-010 which will require Rainier or other light sweet cherry varieties to meet WAC 16-414-

005 "Mature" and WAC 16-414-011(3) size requirements. Eliminate the container requirements (WAC 16-414-085) for shipping sweet cherries.

Reasons Supporting Proposal: These amendments will bring the Rainier cherry and other light sweet cherry varieties under state requirements for soluble solids "Mature" and establish a size requirement which is currently required under Federal Marketing Order 923. Removing the container requirements will allow growers/packers and shippers to pack and market various types of containers that may be requested or required by buyers and the consuming public.

Statutory Authority for Adoption: Chapter 15.17 WAC, Standards of grades and packs; chapter 34.05 WAC, Administrative Procedure Act.

Statute Being Implemented: Chapter 15.17 WAC, Standards of grades and packs.

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

Name of Proponent: The Washington State Horticultural Association (WSHA), grade and pack committee, 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 these rule amendments.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

April 19, 2006
Robert W. Gore
Assistant Director

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-005 What definitions are important to this chapter? "Clean" means cherries are practically free from dirt, dust, spray residue, or other foreign material. For example, clean means the product is practically free from leaves, fruit spurs, bark, twigs, dirt or foreign material.

"Condition defects" means defects that may develop or change during shipment or storage. Condition defects include, but are not limited to, decayed or soft cherries and such other factors as pitting, shriveling, sunken areas, brown discoloration and bruising that, because of its location appears to have occurred after packing.

"Damage" means any injury or specific defect described in WAC 16-414-045 or any equally objectionable variation of those defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible quality or marketing quality of the fruit.

"Department" means the Washington state department of agriculture (WSDA).

"Diameter" means the greatest dimension measured at right angles to a line from the stem to the blossom end of the cherry.

"Director" means the director of the Washington state department of agriculture or the director's designee.

"Face packed" means the cherries in the top layer of any container are placed so the stem ends are pointing downward toward the bottom of the container.

"Fairly well colored" means that at least ninety-five percent of the surface of the cherry shows characteristic color for mature cherries of the variety.

"Firm" means the cherries:

(1) Possess a firm, fleshy texture;

(2) Retain their approximate original shape;

(3) Are not shriveled; and

(4) Do not show more than slight collapsed areas of flesh.

"Mature" means cherries have reached the stage of growth that will insure the proper completion of the ripening process. Rainier cherries or other varieties of "light colored sweet cherries" shall meet a minimum of seventeen percent soluble solids as determined from a composite sample by refractometer prior to packing, at time of packing, or at time of shipment; provided that individual lots shall not be combined with other lots to meet soluble solids requirements.

"Permanent defects" means defects that are not subject to change during shipping or storage. Permanent defects include, but are not limited to, factors of shape, scarring, skin breaks, injury caused by hail or insects, and mechanical injury that, because of its location, appears to have occurred before shipment.

"Off-size" means a cherry whose diameter fails to meet a designated size when measured at right angles to a line from its stem to its blossom end.

"Serious damage" means any specific defect described in WAC 16-414-065 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects that seriously detracts from the appearance, edible quality or marketing quality of cherries.

"Shipping point" means:

(1) The point of origin of the shipment in the producing area or at the port of loading; or

(2) The port of entry into the United States in the case of shipments from outside the continental United States.

"Similar varietal characteristics" means the cherries in any container are similar in color and shape.

"Well formed" means a cherry has the normal shape characteristic of the variety. Mature well-developed doubles are considered well formed if the halves are approximately evenly formed with a variation of no more than 2/64 of an inch.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-011 What size requirements apply to sweet cherries? (1) The minimum diameter of each cherry must be at least 54/64 inch.

(2) The maximum diameter of the cherries in any lot may be specified according to the facts.

(3) For the Rainier variety and similar varieties commonly referred to as "light colored sweet cherries," at least ninety percent, by count, of the cherries in any lot shall measure not less than 61/64 inch in diameter and not more than

five percent, by count, may be less than 57/64 inch in diameter.

(4) When containers of cherries are marked with a row count/row size designation, the row count/row size marked must comply with the corresponding minimum diameter size as shown in the following table:

If containers of cherries are marked with the following row count/row size designations:	Then minimum diameter size of the cherries in inches must be:
8	84/64
8 1/2	79/64
9	75/64
9 1/2	71/64
10	67/64
10 1/2	64/64
11	61/64
11 1/2	57/64
12	54/64

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-414-085	What requirements apply to containers used to ship sweet cherries?

AMENDATORY SECTION (Amending WSR 99-14-036, filed 6/29/99, effective 7/30/99)

WAC 16-461-010 Inspection certificate and/or permit required. (1) No person shall ship, transport, accept for shipment, or accept delivery of, any commercial lot of the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the plant services division of the department of agriculture allowing such shipment, movement or delivery:

(a) Apricots - in closed or open containers for fresh market.

(b) Italian prunes - in closed or open containers for fresh market.

(c) Peaches - in closed or open containers for fresh market.

(d) Cherries - in closed or open containers for fresh market: Provided, That no permit shall be issued on cherries infested with live cherry fruit fly larvae.

(e) Apples - in closed or open containers for fresh market: Provided, That apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.

Apples of the Red Delicious and Delicious varieties must be certified as to quality and condition and must meet all the requirements of chapter 16-403 WAC, Standards for Apples Marketed Within Washington. Apples of the Red Delicious and Delicious varieties not allowed to enter channels of commerce within twenty-one days following the original date of inspection as indicated by a state lot stamp, will require recertification for meeting the minimum firmness requirement as stated in WAC 16-403-142.

(f) Pears - in closed or open containers for fresh market: Provided, That pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.

(g) Asparagus - in closed or open containers for fresh market: Provided, That asparagus may be shipped or transported if accompanied by certificates of compliance issued by the shipper or packer of the asparagus, having the approval of the director to issue the certificates of compliance.

(h) Apples in containers or bulk, for processing: Provided, That apples for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance: Provided further, That apples for processing entering intrastate commerce shall not require a permit.

(i) Pears in containers or bulk, for processing: Provided, That pears for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance: Provided further, That pears for processing entering intrastate commerce shall not require a permit.

(2) Exemptions - fruits and vegetables listed in WAC 16-461-010 shall be exempted from requirements for inspection and issuance of a certificate or permit:

(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labelling, or processing; prior to entering commercial channels for resale;

(b) When transportation is between horticultural facilities other than those facilities which sell at wholesale or retail level, for the purposes set forth in (a) of this subsection;

(c) When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance, provided that such exempt sales by the producer within a farmer's market shall not be restricted to the zone of production;

(d) When daily quantities do not exceed one hundred pounds net weight of dark or light sweet varieties of sweet cherries which are sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

(3)(a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting such authority, on such terms and conditions as he may deem appropriate. The authority shall be limited to

the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.

(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so: Provided, That the apples, pears, cherries, and asparagus about to be shipped or transported are in full compliance with the requirements of chapter 15.17 RCW, regulations adopted thereunder and administrative directives of the director: Provided further, That apricots, cherries, peaches, prunes, or pears about to be shipped or transported are in full compliance with an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal-state lot identification;

Cherries of the dark sweet varieties shall be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Cherries. Cherries of the Rainier variety or other varieties of "light colored sweet cherries" shall meet only requirements of WAC 16-414-005 "mature" and WAC 16-414-011(3) size requirement.

(c) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3) and that cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3)(b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW or rules adopted thereunder, or for violation of the terms of the certificate of compliance agreement. The period of any suspension shall be determined by the director and shall be commensurate with the seriousness of the violation.

(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director shall be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance shall be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture at the regular base fee equivalent to that charged by the director for a shipping permit, for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.

Reviser's note: The spelling 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.