

WSR 06-12-029
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed May 31, 2006, 9:05 a.m.]

Title of Rule and Other Identifying Information: Amending WAC 458-30-330 Open space plan and public benefit rating system—Authorization and procedure to establish—Adoption—Notice to owner—Valuation; and repealing WAC 458-30-335 Rating system—Procedure to establish and 458-30-340 Rating system—Adoption—Notice to owner—Loss of classification.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kim M. Qually, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail kimq@dor.wa.gov, AND RECEIVED BY August 7, 2006. Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/laws/RuleMaking/default.aspx>.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of WAC 458-30-330 is to explain the responsibility granted to county legislative authorities relating to the creation of an open space plan, public rating system, and assessed valuation schedule. The revised WAC 458-30-330 will incorporate the contents of WAC 458-30-335 and 458-30-340. The revised rule will explain the authorization given to county legislative authorities in regard to land classified as open space, the process required and used to enact an open space plan and public benefit rating system, and the effect the public benefit rating system has on the assessed value of classified open space land.

Reasons Supporting Proposal: During the 2005 legislative session, RCW 84.34.055 was amended by the legislature. This statute enables a county legislative authority to establish open space priorities and to adopt a public benefit rating system that is used to value land classified as open space. The statutory changes become operative July 1, 2006. In reviewing the amended statute during the rule-drafting process, the department determined that all information derived from RCW 84.34.055, which is currently set forth in three separate rules, should be consolidated into one rule, WAC 458-30-330. This consolidated rule will provide all information regarding an open space plan and the public benefit rating system used in the open space taxation program, chapter 84.34 RCW.

Statutory Authority for Adoption: RCW 84.34.141.

Statute Being Implemented: RCW 84.34.055.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Kim M. Qually, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6113; Implementation and Enforcement: Peri Maxey, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

May 30, 2006

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-330 Open space plan and public benefit rating system—Authorization and procedure to establish—Adoption—Notice to owner—Valuation. (1) **Introduction.** ~~((This section sets forth the general authority that has been conferred on a county legislative authority to establish an open space plan and a public benefit rating system under RCW 84.34.055.~~

~~(2) General authorization. The county legislative authority may direct the county planning commission to set open space priorities and to adopt, following a public hearing, an open space plan and a public benefit rating system for the county. The open space plan shall include, but is not limited to, the following:~~

~~(a) Criteria to determine eligibility of land;~~

~~(b) A process for establishing a public benefit rating system; and~~

~~(c) An assessed valuation schedule that shall be developed by the assessor and shall be a percentage of true and fair value based on the public benefit rating system.~~

~~(3) Public hearing required. At least one public hearing must be held before an open space plan, a public benefit rating system, or an assessed valuation schedule may be approved by the county legislative authority.)) RCW 84.34.055 enables a county legislative authority to establish an open space plan, public benefit rating system, and valuation schedule for land classified as open space. This section explains the factors that must be considered when such a plan and rating system are established, includes a nonexclusive list of recognized sources used in determining open space priorities, and outlines the actions required after and effects of the approval of an open space plan and public benefit rating system.~~

~~(2) General authorization. The county legislative authority may direct the county planning commission to set open space priorities and to adopt, following a public hearing, an open space plan and a public benefit rating system (rating system) for the county. As used in this section, "planning commission" means the county office, commission, or department that is responsible for making planning decisions at the county level. The open space plan must include, but is not limited to, the following:~~

~~(a) Criteria to determine the eligibility of land;~~

~~(b) A process to establish a rating system; and~~

~~(c) An assessed valuation schedule developed by the assessor. This schedule is a percentage reduction in true and fair value based on the rating system.~~

(3) A public hearing is required. At least one public hearing must be held before an open space plan, a public benefit rating system, or an assessed valuation schedule may be approved by the county legislative authority.

(4) What criteria are used to determine eligibility? Within the rating system the county legislative authority must include the criteria and elements contained in RCW 84.34.020 (1)(a). This authority, which approves or denies applications for the classification and reclassification of land as open space, must consider the criteria when it makes its determination.

(a) The rating system must provide a method to rank or rate classified open space land.

(b) The legislative authority must give priority consideration to lands used for buffers planted with or primarily containing native vegetation no later than July 1, 2006, unless buffers of this nature already receive priority consideration in an existing open space plan, rating system, and assessed valuation schedule.

(c) "Priority consideration" as used in this section, may include, but is not limited to, establishing classification eligibility, maintenance criteria, or a rating system for buffers with native vegetation.

(5) How is an open space plan and rating system developed? The county planning commission must take all reasonable steps to determine open space priorities or use recognized sources for this purpose, or both.

(a) Recognized sources of open space priorities include, but are not limited to:

(i) The natural heritage data base;

(ii) The state office of historic preservation;

(iii) The interagency committee for outdoor recreation inventory of dry accretion beach and shoreline features;

(iv) The state, national, county, and/or state registers of historic places;

(v) The shoreline master program; or

(vi) Studies conducted by the parks and recreation commission and by the departments of fisheries, natural resources, and wildlife.

(b) Particular features and sites may be verified by an outside expert in the field and approved by the appropriate state or local agency. This verification is to be sent to the county legislative authority for final approval for inclusion in the open space plan.

(6) How is an owner of classified open space land notified about the adoption of an open space plan, rating system, and valuation schedule? Can an owner choose not to participate and request removal from the current use program? Once the county legislative authority adopts an open space plan, rating system, and assessed valuation schedule, the assessor must revalue all land classified as open space using the adopted rating system and valuation schedule. The assessor must then notify all owners of such land of the new assessed value of their land in the manner provided in RCW 84.40.045.

(a) Within thirty days of receipt of this notice of the new assessed value, the owner may request that the parcel(s) of land be removed from the open space classification without payment of additional tax, interest, or penalty.

(b) If previously classified open space land does not qualify for classification under the newly adopted open space plan and rating system, the assessor is not to remove the land from the open space classification. This land will retain its status as classified open space land. The assessor will determine the value of this land using the new priority rating system and valuation schedule.

(7) How does a rating system affect assessed value of classified open space land? The assessed value of properties classified as open space is determined by a formula using a priority rating system typically consisting of "points." A county generally establishes a list of priority resources based on the definition of open space in RCW 84.34.020(1); these are also known as "open space priorities." Each priority resource is assigned a specific point or number of points. The more priority points the land is entitled to, the larger the reduction in true and fair value.

(a) A parcel of classified open space land may contain a number of priority resources. In such cases, the open space plan and rating system may allow the parcel to receive multiple priority points based on the number of priority resources. This would entitle the parcel to a larger reduction in assessed value.

(b) The priority rating system takes into consideration established priority resources, public access, and/or conservation or historic easements.

(c) Example. Let's assume a wetland was designated as a priority resource in the adopted open space plan. A wetland entitles the land to receive three priority points. Each point may represent a ten percent reduction in assessed value (one point equals a ten percent reduction, two points equals a twenty percent reduction, and so on). A parcel with a priority rating of three points would be entitled to a thirty percent reduction in assessed value.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|--|
| WAC 458-30-335 | Rating system—Procedure to establish. |
| WAC 458-30-340 | Rating system—Adoption—Notice to owner—Loss of classification. |

WSR 06-12-060
EXPEDITED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed June 2, 2006, 2:52 p.m.]

Title of Rule and Other Identifying Information: Sport halibut rules.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL

ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Fronda Woods, Department of Fish and Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091, AND RECEIVED BY August 7, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Requires halibut landings to be made within catch area from which the halibut were taken.

Reasons Supporting Proposal: Halibut are managed under federal rules that mirror recommendations from the International Pacific Halibut Commission. The federal rule provides that all sport fishing for halibut is managed on a "port of landing" basis, where halibut landed into a port count towards the quota for the area in which the port is located. This state rule will conform with the federal rule.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

Rule is necessary because of federal law, 50 C.F.R. Part 300 (Docket No. 060111007-6053-02; I.D. 010906A) RIN 0648-AT56.

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Phil Anderson, 1111 Washington Street, Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

June 2, 2006

Evan Jacoby
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-130, filed 6/24/05, effective 7/25/05)

WAC 220-56-255 Halibut—Seasons—Daily and possession limits. (1) It is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) Catch Record Card Area 1: Open May 1 through September 30. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish if the vessel has brought halibut into port or landed halibut.

(b) Catch Record Card Area 2:

(i) Those waters south of the Queets River, north of 47° and east of 124°40'W - Open May 1 through September 30.

(ii) All other waters in Area 2 - Open May 1 through September 30, except closed to fishing for halibut 12:01 a.m. of each Friday through 11:59 p.m. of each Saturday.

(c) Catch Record Card Areas 3 and 4 - Open May 10 through September 30, except closed to fishing for halibut 12:01 a.m. of each Sunday through 11:59 p.m. of each Monday. The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within an eastward facing "C" shaped closed area defined as: Beginning at 48°18'N. lat.; 125°18'W. long., thence to 48°18'N. lat.; 124°59'W. long., thence to 48°11'N. lat.; 124°59'W. long., thence to 48°11'N. lat.; 125°11'W. long., thence to 48°04'N. lat.; 125°11'W. long., thence to 48°04'N. lat.; 124°59'W. long., thence to 48°00'N. lat.; 124°59'W. long., thence to 48°00'N. lat.; 125°18'W. long., thence to the point of origin.

(d) Catch Record Card Area 5 - Open May 26 through July 31, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(e) Catch Record Card Areas 6 through 13 - Open April 14 through June 20, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(2) Daily limit one halibut taken from state and offshore waters, except Canadian waters. See WAC 220-56-156 for limits on Canadian-origin halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit. See WAC 220-56-156 for rules on Canadian-origin halibut possession.

(4) It is unlawful to land halibut outside the catch area in which the halibut were taken, except for Canadian-origin halibut. See WAC 220-56-156 for rules on landing Canadian-origin halibut.

WSR 06-12-066

EXPEDITED RULES

UNIVERSITY OF WASHINGTON

[Filed June 5, 2006, 10:41 a.m.]

Title of Rule and Other Identifying Information: Housekeeping amendments to Title 478 WAC, rules that update citations of the state's recodified public records laws.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rebecca Goodwin Dear-dorff, University of Washington, Rules Coordination Office, Box 355509, Seattle, WA 98195, e-mail rules@u.washington.edu, fax (206) 221-6917, AND RECEIVED BY August 9, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed housekeeping amendments are intended to update various citations of the state's public records laws within the University of Washington's Title 478 WAC rules. Chapter 42.17 RCW will be recodified as chapter 42.56 RCW, Public records, effective July 1, 2006. Amended citations appear in

WAC 478-04-010, 478-250-010, 478-250-060, 478-276-010, 478-276-060, 478-276-080, 478-276-100, and 478-276-110.

Reasons Supporting Proposal: Executive Order 97-02 encourages state agencies to update rules for accuracy.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: RCW 28B.20.130 and chapter 274, Laws of 2005.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting: Rebecca Goodwin Dearnorff, Director of Rules Coordination, 4046 12th Avenue N.E., Seattle, WA, (206) 543-9219; Implementation and Enforcement: Eliza Saunders, Director of Public Records and Open Public Meetings, 4311 11th Avenue N.E., Suite 360, Seattle, WA, (206) 543-9180.

June 1, 2006

Rebecca Goodwin Dearnorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 90-15-005, filed 7/6/90, effective 8/6/90)

WAC 478-04-010 Purpose. The purpose of this chapter is to establish rules implementing RCW 34.05.220 (1)(b) and ~~((42-17-250))~~ 42.56.040 (1)(a) and (b).

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-250-010 Purpose. This chapter is enacted by the board of regents of the University of Washington in compliance with chapter ~~((42-17))~~ 42.56 RCW, "~~(Disclosure—Campaign finances—Lobbying—)~~ Public records"; and chapter 34.05 RCW, "Administrative Procedure Act"; and in particular with RCW ~~((42-17-260))~~ 42.56.070 and 34.05.220.

AMENDATORY SECTION (Amending WSR 05-08-064, filed 3/31/05, effective 5/1/05)

WAC 478-250-060 Rule indexing. (1) Content. The university rules coordination office shall maintain an index of final orders, declaratory orders, interpretive statements, and policy statements, as defined by RCW ~~((42-17-260))~~ 42.56.070(5), issued after June 30, 1990, by the board of regents of the University of Washington, the president of the University of Washington, or their designees.

(2) Form. The index shall reference final orders, declaratory orders, interpretive statements, or policy statements by one or more of the following classifications: Date of implementation, organizational unit, or subject matter.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-276-010 Purpose. This chapter is enacted by the board of regents of the University of Washington in compliance with the provisions of chapter ~~((42-17))~~ 42.56 RCW, "~~(Disclosure—Campaign finances—Lobbying—Records—)~~ Public records";

~~and in particular with RCW 42.17.250 through 42.17.340 dealing with))~~ Public records."

AMENDATORY SECTION (Amending WSR 01-11-136, filed 5/23/01, effective 6/23/01)

WAC 478-276-060 Public records officer. For purposes of compliance with chapter ~~((42-17))~~ 42.56 RCW, the person designated as public records officer for the University of Washington is the director of public records and open public meetings. Duties for this individual shall include but not be limited to: The implementation of the university's rules and regulations regarding release of public records, coordinating the staff of the public records and open public meetings office in this regard, and generally coordinating compliance by the university with the public records disclosure requirements of chapter ~~((42-17))~~ 42.56 RCW. The person so designated shall be at the following location:

University of Washington
Public Records and Open Public Meetings Office
Visitors Information Center
4014 University Way N.E.
Seattle, WA 98105-6203

(for internal campus mail use: Box 355502).

AMENDATORY SECTION (Amending WSR 01-11-136, filed 5/23/01, effective 6/23/01)

WAC 478-276-080 Requests for public records. In accordance with requirements of chapter ~~((42-17))~~ 42.56 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records required to be disclosed by chapter ~~((42-17))~~ 42.56 RCW, may be inspected or copies of such records may be obtained, by members of the public upon compliance with the following procedures: All requests shall be directed to the director of public records and open public meetings at the address set forth in WAC 478-276-140. The request shall include the following information:

- (1) The name and address of the person requesting the records;
- (2) The date on which the request was made; and
- (3) The public record(s) requested.

AMENDATORY SECTION (Amending WSR 01-11-136, filed 5/23/01, effective 6/23/01)

WAC 478-276-100 Inspection of public records—Copying—Costs. (1) Public records of the University of Washington required to be disclosed by chapter ~~((42-17))~~ 42.56 RCW, shall be made available for inspection and copying by the public records and open public meetings office staff under the supervision of the director of public records and open public meetings. Arrangements for photocopying of documents in accordance with RCW ~~((42-17-300))~~ 42.56.210 shall be made by the university in such a way as to protect the records from damage or disorganization and to prevent excessive interference with other essential functions of the agency.

(2) No fee shall be charged for the inspection of public records. The university imposes a charge for providing copies of public records whether the copies are on paper or on other media such as, but not limited to, CDs, diskettes, audio or videotape; the university also charges for packaging, postage, and other charges as allowed by statute. Such charges shall not exceed the amount necessary to reimburse the university for actual costs as allowed by law.

(3) No person shall be provided a copy of a public record which has been copied by the university at the request of such person until and unless such person has tendered payment for the charge for providing such copying.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-276-110 Exemptions—Court protection.

(1) The University of Washington reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 478-276-080 is exempt under the provisions of chapter ~~((42.17))~~ 42.56 RCW.

(2) In addition, pursuant to chapter ~~((42.17))~~ 42.56 RCW, the University of Washington reserves the right to delete identifying details when it makes available or publishes any public record in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by RCW ~~((42.17-255))~~ 42.56.050.

(3) Responses by the University of Washington refusing, in whole or in part, inspection of any record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

(4) Pursuant to RCW ~~((42.17-330))~~ 42.56.540, the University of Washington reserves the right to seek to enjoin the examination of any specific record, the examination of which the university determines would clearly not be in the public interest and would substantially and irreparably damage any person or would substantially and irreparably damage vital governmental functions.

WSR 06-12-068
EXPEDITED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed June 5, 2006, 10:48 a.m.]

Title of Rule and Other Identifying Information: Commercial fishing rules.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING

AND THEY MUST BE SENT TO Fronda Woods, Department of Fish and Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091, AND RECEIVED BY August 7, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Corrects shrivner's errors caused by filing on [an] incorrect order typing service rule base. Makes no change in rules.

Reasons Supporting Proposal: Corrects filing error.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Phil Anderson, 1111 Washington Street, Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

June 5, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 06-08, filed 1/22/06, effective 2/22/06)

WAC 220-52-020 Clams—Commercial harvest. It shall be unlawful to take, dig for or possess clams except razor clams, cockles, borers or mussels taken for commercial purposes from the tidelands of the state of Washington except from registered aquaculture farms or from ~~((state-owned))~~ nonstate tidelands under ~~((contract with or permit from the department))~~ a nonstate lands commercial wild clam, mussel and oyster trial fishery permit.

AMENDATORY SECTION (Amending Order 05-275, filed 12/9/05, effective 1/9/06)

WAC 220-52-043 Commercial crab fishery—Additional gear and license use requirements. (1) **Commercial gear limited to pots and ring nets.** It shall be unlawful to take or fish for crabs for commercial purposes except with shellfish pots and ring nets.

(2) **Commercial gear escape rings and ports defined.** It shall be unlawful to use or operate any shellfish pot gear in the commercial Dungeness crab fishery unless such gear meets the following requirements:

(a) Pot gear must have not less than two escape rings or ports not less than 4-1/4 inches inside diameter.

(b) Escape rings or ports described above must be located in the upper half of the trap.

(3) ~~((Puget Sound))~~ **Commercial ~~((crab))~~ crab gear ~~((buoy tagging))~~ buoy tag requirements.**

(a) In ~~((coastal waters, each))~~ Puget Sound, all coastal waters each crab ~~((pot[s]))~~ pot must have ~~((the department-issued buoy tag))~~ a durable, nonbiodegradable tag permanently and legibly marked with the license owner's name or license number, and telephone number ~~((the department-issued buoy tag))~~ the department-issued buoy tag securely attached to the ~~((first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the~~

~~buoy tag must be attached to the end of that buoy, at the end away from the crab pot buoy line.}] [pot. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with law.}]~~ first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of that buoy, at the end away from the crab pot buoy line.

(b) In Puget Sound~~((f,))~~ all crab buoys must have ~~((the))~~ the buoy tag issued to the license owner by the department attached to the outermost end of the buoy line.

~~((e))~~ (c) If more than one buoy is attached to a pot, only one buoy tag is required.

(4) **Puget Sound - Description of lawful buoys.** All buoys attached to commercial crab gear in Puget Sound waters must consist of a durable material and remain floating on the water's surface when five pounds of weight is attached. It is unlawful to use bleach or antifreeze bottles or any other container as a float. All buoys fished under a single license must be marked in a uniform manner using one buoy brand number registered by the license holder with the department and be of identical color or color combinations. No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of thirty percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white, as the red and white colors are reserved for personal use crab gear as described in WAC 220-56-320 (1)(c).

(5) **Commercial crab license requirements.** In addition to, and separate from, all requirements in this chapter that govern the time, area, gear, and method for crab fishing, landing, possession, or delivery of crabs, no commercial crab fishing is allowed except when properly licensed. A person may take, fish for, land, or deliver crabs for commercial purposes in Washington or coastal waters only when the person has the license required by statute, or when the person is a properly designated alternative operator to a valid license. For Puget Sound, a person must have a "Dungeness crab - Puget Sound" fishery license provided by RCW 77.65.130. For coastal waters, such person must have a "Dungeness crab - Coastal" fishery license provided by RCW 77.65.130. To use ring nets instead of or in addition to pots, then the licensee must also have the "Crab ring net - Puget Sound" or "Crab ring net - non-Puget Sound" license in RCW 77.65.-130. Qualifications for the limited entry licenses, requirements for designating vessels, and use of alternate operators is provided by and controlled by chapters 77.65 and 77.70 RCW.

(6) **Maximum size for commercial crab pots.** It is unlawful to commercially fish a crab pot greater than thirteen cubic feet in volume used to fish for or take Dungeness crab from state or offshore waters.

(7) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any crab fishing.

WSR 06-12-106
EXPEDITED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed June 7, 2006, 9:19 a.m.]

Title of Rule and Other Identifying Information: WAC 180-16-241 Remote and necessary school plants—Purpose and authority; 180-16-242 Remote and necessary school plants—Criteria; 180-16-243 Remote and necessary school plants—Review committee; chapter 180-24 WAC, School district organization; and chapter 180-56 WAC, Secondary education.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO William T. Panos, Director, School Facilities and Organization, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, AND RECEIVED BY August 7, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The statutory authority to adopt rules governing determination of remote and necessary schools, the organization and reorganization of school districts (i.e., district boundaries), and the establishment in any nonhigh school district of any secondary program or any new grades in grades nine through twelve was transferred from the Washington state board of education (SBE) to the office of superintendent of public instruction (OSPI) by legislation passed during the 2006 legislative session (E2SHB 3098, sections 308, 322, 501 through 509).

The proposed amendatory changes to the WAC chapters referenced above serve only to indicate the transfer of authority from the SBE to the OSPI and will not result in any changes to the existing requirements under the amended chapters or chapters referenced therein.

Reasons Supporting Proposal: E2SHB 3098 (sections 308, 322, 325, 501-509).

Statutory Authority for Adoption: RCW 28A.305.130 (5), (10), 28A.315.015 (2)(e), 28A.315.175, 28A.315.195(4), 28A.315.205(3).

Statute Being Implemented: E2SHB 3098, (sections 308, 322, 325, 501-509).

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

Name of Proponent: Superintendent of public instruction, school facilities and organization, governmental.

Name of Agency Personnel Responsible for Drafting: Charles Schreck, Director, Office of Professional Practices, Office of Superintendent of Public Instruction, (360) 725-6130; Implementation: Marty Daybell, Deputy Superintendent, General Administration and Operations, Office of Superintendent of Public Instruction, (360) 725-6002; and

Enforcement: William T. Panos, Director, School Facilities and Organization, Office of Superintendent of Public Instruction, (360) 725-6261.

June 5, 2006
Dr. Terry Bergeson
Superintendent

AMENDATORY SECTION (Amending WSR 05-13-061, filed 6/10/05, effective 6/10/05)

WAC 180-16-241 Remote and necessary small school plants—Purpose and authority. (1) The purpose of WAC ~~((180-24-400 through 180-24-420))~~ 392-349-005 through 392-349-015 is to establish policies and procedures to govern the classification of small school plants as remote and necessary.

(2) The authority for WAC ~~((180-24-400 through 180-24-420))~~ 392-349-005 through 392-349-015 is the state Operating Appropriations Act which allocates funds to school districts for small school plants which have been judged by the ~~((state board of education))~~ superintendent of public instruction to be remote and necessary.

AMENDATORY SECTION (Amending WSR 05-13-061, filed 6/10/05, effective 6/10/05)

WAC 180-16-242 Remote and necessary small school plants—Criteria. (1) Decisions of the ~~((state board of education))~~ superintendent of public instruction on granting remote and necessary status to small school plants within school districts shall be based on a finding that granting remote and necessary status is necessary to assure reasonable provision of a basic education program to students, including related services, equipment, materials and supplies.

(2) In making the finding under subsection (1) of this section, the ~~((state board of education))~~ superintendent of public instruction shall consider, including but not limited to, the factors under (a) through ~~((g))~~ (e) of this subsection. No single factor or combination of factors necessarily warrants granting or denying remote and necessary status. However, it shall be the policy of the ~~((state board of education))~~ superintendent of public instruction to favor those requests which, in the ~~((board's))~~ superintendent of public instruction's judgment, meet the provisions of this section. "Favor" does not mean that the listed factors are necessarily exclusive. Additional factors and considerations may be included in a particular request. If there is a factual situation that falls outside the scope of all or a portion of the listed factors, the ~~((state board))~~ superintendent of public instruction may consider the facts and reasons the additional factors or considerations support the request.

(a) The student population to be served at the small school site, must meet the small school funding formula for remote and necessary school plants as provided in the Operating Appropriations Act. The grade span served at the small school site shall include the same levels for eligible students established by the district for other elementary, middle, or high schools of the district, and meet the educational needs of the population served by that small school plant.

(b) Existence of an intact, permanent community which is defined as a geographically site-specific, nontransient group of people. This factor must be met.

(c) Transportation: Travel time to another school in the district, or school in another district, is not less than sixty minutes one way, or international boundary crossing processing time is unpredictable or lengthy or both.

(d) Transportation: Student safety from a small school site in the school district to another school in the district, or school in another district, may be at risk due to the condition of roads or waterways, seasonal weather conditions, or topography.

(e) Operational efficiency: Nonavailability of age appropriate grade level or cooperative programs in other school facilities in the district, or in the next nearest district or districts, or other educational organizations approved or recognized by the ~~((state board of education or the))~~ superintendent of public instruction.

~~((3) At its discretion, the state board of education may use as guidance the applicable provisions of WAC 180-24-013, 180-24-016, and 180-24-017.))~~

AMENDATORY SECTION (Amending WSR 05-13-061, filed 6/10/05, effective 6/10/05)

WAC 180-16-243 Remote and necessary small school plants—Review committee. (1) There is hereby established by the ~~((state board of education))~~ superintendent of public instruction a remote and necessary review committee comprised of at least the following five members:

(a) One member of the state board of education selected by the president of the board;

(b) Two staff members from the office of the superintendent of public instruction, one who is knowledgeable about finance issues and one who is knowledgeable about curriculum issues, both selected by the state superintendent;

(c) One school director selected by the Washington State School Directors' Association;

(d) One school district administrator selected by the Washington Association of School Administrators;

(2) Vacancies on the review committee shall be filled by the person or organization responsible for appointments.

(3) At the ~~((state board of education's))~~ discretion of the superintendent of public instruction, other members may be added to the review committee.

(4) It is the responsibility of the review committee to receive and review all applications from school districts requesting the ~~((state board of education))~~ superintendent of public instruction to grant remote and necessary status to a small school plant located in the district. Following the review of applications, the review committee shall recommend to the ~~((state board))~~ superintendent of public instruction whether such designation should be granted. Recommendations of the review committee shall be advisory only. The final determination rests solely with the ~~((state board of education))~~ superintendent of public instruction.

(5) Every small school plant with remote and necessary status beginning 1996, shall be reviewed every four years by the review committee and the ~~((state board))~~ superintendent of public instruction. The review committee shall submit its

findings and recommendations to the ~~((state board))~~ superintendent of public instruction. The review committee may conduct the review on-site, with the number of members participating determined by the committee, or may conduct the review by other means as determined by the committee. The ~~((state board))~~ superintendent of public instruction shall provide to the fiscal committees of the legislature in January of odd-numbered years a list of remote and necessary small school plants.

(6) A small school plant shall lose its remote and necessary status if the number of students exceeds the enrollment requirements set forth in the state Operating Appropriations Act for three consecutive years. The loss of remote and necessary status shall take effect the immediate ensuing school year. If a small school site should lose its remote and necessary status, the local serving school district may continue to maintain and operate the school site. When the enrollment of such small school plant again meets the requirements of the state Operating Appropriations Act, the school district may apply to the ~~((state board of education))~~ superintendent of public instruction for redesignation as a remote and necessary plant.

(7) A small school plant shall lose its remote and necessary status if a local school district closes the small school plant. If the small school plant is reopened by the district, or a new small school plant is opened, the school district may apply to the ~~((state board of education))~~ superintendent of public instruction for remote and necessary designation for the small school plant. If such designation is granted, the remote and necessary status shall take effect as determined by the ~~((state board of education))~~ superintendent of public instruction.

NEW SECTION

The following chapter of the Washington Administrative Code is decodified as follows:

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 180-16-241 | 392-349-005 |
| 180-16-242 | 392-349-010 |
| 180-16-243 | 392-349-015 |

AMENDATORY SECTION (Amending WSR 05-19-112, filed 9/20/05, effective 10/21/05)

WAC 180-24-00701 Regional committee decision making criteria. (1) The regional committee shall give consideration to all of the following criteria when reviewing the proposed transfer of territory:

(a) Student educational opportunities (see RCW 28A.315.205 (4)(a) for full text);

(b) Safety and welfare of pupils (see RCW 28A.315.205 (4)(b) for full text);

(c) History and relationship of the property affected to the students and communities affected (see RCW 28A.315.205 (4)(c) for full text). "Communities affected" includes all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens

living within the immediate locale/neighborhood of which the proposed territory will become part, and all citizens residing within the school district to which the proposed territory will be transferred;

(d) Geographic accessibility (see RCW 28A.315.205 (4)(d) for full text);

(e) Disparities in per pupil valuation, economies of operation and transportation costs (see RCW 28A.315.205 (4)(e) for full text); and

(f) Other criteria or considerations as may be established in rule by the ~~((state board of education))~~ superintendent of public instruction. (RCW 28A.315.015 (2)(e).)

(2) The boundaries of the school districts affected by a proposed change in school district organization shall be contiguous to one another.

(3) Under RCW 28A.315.205(4), "geographic accessibility" includes, but is not limited to, consideration of the following factors:

(a) Mountains, hills, valleys, wasteland, and related geographic and man-made features, which either enhance or impede travel.

(b) Rivers, lakes, canals, and other natural or man-made waterways and bodies of water, which either enhance or impede travel.

(c) The extent and nature of roads, highways, ferries, and traffic patterns.

(d) Climatic conditions.

(e) Time required to travel to and from school.

(4) In considering student educational opportunities under subsection (1)(a) of this section, the regional committee shall not consider one set of test scores, alone, as a sufficient basis to make a judgment about student educational opportunities. Test scores in the districts affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.

(5) In considering geographic accessibility under subsection (1)(d) of this section, the regional committee shall make one judgment on geographic accessibility, regardless of how many individual components may apply to the particular transfer of territory petition.

(6) Each regional committee shall use the same criterion checklist included in the *Lay ((Persons's)) Person's Guide to School District Boundaries* and published on the ~~((state board of education and))~~ superintendent of public instruction web site((s)).

(7) If a regional committee needs to continue a public hearing or schedule more than one additional hearing on a proposed transfer of territory, each such hearing is subject to public notice requirements.

(8) Regional committees shall use the decision format (motion) included in the *Lay Person's Guide to School District Boundaries* and published on the ~~((state board of education and))~~ superintendent of public instruction web site((s)).

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-105 Election of regional committee members—Applicable provisions. In addition to the provi-

sions of RCW 28A.315.105 through 28A.315.145, the provisions of WAC ((~~180-24-105 through 180-24-190~~)) 392-340-105 through 392-340-190 shall apply to the election of regional committee members.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-115 Election of regional committee members—Dissolution—Position numbers—Initial elections—Regular elections—Terms of office. (1) Elections for members of regional committees shall be conducted within the time periods noted in WAC ((~~180-24-120 through 180-24-190~~)) 392-340-120 through 392-340-190.

(2) Regional committee member position numbers shall be assigned by the educational service district superintendent for purposes of all elections held pursuant to RCW 28A.315.-125. For the election of a new regional committee following a change in the number of educational service districts or board members, regional committee member positions one, three, five, seven, and nine shall be for a term of two years, positions two, four, six, and eight shall be for a term of four years.

(3) Regular elections of regional committee members shall be conducted in even-numbered years for four-year terms and until their successors are certified as elected: Provided, That whenever a change in the number of educational service districts or board members occurs, a new regional committee shall be elected for each affected educational service district at the next regular election.

(4) Those regional committee members serving within an educational service district affected by the change shall continue to constitute the regional committee for the educational service district within which they are registered to vote until the majority of a new regional committee has been elected and certified at the next regular election.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-130 Election of regional committee members—Candidates—Eligibility—Filing. (1) Eligibility. A person is eligible to be a candidate for membership on the regional committee if he or she is a registered voter and a resident of the committee member district for which the candidate files. Eligibility is restricted pursuant to RCW 28A.315.115.

(2) Forms for filing. A person who desires to be a candidate shall complete:

(a) The declaration of candidacy and affidavit form provided for in WAC ((~~180-24-135~~)) 392-340-135; and

(b) The biographical data form provided for in WAC ((~~180-24-140~~)) 392-340-140: Provided, That a declarant may elect not to submit biographical data.

(3) Filing period. The filing period for candidates for a position on a regional committee is from October first through October fifteenth of each even-numbered year. Any declaration of candidacy that is not received by the educational service district superintendent on or before 5:00 p.m. October fifteenth shall not be accepted and such a declarant shall not be a candidate: Provided, That any declaration that

is postmarked on or before midnight October fifteenth and received by mail on or before 5:00 p.m. October twentieth shall be accepted: Provided further, That any declaration received pursuant to the United States mail on or before 5:00 p.m. October twentieth that is not postmarked or legibly postmarked shall also be accepted.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-145 Election of regional committee members—Withdrawal of candidacy. (1) Any candidate may withdraw his or her declaration of candidacy by delivering a written, signed and notarized statement of withdrawal to the educational service district superintendent on or before 5:00 p.m. October twentieth. A candidate's failure to withdraw as prescribed above shall result in the inclusion of the candidate's name on the appropriate election ballot.

(2) A regional committee member district position shall be stricken from the ballot if no candidate files for the position within the timelines specified in WAC ((~~180-24-130~~)) 392-340-130.

(3) Board-member district positions which become vacant after the call of election specified in WAC ((~~180-24-125~~)) 392-340-125 shall be filled by appointment by the regional committee pursuant to RCW 28A.315.135 and the appointee shall serve until his or her successor has been elected at the next election called by the educational service district superintendent.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-155 Election of regional committee members—Ballots and envelopes—Mailing to voters. (1) On or before November first ballots shall be mailed to voters together with two envelopes to be used for voting. The outer and larger envelope (i.e., official ballot envelope) shall:

(a) Be labeled "official ballot";

(b) Be preaddressed with the educational service district superintendent as addressee;

(c) Have provision for prepaid postage; and

(d) Have provision for the identification of the voter, mailing address, his or her school district, and educational service district.

The inner and smaller envelope shall be unlabeled and unmarked.

(2) One ballot and two envelopes to be used for voting purposes and pertinent instructions for voting purposes shall be mailed to each member of a public school district board of directors as certified by the educational service district superintendent pursuant to WAC ((~~180-24-145~~)) 392-340-145.

AMENDATORY SECTION (Amending WSR 99-24-125, filed 12/1/99, effective 1/1/00)

WAC 180-24-190 Election of regional committee members—Run-off elections. (1) If no candidate receives a majority of the votes cast, then, not later than the first day of December, the educational service district superintendent shall call a second election to be conducted in the same man-

ner as the first election and at which the candidates shall be the two candidates receiving the highest and next highest number of votes cast. No vote cast at such second election shall be received for counting if postmarked after the sixteenth day of December, or if not postmarked or the postmark is not legible, if received by mail after 5:00 p.m. of the twenty-first day of December. Votes cast at the second election shall be counted in accordance with WAC ((180-24-165 through 180-24-180)) 392-340-165 through 392-340-180 prior to the second Monday of January next following. The candidate receiving a majority of the votes cast at any such second election shall be declared elected.

(2) In the event of a tie in such second election, the candidate elected shall be determined by a chance drawing of a nature established by the educational service district superintendent.

AMENDATORY SECTION (Amending WSR 05-19-112, filed 9/20/05, effective 10/21/05)

WAC 180-24-195 Notification to ((state board of education)) the superintendent of public instruction of regional committee meetings. The secretary of each regional committee—i.e., the educational service district superintendent—shall notify the ((state board of education)) superintendent of public instruction of all meetings of the regional committee.

AMENDATORY SECTION (Amending WSR 05-19-112, filed 9/20/05, effective 10/21/05)

WAC 180-24-207 Transfer of territory—Other district requirements. (1) At least one member of each school board whose district is affected by a proposed transfer of territory must be part of the respective district's negotiating team.

(2)(a) Upon reaching a decision recommendation through the district-to-district negotiation process on a proposed transfer of territory, the negotiating parties shall produce, at a minimum, a written summary of the recommendation, including rationale for the recommendation, and submit to the respective affected school district boards of directors.

(b) Each school board of directors shall adopt at a public meeting of the board a written resolution indicating whether the board approves or disapproves the recommendation on the proposed transfer of territory. The resolution format included in the *Lay Person's Guide to School District Boundaries* and published on the ((state board of education and)) superintendent of public instruction web site((s)) shall be used.

AMENDATORY SECTION (Amending WSR 05-19-112, filed 9/20/05, effective 10/21/05)

WAC 180-24-209 Transfer of territory—Sufficiency of written record for appeal to ((state board of education)) the superintendent of public instruction—Referral of case back to regional committee. (1) For purposes of review by the ((state board of education)) superintendent of public instruction, the record of regional committee proceedings must be sufficient to allow the ((state board of educa-

~~tion~~) superintendent of public instruction to determine what facts the regional committee relied on in applying the required statutory and regulatory criteria. Evidence of facts relied on may be contained in the written findings required in RCW 28A.315.205(2) or in a written verbatim transcript of the proceedings, or elsewhere in the record.

(2) When referring a transfer of territory case back to the originating regional committee, the ((state board of education)) superintendent of public instruction will make every effort to submit the written referral within fourteen days of ((its)) a decision.

AMENDATORY SECTION (Amending WSR 03-23-040, filed 11/12/03, effective 12/13/03)

WAC 180-24-220 Action by ((state board of education)) the superintendent of public instruction—When. Pursuant to RCW 28A.315.205(5), the ((state board of education)) superintendent of public instruction shall act on a proposed transfer of territory only when there is an appeal to the ((board)) superintendent of public instruction of a decision of a regional committee.

AMENDATORY SECTION (Amending WSR 04-04-091, filed 2/3/04, effective 3/5/04)

WAC 180-24-225 Frequency of petitions—Limitation. (1) The authority for this section is RCW 28A.315.195 (4) which authorizes the ((state board of education)) superintendent of public instruction to establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.

(2) An educational service district superintendent may not accept a petition to transfer territory if any portion of such territory was included in a previous petition brought before the regional committee, unless five years have expired since the date of final disposition of the previous petition.

NEW SECTION

The following chapter of the Washington Administrative Code is decodified as follows:

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 180-24-003 | 392-340-003 |
| 180-24-007 | 392-340-007 |
| 180-24-00701 | 392-340-00701 |
| 180-24-009 | 392-340-009 |
| 180-24-105 | 392-340-105 |
| 180-24-110 | 392-340-110 |
| 180-24-115 | 392-340-115 |
| 180-24-120 | 392-340-120 |
| 180-24-125 | 392-340-125 |
| 180-24-130 | 392-340-130 |
| 180-24-135 | 392-340-135 |
| 180-24-140 | 392-340-140 |
| 180-24-145 | 392-340-145 |

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 180-24-150 | 392-340-150 |
| 180-24-155 | 392-340-155 |
| 180-24-160 | 392-340-160 |
| 180-24-165 | 392-340-165 |
| 180-24-170 | 392-340-170 |
| 180-24-175 | 392-340-175 |
| 180-24-180 | 392-340-180 |
| 180-24-185 | 392-340-185 |
| 180-24-190 | 392-340-190 |
| 180-24-195 | 392-340-195 |
| 180-24-197 | 392-340-197 |
| 180-24-205 | 392-340-205 |
| 180-24-207 | 392-340-207 |
| 180-24-209 | 392-340-209 |
| 180-24-210 | 392-340-210 |
| 180-24-213 | 392-340-213 |
| 180-24-220 | 392-340-220 |
| 180-24-225 | 392-340-225 |
| 180-24-335 | 392-340-335 |

AMENDATORY SECTION (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

WAC 180-56-205 New secondary program or new grades nine through twelve—Regulatory provisions pursuant to RCW 28A.305.130(5). Pursuant to provisions of RCW 28A.305.130(5), the ~~((state board of education))~~ superintendent of public instruction hereby establishes rules and regulations as hereinafter set forth in WAC ~~((180-56-210 through 180-56-270))~~ 392-348-210 through 392-348-270 to govern the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve.

AMENDATORY SECTION (Amending SBE 56-8-51, filed 3/29/65, effective 4/29/65)

WAC 180-56-210 Basic policy. Believing that the welfare of the state and its children require secondary schools which (1) can provide a comprehensive program broad enough to meet the varied needs, abilities and interests of students, (2) are adequately staffed with certified teachers assigned to teach in their fields of competency, (3) are administered by properly certified personnel, (4) can provide adequate pupil-personnel service, (5) can provide school plant facilities suitable to the type of organization and program offered, (6) can give assurance of financial ability and willingness to construct, maintain and operate the facility, and (7) do not duplicate existent educational facilities and/or programs, it shall be the policy of the ~~((state board of education))~~ superintendent of public instruction to approve applications for the establishment in any high school district of any secondary program or any new grades in grades nine through

twelve only when there is evidence that the foregoing conditions can be fulfilled.

AMENDATORY SECTION (Amending SBE 56-8-52, filed 3/29/65, effective 4/29/65)

WAC 180-56-215 Procedure. A secondary program or any new grades nine through twelve may not be established in any existing nonhigh school district except upon prior approval by the ~~((state board of education))~~ superintendent of public instruction. Application for approval to establish any such program or any new grades shall be made to the state superintendent of public instruction by the school authorities of the applicant district. The state superintendent of public instruction shall review the application in light of ~~((state board of education))~~ rules and regulations relating thereto and ~~((shall submit his))~~ in consideration of the findings and recommendations ((to the state board)) of staff and agents of the superintendent of public instruction.

AMENDATORY SECTION (Amending SBE 56-8-53, filed 3/29/65, effective 4/29/65)

WAC 180-56-220 Regulations—Purpose. In order to assure an educational program and school facilities which will meet the requirements of the basic policy stated in WAC ~~((180-56-210 above))~~ 392-348-210, the specific regulations hereinafter in WAC ~~((180-56-230 through 180-56-270))~~ 392-348-230 through 392-348-270 set forth shall be applied in considering applications from nonhigh school districts.

AMENDATORY SECTION (Amending WSR 00-13-038, filed 6/14/00, effective 7/15/00)

WAC 180-56-230 Program. It is presumed by the ~~((state board of education))~~ superintendent of public instruction that a new secondary program (or new grades nine through twelve) must make provision for a comprehensive program. Minimum course offerings that must be available for student selection during grades nine through twelve shall include those necessary to meet the minimum high school graduation requirements under WAC 180-51-060.

AMENDATORY SECTION (Amending SBE 56-8-533, filed 3/29/65, effective 4/29/65)

WAC 180-56-245 Specialized services. Full-time library and instructional materials services shall be provided by a librarian qualified in accordance with standards adopted by the ~~((state board of education))~~ superintendent of public instruction.

A minimum of one full-time person, or equivalent, shall be provided for counseling and guidance services. Personnel assigned to part-time or full-time counseling and guidance responsibilities shall have a minimum of one year of training beyond the bachelor's degree including course work in each of the following areas: Principles and practices of guidance; techniques of counseling; occupational and educational information; testing, measurement and evaluation; and foundations of psychology, preferably including developmental psychology and learning theory.

Provision shall be made for exceptional children including those with high ability or special talent, those who are slow learners and those who are physically handicapped.

Adequate health services shall be provided by the district or by the district in cooperation with other districts and/or agencies.

AMENDATORY SECTION (Amending SBE 56-8-535, filed 3/29/65, effective 4/29/65)

WAC 180-56-255 Interdistrict relationships. Prior to application to the ~~((state board))~~ superintendent of public instruction for the establishment of a new secondary school, the district or districts presently serving students living in the nonhigh school district shall have been given adequate notice of the intent of the nonhigh school district subsequently to withdraw students.

The board of directors of the nonhigh school district seeking approval of the establishment of a new secondary school shall submit evidence that students living in the nonhigh school district cannot be economically and reasonably served in an existing high school or high schools.

There must be adequate proof that the proposed secondary facilities will not duplicate facilities already constructed with state and/or recommended federal assistance when such assistance was predicated on educational service to the nonhigh school district or districts: Provided, That the nonhigh school district may petition the ~~((state board of education))~~ superintendent of public instruction for a feasibility study of the establishment of a high school when the existing high school district facilities reach designated maximum utilization and new construction is needed.

Evidence shall be submitted that unreasonable duplication of transportation routes and/or facilities will not result from the establishment of the new secondary school.

AMENDATORY SECTION (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

WAC 180-56-260 New secondary program or new grades nine through twelve—School district organization. The proposal for establishment of a new secondary school must be consistent with sound, comprehensive planning for secondary school facilities and services and shall be in agreement with provisions of chapter 28A.315 RCW and any subsequent statutory provisions or policies established by the ~~((state board of education))~~ superintendent of public instruction pertaining thereto.

AMENDATORY SECTION (Amending SBE 56-8-537, filed 3/29/65, effective 4/29/65)

WAC 180-56-265 Establishment of new grade or grades. In the establishment of one or more new grades in grades nine through twelve, the principle set forth in WAC ~~((180-56-205 through 180-56-260))~~ 392-348-205 through 392-348-260 above concerning program, specialized services, staff and corps and size of respective grade or grades as related to potential total enrollment of the proposed secondary school shall apply: Provided, That the school district shall have satisfied all other requirements as herein pre-

scribed. The establishment of each such grade shall be subject to prior approval by the ~~((state board of education))~~ superintendent of public instruction.

AMENDATORY SECTION (Amending § 180-56-270, filed 10/16/67, effective 7/1/68)

WAC 180-56-270 Exceptional cases. In exceptional cases, the ~~((state board of education))~~ superintendent of public instruction will consider for special approval applications from schools with an initial enrollment of less than four hundred students and fewer than sixteen teachers and related personnel if in its judgment the establishment of a new high school may be desirable because of the remoteness of the area and the necessity for a program of secondary education.

NEW SECTION

The following chapter of the Washington Administrative Code is decodified as follows:

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 180-56-205 | 392-348-205 |
| 180-56-210 | 392-348-210 |
| 180-56-215 | 392-348-215 |
| 180-56-220 | 392-348-220 |
| 180-56-230 | 392-348-230 |
| 180-56-235 | 392-348-235 |
| 180-56-240 | 392-348-240 |
| 180-56-245 | 392-348-245 |
| 180-56-250 | 392-348-250 |
| 180-56-255 | 392-348-255 |
| 180-56-260 | 392-348-260 |
| 180-56-265 | 392-348-265 |
| 180-56-270 | 392-348-270 |

**WSR 06-12-118
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE**

[Filed June 7, 2006, 10:14 a.m.]

Title of Rule and Other Identifying Information: WAC 16-301-005 General seed standards—Definitions.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dannie McQueen, Washington State Department of Agriculture, P.O. Box 42560,

Olympia, WA 98504, fax (360) 902-2092, e-mail dmcqueen@agr.wa.gov, AND RECEIVED BY August 7, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to use the expedited rule-making process to amend the definition of a seed as listed in WAC to be the definition recognized as that of a true seed. This proposal will align the definition in WAC with the definition in the statute.

Reasons Supporting Proposal: Chapter 15.49 RCW is explicit in that the authority promulgated there under applies to the production, certification, and sales of true seed. The current definition in WAC includes all types of propagative materials. This definition is not supported by the governing statute and should be edited to be unambiguous so that it is referring to a true seed and not any other types of propagative materials.

Statutory Authority for Adoption: Chapters 15.49 and 34.05 RCW.

Statute Being Implemented: RCW 15.49.005.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and **Enforcement:** Fawad Shah, Program Manager, Yakima, (509) 225-2636.

June 7, 2006

Robert W. Gore

Deputy Director

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-301-005 General seed standards—Definitions. Definitions for terms used in this chapter and in chapters 16-302 and 16-303 WAC may be found in chapter 15.49 RCW, seed. For the purposes of these chapters, the following definitions shall apply unless otherwise provided for in law or rule:

"Agricultural seed" as defined in RCW 15.49.011(2) includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combination of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

"AOSA" means the Association of Official Seed Analysts.

"AOSCA" means the Association of Official Seed Certifying Agencies.

"Approved trial grounds" means a specific parcel of land approved by the director for experimental or limited production or increase of bean seed.

"Arbitration committee" means the committee established by the director under RCW 15.49.101 to hear and make determinations in mandatory, nonbinding, arbitration cases.

"Bean" means common beans and adzuki beans.

"Blend" as defined in RCW 15.49.011(3) means seed consisting of more than one variety of a species, each in excess of five percent by weight of the whole.

"Blending" as related to this chapter shall be the process of commingling two or more lots of seed to form one lot of uniform quality.

"Buyer" means a person who purchases seeds.

"Chairperson" means the person selected by the arbitration committee from among their numbers to preside.

"Certifying agency" as defined in RCW 15.49.011(5) means:

(a) An agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

"Common bean" means *Phaseolus vulgaris* L.

"Complete record" means information which relates to the origin, treatment, germination and purity (including variety) of each lot of seed. Records include seed samples and records of declaration, labels, purchases, sales, cleaning, bulking, treatment, handling, storage, analyses, tests and examinations.

"Dealer" as defined in RCW 15.49.011(7) means any person who distributes seeds.

"Department" as defined in RCW 15.49.011(8) means the Washington state department of agriculture or its duly authorized representative.

"Director" as defined in RCW 15.49.011(9) means the director of the department of agriculture.

"Field standards" means the tolerances permitted as determined by established field inspection procedures.

"Fiscal year" means the twelve-month period July 1 through June 30.

"Flower seeds" as defined in RCW 15.49.011(11) include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold as flower seeds in this state.

"Germination" as defined in RCW 15.49.011(13) means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

"Interagency certification" means the participation of two or more official certifying agencies in performing the services required to certify the same lot or lots of seed.

"Isolation standards" means the distance in feet from any contaminating source (i.e., distance from other fields of same species).

"Label" as defined in RCW 15.49.011(18) includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by chapter 15.49 RCW, and may include other information including the requirement for arbitration.

"Land standards" means the number of years that must elapse between the destruction of a stand of a kind, and establishment of a stand of a specified class of a variety of the same kind (i.e., number of years out of production of same crop kind).

"Mixture, mixed or mix" as defined in RCW 15.49.011(22) means seed consisting of more than one species, each in excess of five percent by weight of the whole.

"Nursery" means an area of two acres or less in which grass for seed production is seeded in rows with twenty-four inch minimum spacing to facilitate roguing.

"O.E.C.D." means the Organization for Economic Cooperation and Development certification scheme.

"Off-type" means a plant or seed which deviates in one or more characteristics from that which has been described as being usual for the strain or variety.

"Official certificate" means a document issued by an official testing agency including but not limited to seed certification tags, bulk seed certification certificates, phyto-sanitary certificates, laboratory sanitary certificates, and other letters, tags, stamps, or similar documents certifying seed quality or condition.

"Official sample" as defined in RCW 15.49.011(23) means any sample taken and designated as official by the department.

"Official seed laboratory" means a seed testing laboratory approved by the director, such as, but not limited to, Washington State Seed Laboratory, 21 N 1st Avenue, Yakima, Washington; and Oregon State Seed Laboratory, Oregon State University, Corvallis, Oregon. This definition is to include any laboratory that has an accreditation process in place.

"Origin" means the county within the state of Washington, or the state, territory, or country where a specific seed lot was grown.

"Person" as defined in RCW 15.49.011(26) means an individual, partnership, corporation, company, association, receiver, trustee or agent.

"Proprietary variety" means that crop variety for which a person has exclusive production and/or marketing rights.

"Representative sample" means a sample drawn in accordance with sampling procedures adopted in WAC 16-301-095.

"Seeds" as defined in RCW 15.49.011(33) means agricultural or vegetable seeds, or other seeds as determined by rules adopted by the department. ~~((The word seed or seeds as used in this chapter shall include all propagating materials.))~~

"Seed labeling permit" means a permit issued by the department pursuant to RCW 15.49.400 to a person labeling seed for distribution in this state.

"Seed program advisory committee" means a committee of representatives from the small grains, pea, lentil, bean, vegetable, small seeded legumes, and grass seed industries selected by the program manager in consultation with the industry.

"Seed standards" means the tolerances permitted as determined by established seed inspection procedures.

"Serology" means precipitation, agglutination, immunodiffusion, or labeled antibody test methods (such as ELISA)

that use the specificity of antigen-antibody reactions to detect and identify antigenic substances and the organisms such as viruses and bacteria that carry viruses.

"Stock seed" means breeders, prebasic, or like initial generation of seed.

"Sudangrass" means *Sorghum bicolor x drummondii*.

"University" means the Washington State University.

"USDA" means the United States Department of Agriculture.

"Vegetable seeds" as defined in RCW 15.49.011(38) include the seeds of all crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

"WSCIA" means the Washington State Crop Improvement Association.

WSR 06-12-124

EXPEDITED RULES

DEPARTMENT OF

NATURAL RESOURCES

(Aquatic Resources Program)

[Filed June 7, 2006, 10:38 a.m.]

Title of Rule and Other Identifying Information: WAC 332-30-123 Aquatic land use rental rates for nonwater dependent uses and 332-30-128 Rent review.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Elizabeth Ellis, Washington Department of Natural Resources, Aquatic Resources Program, 1111 Washington Street S.E., Olympia, WA 98504-47027 [98504-7027], AND RECEIVED BY August 7, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule-making proposal will correct a few typographical references and increase clarity.

No substantive changes will be made.

Reasons Supporting Proposal: Typographic errors have been located by the Washington state code reviser that require editing.

Statutory Authority for Adoption: RCW 79.105.360 Aquatic land use rental rates, 79.105.320 Administrative review of rent.

Statute Being Implemented: RCW 79.105.360 Aquatic land use rental rates, 79.105.320 Administrative review of rent.

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

Name of Proponent: Washington department of natural resources, aquatic resources program, governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Ellis, Olympia, (360) 902-1074.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: These changes are required by the code reviser's office in order for the rules to conform with statutory requirements.

June 5, 2006
Doug Sutherland
Commissioner of
Public Lands

AMENDATORY SECTION (Amending Order 724, filed 2/16/06, effective 3/19/06)

WAC 332-30-123 Aquatic land use rentals for water-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). The annual rental for water-dependent use leases of state-owned aquatic land shall be: The per unit assessed value of the upland tax parcel, exclusive of improvements, multiplied by the units of lease area multiplied by thirty percent multiplied by the real rate of return. Expressed as a formula, it is: $UV \times LA \times .30 \times r = AR$. Each of the letter variables in this formula have specific criteria for their use as described below. This step by step presentation covers the typical situations within each section first, followed by alternatives for more unique situations.

(1) **Overall considerations.**

(a) Criteria for use of formula. The formula:

(i) Shall be applied to all leases ~~((having structural uses that require a physical interface with upland property when a water-dependent use occurs on such uplands (in conjunction with the water-dependent use on the aquatic lands))~~ for water-dependent uses, except as otherwise provided by statute) ~~for water-dependent uses, except as otherwise provided by statute;~~

(ii) ~~((Shall be used for remote moorage leases by selecting an upland parcel as detailed in subsection (2) of this section;~~

~~((iii)))~~ Shall not be used for areas of filled state-owned aquatic lands having upland characteristics where the department can charge rent for such fills (see WAC 332-30-125), renewable and nonrenewable resource uses, or areas meeting criteria for public use (see WAC 332-30-130); and

~~((iv))~~ ~~((iii))~~ (iii) Shall cease being used for leases intended for water-dependent uses when the lease area is not actively developed for such purposes as specified in the lease contract. Rental in such situations shall be determined under the appropriate section of this chapter.

(b) Criteria for applicability to leases. The formula shall be used to calculate rentals for:

(i) All new leases and all pending applications to lease or re-lease as of October 1, 1984;

(ii) All existing leases, where the lease allows calculation of total rent by the appropriate department methods in effect at the time of rental adjustment. Leases in this category

previously affected by legislated rental increase limits, shall have the formula applied on the first lease anniversary date after September 30, 1984. Other conditions of these leases not related to rent shall continue until termination or amendment as specified by the lease contract. Leases in this category not previously affected by legislated rental increase limits and scheduled for a rent adjustment after October 1, 1985, shall have the option of retaining the current rent or electing to pay the formula rent under the same conditions as specified in (iii) of this subsection.

(iii) Leases containing specific rent adjustment procedures or schedules shall have the rent determined by the formula when requested by the lessee. Holders of such leases shall be notified prior to their lease anniversary date of both the lease contract rent and formula rent. A selection of the formula rent by the lessee shall require an amendment to the lease which shall include all applicable aquatic land laws and implementing regulations.

(2) **Physical criteria of upland tax parcels.**

(a) ~~((Leases used in conjunction with and supportive of activities on the uplands.))~~ The upland tax parcel used shall be ~~((waterfront used in conjunction with the leased area))~~ used in conjunction with the leased area and have some portion with upland characteristics. ~~((The upland tax parcel shall be waterfront, except that if the waterfront parcel's assessed value is inconsistent with the purposes of the lease as described in subsection (3) of this section, and there is a landward parcel also used in conjunction with the leased area that meets all the criteria in this subsection (2) and is consistent with the purposes of the lease as described in subsection (3) of this section, then such landward parcel shall be used.))~~ The upland tax parcel shall be waterfront, except that if the waterfront parcel's assessed value is inconsistent with the purposes of the lease as described in subsection (3) of this section, and there is a landward parcel also used in conjunction with the leased area that meets all the criteria in this subsection (2) and is consistent with the purposes of the lease as described in subsection (3) of this section, then such landward parcel shall be used. If no upland tax parcel meets these criteria, then an alternative shall be selected under the criteria of subsection (4) of this section. ~~((For the purposes of this section, "upland characteristics" means fill or other improvements or alterations that allow for development of the property as if it were uplands and that have been valued by the county assessor as uplands.))~~ For the purposes of this section, "upland characteristics" means fill or other improvements or alterations that allow for development of the property as if it were uplands and that have been valued by the county assessor as uplands.

(b) ~~((Remote moorage leases. The upland tax parcel used shall be waterfront, have some portion with upland characteristics; and) [For leases without a physical connection with upland property (for example, open water moorage and anchorage areas, or mitigation or conservation sites not abutting the shoreline), the upland tax parcel used shall.])~~ For leases without a physical connection with upland property (for example, open water moorage and anchorage areas, or mitigation or conservation sites not abutting the shoreline), the upland tax parcel used shall.

(i) If the ~~((remote moorage [lease]))~~ lease is associated with a local upland facility, be an appropriate parcel at the facility; or

(ii) If the ~~((remote moorage is similar in nature of use to moorages in the area [lease is of the same use class within the water-dependent category (as listed in subsection (4) of this section) as at least one other lease within the county that is]))~~ lease is of the same use class within the water-dependent category (as listed in subsection (4) of this section) as at least one other lease within the county that is associated with a local upland facility, be an appropriate parcel at the ~~((nearest such))~~ nearest such facility; or

(iii) If ~~((the remote moorage is not associated with a [there is no such]))~~ there is no such local upland facility, be ~~((the parcel closest in distance to the moorage area [an alternate parcel selected under the criteria of subsection (4) of this section]))~~ an alternate parcel selected under the criteria of subsection (4) of this section.

(c) Priority of selection. If more than one upland tax parcel meets the physical criteria, the priority of selection shall be:

(i) The parcel that is structurally connected to the lease area;

(ii) The parcel that abuts the lease area;

(iii) The parcel closest in distance to the lease area.

If more than one upland tax parcel remains after this selection priority, then each upland tax parcel will be used for its portion of the lease area. If there is mutual agreement with the lessee, a single upland tax parcel may be used for the entire lease area. When the unit value of the upland tax parcels are equal, only one upland tax parcel shall be used for the lease area.

(d) The unit value of the upland tax parcel shall be expressed in terms of dollars per square foot or dollars per acre, by dividing the assessed value of the upland tax parcel by the number of square feet or acres in the upland tax parcel. This procedure shall be used in all cases even if the value attributable to the upland tax parcel was assessed using some other unit of value, e.g., front footage, or lot value. Only the "land value" category of the assessment record shall be used; not any assessment record category related to improvements.

(3) **Consistent assessment.** In addition to the criteria in subsection (2) of this section, the upland tax parcel's assessed value must be consistent with the purposes of the lease ~~((and method of rental establishment))~~. On this basis, the following situations ~~((are examples, but are not an exclusive list, of what the department))~~ are examples, but are not an exclusive list, of what the department will ((be considered) [consider]) consider inconsistent and shall either require adjustment as specified, or selection of an alternative upland tax parcel under subsection (4) of this section:

(a) The upland tax parcel is not assessed. (See chapter 84.36 RCW Exemptions);

(b) Official date of assessment is more than four years old. (See RCW 84.41.030);

(c) The "assessment" results from a special tax classification ~~((for other adjustment by the county assessor))~~ or other adjustment by the county assessor not reflecting fair market value ~~((as developable upland property))~~ as developable upland property. Examples include classifications

under: State-regulated utilities (chapter 84.12 RCW), Timber and forest lands (chapter 84.33 RCW), and Open space (chapter 84.34 RCW). This inconsistency may be corrected by substituting the ~~((full [fair market]))~~ fair market value for the parcel if such value is part of the assessment records;

(d) If the assessed valuation of the upland tax parcel to be used is under appeal as a matter of record before any county or state agency, the valuation on the assessor's records shall be used, however, any changes in valuation resulting from such appeal will result in an equitable adjustment of future rental;

(e) The majority of the upland tax parcel area is not used ~~((for [in conjunction with]))~~ in conjunction with a water-dependent ~~((purpose [use]))~~ use. This inconsistency may be corrected by using the value and area of the portion of the upland tax parcel that is used ~~((for [in conjunction with]))~~ in conjunction with water-dependent ~~((purposes [use]))~~ use if this portion can be segregated from the assessment records; and

(f) The size of the upland tax parcel in acres or square feet is not known or its small size results in a nominal valuation, e.g., unbuildable lot ~~(([; and]~~

~~((g) The assessed value reflects the presence of contamination on the uplands, when the contamination on the uplands does not impair the use of the leasehold. This inconsistency may be corrected by substituting the full value for the upland parcel as if there were no contamination, if such value is part of the assessment records.))~~; and

(g) The assessed value reflects the presence of contamination on the uplands, when the contamination on the uplands does not impair the use of the leasehold. This inconsistency may be corrected by substituting the full value for the upland parcel as if there were no contamination, if such value is part of the assessment records.

(4) **Selection of the nearest comparable upland tax parcel.** When the upland tax parcel does not meet the physical criteria or has an inconsistent assessment that can't be corrected from the assessment records, an alternative upland tax parcel shall be selected which meets the criteria. The nearest upland tax parcel shall be determined by measurement along the shoreline from the inconsistent upland tax parcel.

(a) The alternative upland tax parcel shall be located by order of selection priority:

(i) Within the same city as the lease area, and if not applicable or found;

(ii) Within the same county and water body as the lease area, and if not found;

(iii) Within the same county on similar bodies of water, and if not found;

(iv) Within the state.

(b) Within each locational priority of (a) of this subsection, the priority for a comparable upland tax parcel shall be:

(i) The same use class within the water-dependent category as the lease area use ~~(([;]. For the purposes of this section, some examples of use classes include:~~

~~(A) Marinas and recreational moorage, including recreational boat launches and local upland facilities for open water moorage;~~

~~(B) Industrial and commercial shipping terminals and moorage;~~

~~(C) Conservation and natural resource protection areas;
(D) Mitigation sites; and~~

~~(E) For water-oriented floating homes, the same use class means any floating home;}}~~ For the purposes of this section, some examples of use classes include:

(A) Marinas and recreational moorage, including recreational boat launches and local upland facilities for open water moorage;

(B) Industrial and commercial shipping terminals and moorage;

(C) Conservation and natural resource protection areas;

(D) Mitigation sites; and

(E) For water-oriented floating homes, the same use class means any floating home;

(ii) Any water-dependent use within the same upland zoning;

(iii) Any water-dependent use; and

(iv) Any water-oriented use.

(5) **Aquatic land lease area.** The area under lease shall be expressed in square feet or acres.

(a) Where more than one use class separately exist on a lease area, the formula shall only be applied to the water-dependent use area. Other use areas of the lease shall be treated according to the regulations for the specific use.

(b) If a water-dependent and a nonwater-dependent use exist on the same portion of the lease, the rent for such portion shall be negotiated taking into account the proportion of the improvements each use occupies.

(6) Real rate of return.

(a) Until July 1, 1989, the real rate of return to be used in the formula shall be five percent.

(b) On July 1, 1989, and on each July 1 thereafter the department shall calculate the real rate of return for that fiscal year under the following limitations:

(i) It shall not change by more than one percentage point from the rate in effect for the previous fiscal year; and

(ii) It shall not be greater than seven percent nor less than three percent.

(7) **Annual inflation adjustment of rent.** The department shall use the inflation rate on a fiscal year basis e.g., the inflation rate for calendar year 1984 shall be used during the period July 1, 1985 through June 30, 1986. The rate will be published in a newspaper of record. Adjustment to the annual rent of a lease shall occur on the anniversary date of the lease except when the rent is redetermined under subsection (9) of this section. The inflation adjustment each year is the inflation rate times the previous year's rent except in cases of stairstepping.

(8) Stairstepping rental changes.

(a) Initial increases for leases in effect on October 1, 1984. If the application of the formula results in an increase of more than one hundred dollars and more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between each year's inflation adjusted formula rent and the previous rent.

Example

Previous rent = \$100.00 Formula rent = \$403.00 Inflation = 5%/yr.

| Yr. | Formula Rent | Previous Rent | Difference | 33% | Stairstep Rent |
|-----|--------------|---------------|------------|----------|----------------|
| 1 | \$403.00 | \$100.00 | \$303.00 | \$100.00 | \$200.00 |
| 2 | 423.15 | 100.00 | 323.15 | 106.64 | 306.64 |
| 3 | 444.31 | 100.00 | 344.31 | 113.62 | 420.26 |
| 4 | 466.52 | - | - | - | 466.52 |

(b) Initial decreases for leases in effect on October 1, 1984. If the application of the formula results in a decrease of more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between the previous rent and each year's inflation adjusted formula rent.

Example

Previous rent = \$403.00 Formula rent = \$100.00 Inflation = 5%/yr.

| Yr. | Previous Rent | Formula Rent | Difference | 33% | Stairstep Rent |
|-----|---------------|--------------|------------|----------|----------------|
| 1 | \$403.00 | \$100.00 | \$303.00 | \$100.00 | \$303.00 |
| 2 | 403.00 | 105.00 | 298.00 | 98.34 | 204.66 |
| 3 | 403.00 | 110.25 | 292.75 | 96.61 | 108.05 |
| 4 | - | 115.76 | - | - | 115.76 |

(c) If a lease in effect on October 1, 1984, contains more than one water-dependent or water-oriented use and the rental calculations for each such use (e.g., log booming and log storage) result in different rentals per unit of lease area, the total of the rents for those portions of the lease area shall be used to determine if the stairstepping provisions of (a) or (b) of this subsection apply to the lease.

(d) If a lease in effect on October 1, 1984, contains a nonwater-dependent use in addition to a water-dependent or oriented use, the stairstepping provisions of (a) or (b) of this subsection:

(i) Shall apply to the water-dependent use area if it exists separately (see subsection (5)(a) of this section);

(ii) Shall not apply to any portion of the lease area jointly occupied by a water-dependent and nonwater-dependent use (see subsection (5)(b) of this section).

(e) Subsequent increases. After completion of any initial stairstepping under (a) and (b) of this subsection due to the first application of the formula, the rent for any lease or portion thereof calculated by the formula shall not increase by more than fifty percent per unit area from the previous year's per unit area rent.

(f) All initial stairstepping of rentals shall only occur during the term of existing leases.

(9) The annual rental shall be redetermined by the formula every four years or as provided by the existing lease language. If an existing lease calls for redetermination of rental during an initial stairstepping period, it shall be determined on the scheduled date and applied (with inflation adjustments) at the end of the initial stairstep period.

AMENDATORY SECTION (Amending Order 724, filed 2/16/06, effective 3/19/06)

WAC 332-30-128 Rent review. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Eligibility to request review.** Any lessee or applicant to lease or release state-owned aquatic lands may request review of any rent proposed to be charged by the department.

(2) **Dispute officers.** The manager of the marine lands division will be the rental dispute officer (RDO). The supervisor of the department, or his designee, will be the rental dispute appeals officer (RDAO).

(3) **Submittals.** A request for review of the rent (an original and two copies) shall be submitted within thirty days of notification by the department of the rent due from the lessee/applicant. The request for review shall contain sufficient information for the officers to make a decision on the appropriateness of the rent initially determined by the department. The burden of proof for showing that the rent is incorrect shall rest with the lessee/applicant.

(4) **Rental due.** The request for review shall be accompanied by one year's rent payment based on the preceding year's rate, or a portion thereof as determined by RCW 79.105.340; or based on the rate proposed by the department, or a portion thereof as determined by RCW 79.105.340, whichever is less. The applicant shall pay any additional rent or be entitled to a refund, with interest, within thirty days after completion of the review process provided in this section.

(5) **Contents of request.** The request for review shall state what the lessee/applicant believes the rent should be and shall contain, at the minimum, all necessary documentation to justify the lessee/applicant's position. This information shall include but not be limited to:

(a) **Rationale.** Why the rent established by the department is inappropriate. The supporting documentation for nonwater-dependent leases may include appraisals by professionally accredited appraisers.

(b) **Lease information.** A description of state-owned aquatic land under lease which shall include, but not be limited to:

- (i) Lease or application number;
- (ii) Map showing location of lease or proposed lease;
- (iii) Legal description of lease area including area of lease;
- (iv) The permitted or intended use on the leasehold; and
- (v) The actual or current use on the leasehold premises.

(c) **Substitute upland parcel.** A lessee/applicant whose lease rent is determined according to RCW 79.105.240 (water-dependent leases) and who disputes the choice of the upland parcel as provided by WAC 332-30-123, shall indicate the upland parcel that should be substituted in the rental determination and shall provide the following information on the parcel:

- (i) The county parcel number;
- (ii) Its assessed value;
- (iii) Its area in square feet or acres;
- (iv) A map showing the location of the parcel; and
- (v) A statement indicating the land use on the parcel and justifying why the parcel should be substituted.

(6) **RDO review.**

(a) The RDO shall evaluate the request for review within fifteen days of filing to determine if any further support materials are needed from the lessee/applicant or the department.

(b) The lessee/applicant or the department shall provide any needed materials to the RDO within thirty days of receiving a request from the RDO.

(c) The RDO may, at any time during the review, order a conference between the lessee/applicant and department staff to try to settle the rent dispute.

(d) The RDO shall issue a decision within sixty days of filing of the request. Such decision shall contain findings of fact for the decision. If a decision cannot be issued within that time, the lessee/applicant's request will automatically be granted and the rent proposed by the lessee/applicant will be the rent for the lease until the next rent revaluation; provided that, the RDO may extend the review period for one sixty-day period.

(7) **RDAO review.**

(a) ~~The ((RDAO may, within fifteen days of the final decision by the RDO, be petitioned to review) [lessee/applicant may submit a petition within thirty days to the rental dispute appeals officer (RDAO) for review of]) lessee/applicant may submit a petition within thirty days to the rental dispute appeals officer (RDAO) for review of that decision.~~

(b) If the RDAO declines to review the petition on the decision of the RDO, the RDO's decision shall be the final decision of the RDAO.

(c) If the RDAO consents to review the decision, the review may only consider the factual record before the RDO and the written findings and decision of the RDO. The RDAO shall issue a decision on the petition containing written findings within ~~((thirty) [sixty])~~ sixty days of the filing of the petition. ~~((The RDAO may extend the review period for one sixty-day period. This decision shall be the RDAO's final decision.))~~ The RDAO may extend the review period for one sixty-day period. This decision shall be the RDAO's final decision. This decision shall be the RDAO's final decision.

(8) **Board review.**

(a) ~~((The board of natural resources (board) may, within fifteen days of the final RDAO decision, be petitioned to review that decision.) [The lessee/applicant may submit a petition within thirty days to the board of natural resources (board) for review of the RDAO decision.])~~ The lessee/applicant may submit a petition within thirty days to the board of natural resources (board) for review of the RDAO decision.

(b) If the board declines to review the petition, the RDAO decision shall be the final decision of the board.

(c) If the board decides to review the petition, the department and the lessee/applicant shall present written statements on the final decision of the RDAO within ~~((fifteen) [thirty])~~ thirty days of the decision to review. The board may request oral statements from the lessee/applicant or the department if the board decides a decision cannot be made solely on the written statements.

(d) The board shall issue a decision on the petition within ~~((sixty) [ninety])~~ ninety days of the filing of the written statements by the lessee/applicant and the department.