

WSR 07-13-029
RULES OF COURT
STATE SUPREME COURT

[June 7, 2007]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE AMENDMENTS TO CR 10, )
CRLJ 10, CR 45, CR 45 FORM, CR 53.4, ) NO. 25700-A-875
CR 54, CR 78, NEW GR 14.1, CrR 4.4, )
CrRLJ 4.4, CrR 4.7, CrR 7.8, RAP 10.4, )
RALJ 7.3, GR 33 AND RAP 9.5 )

The Rules Committee having recommended the adoption of the proposed amendments to CR 10, CRLJ 10, CR 45, CR 45 FORM, CR 53.4, CR 54, CR 78, New GR 14.1, CrR 4.4, CrRLJ 4.4, CrR 4.7, CrR 7.8, RAP 10.4, RALJ 7.3, GR 33 AND RAP 9.5, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Washington Reports and will become effective September 1, 2007.

DATED at Olympia, Washington this 7th day of June, 2007.

Alexander, C. J.
C. Johnson, J. Chambers, J.
Madsen, J. Owens, J.
Fairhurst, J.
Bridge, J. J. M. Johnson, J.

SUPERIOR COURT CIVIL RULES (CR)
CR 10. FORM OF PLEADINGS AND OTHER PAPERS

(a) - (e) [Unchanged.]

(f) Personal Identifiers Prohibited. [Reserved. See GR 31(e).]

(g) Unpublished Opinions. [Reserved. See GR 14.1.]

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION (CRLJ)
RULE 10. FORM OF PLEADINGS

(a) - (c) [Unchanged.]

(d) Personal Identifiers Prohibited. [Reserved. See GR 31(e).]

(e) Unpublished Opinions. [Reserved. See GR 14.1.]

CIVIL RULES (CR)
RULE 45. Subpoena

(a) For Attendance of Witnesses. The subpoena shall be issued as follows:

(1) Form. To require attendance before a court of record or at the trial of an issue therein, such subpoena may be

issued in the name of the State of Washington and be under the seal of the court before which the attendance is required or in which the issue is pending. Provided, That such subpoena may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear, and the form of such subpoena in each case may be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney.

(2) Issuance for Trial. To require attendance before a court of record or at the trial of an issue of fact, the subpoena may be issued by the clerk in response to a praecipe or by an attorney of record.

(3) Issuance for Deposition. To require attendance out of such court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state, it shall be issued by an attorney of record or by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) Authorization. Proof of service of a notice to take a deposition as provided in rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the attorney of record or the officer taking the deposition of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by rule 26(b), but in that event the subpoena will be subject to the provisions of rule 26(c) and section (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) Place of Examination. A resident of the state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. A nonresident of the state may be required to attend only in the county wherein he is served with a subpoena, or within 40 miles from the place of service or at such other convenient place as is fixed by an order of the court.

(3) Foreign Depositions for Local Actions. When the place of examination is in another state, territory, or country, the party desiring to take the deposition may secure the issuance of a subpoena or equivalent process in accordance with the laws of such state, territory or country to require the deponent to attend the examination.

(4) Local Depositions for Foreign Actions. When any officer or person is authorized to take depositions in this state by the law of another state, territory or country, with or without a commission, a subpoena to require attendance before such officer or person may be issued by any judge or justice of the peace of this state for attendance at any places within his jurisdiction.

(e) Subpoena for Hearing or Trial. [Reserved. See RCW 5.56.010.]

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

(g) When Excused. A witness subpoenaed to attend in a civil case is dismissed and excused from further attendance as soon as he has given his testimony in chief and has been cross-examined thereon, unless either party moves in open court that the witness remain in attendance and the court so orders; and witness fees will not be allowed any witness after the day on which his testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact in the minutes.

**(a) Form; Issuance.**

(1) Every subpoena shall:

(A) state the name of the court from which it is issued;

(B) state the title of the action, the name of the court in which it is pending, and its case number;

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subsections (c) and (d) of this rule.

(2) A subpoena for attendance at a deposition shall state the method for recording the testimony.

(3) A command to a person to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A party may be compelled to produce evidence at a deposition or permit inspection only in accordance with rule 34.

(4) A subpoena may be issued by the court in which the action is pending under the seal of that court or by the clerk in response to a praecipe. An attorney of record of a party or

other person authorized by statute may issue and sign a subpoena, subject to RCW 5.56.010.

**(b) Service.**

(1) A subpoena may be served by any suitable person over 18 years of age by giving the person named therein a copy thereof, or by leaving a copy at the place of such person's abode. When service is made by any other person other than an officer authorized to serve process, proof of service shall be made by affidavit.

(2) A subpoena commanding production of documents and things, or inspection of premises, without a command to appear for deposition, hearing or trial, shall be served on each party in the manner prescribed by rule 5(b). Such service shall be made no fewer than five days prior to service of the subpoena on the person named therein, unless the parties otherwise agree or the court otherwise orders for good cause shown. A motion for such an order may be made *ex parte*.

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**(e) Subpoena for Taking Deposition, Producing Documents, or Permitting Inspection.**

(1) *Witness Fees and Mileage.* [Reserved. See RCW 2.40.020.]

(2) *Place of Examination.* A resident of the state may be required to attend an examination, produce documents, or permit inspection only in the county where the person resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of the court. A nonresident of the state may be required to attend an examination, produce documents, or permit inspection only in the county where the person is served with a subpoena, or within

40 miles from the place of service, or at such other convenient place as is fixed by an order of the court.

(3) *Foreign Proceedings for Local Actions.* When the place of examination, production, or inspection is in another state, territory, or country, the party desiring to take the deposition, obtain production, or conduct inspection may secure the issuance of a subpoena or equivalent process in accordance with the laws of such state, territory, or country.

(4) *Local Depositions for Foreign Actions.* When any officer or person is authorized to take depositions in this state by the law of another state, territory, or country, with or without a commission, a subpoena to require attendance before such officer or person may be issued by any court of this state for attendance at any place within its jurisdiction.

**(f) Subpoena For Hearing or Trial.**

(1) *When Witnesses Must Attend - Fees and Allowances.* [Reserved. See RCW 5.56.010.]

(2) *When Excused.* A witness subpoenaed to attend in a civil case is dismissed and excused from further attendance as soon as the witness has given testimony in chief and has been cross-examined thereon, unless either party moves in open court that the witness remain in attendance and the court so orders. Witness fees will not be allowed any witness after the day on which the witness' testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact.

**(g) Contempt.**

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend a deposition, produce documents, or permit inspection at a place not within the limits provided by subsection (e)(2).

**(h) Form.** A subpoena should be substantially in the form below.

Issued by the  
SUPERIOR COURT FOR THE STATE OF WASHINGTON  
\_\_\_\_\_ COUNTY

**SUBPOENA IN A CIVIL CASE**

v. CAUSE NUMBER:

TO:

YOU ARE COMMANDED to appear in the Superior Court of the State of Washington at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. CR 30 (b)(6).

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

**PROOF OF SERVICE**

SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE/PLACE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

CR 45, Sections (c) & (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that, the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and

days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

**SUPERIOR COURT CIVIL RULES (CR)**  
**CR 53.4. PROCEDURES FOR MANDATORY MEDIATION OF**  
**HEALTH CARE CLAIMS**

**(a) - (e)** [Unchanged.]

**(f) Mediation Procedure.** Promptly upon the designation of a mediator, the plaintiff shall arrange a conference call among the mediator and counsel for each party to discuss the procedural aspects of the mediation. Except to the extent the mediator directs otherwise, the following procedures shall apply:

(1) - (8) [Unchanged.]

(9) Certification of Mediation. Not more than 10 days after the mediation concludes or the mediator determines that the claim is not appropriate for mediation, the parties shall certify in writing to the court the manner of mediation, if any, and compliance with the provisions of this rule.

**(g)** [Unchanged.]

**SUPERIOR COURT CIVIL RULES (CR)**  
**RULE 54. JUDGMENT AND COSTS**

**(a) - (c)** [Unchanged.]

**(d) Costs, Disbursements, Attorneys' Fees, and Expenses.**

(1) Costs and Disbursements. Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute. If the party to whom costs are awarded does not file a cost bill or an affidavit detailing disbursements within 10 days after the entry of the judgment, the clerk shall tax costs and disbursements pursuant to CR 78(e).

(2) Attorneys' Fees and Expenses. Claims for attorneys' fees and expenses, other than costs and disbursements, shall be made by motion unless the substantive law governing the action provides for the recovery of such fees and expenses as an element of damages to be proved at trial. Unless otherwise provided by statute or order of the court, the motion must be filed no later than 10 days after entry of judgment.

assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**(e) - (f)** [Unchanged.]

**SUPERIOR COURT CIVIL RULES (CR)**  
**CR 78. CLERKS**

**(a) - (d)** [Unchanged.]

**(e) Entry of Judgments and Costs.** The clerk shall enter judgment or decree pursuant to the provisions of rule 58 and the same shall then be entered for the sum found due or the relief awarded, with costs and disbursements, if any, to be taxed. Entry of judgment shall not be delayed for the taxing of costs. If no cost bill is filed by the party to whom costs are awarded within 10 days after the entry of the judgment or decree, the clerk shall proceed to tax the following costs and disbursements, namely:

(1) The statutory attorney fee;

(2) The clerk's fee; and

(3) The sheriff's fee; and

~~(4) Other disbursements, the amount whereof plainly appears on the papers in the case, and shall enter the sum thereof in the judgment entry and execution docket.~~ [PARAGRAPH BREAK]

If a cost bill is filed, ~~he~~ the clerk shall enter as the amount to be recovered the amount claimed in such cost bill, and no motion to retax costs shall be considered unless the same be filed within 6 days after the filing of the cost bill.

For purposes of this subsection (e), "cost bill" also includes an affidavit detailing disbursements.

**(f)** [Unchanged.]

**GENERAL RULES (GR)**

[New Rule]

**RULE 14.1. Citation to Unpublished Opinions**

**(a) Washington Court of Appeals.** A party may not cite as an authority an unpublished opinion of the Court of Appeals. Unpublished opinions of the Court of Appeals are those opinions not published in the Washington Appellate Reports.

**(b) Other Jurisdictions.** A party may cite as an authority an opinion designated "unpublished," "not for publication," "non-precedential," "not precedent," or the like that has been issued by any court from a jurisdiction other than Washington state, only if citation to that opinion is permitted under the law of the jurisdiction of the issuing court. The party citing the opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.

SUPERIOR COURT CRIMINAL RULES (CrR)

RULE 4.4. SEVERANCE OF OFFENSES AND DEFENDANTS

(a) - (b) [Unchanged.]

**(c) Severance of Defendants.**

(1) A defendant's motion for severance on the ground that an out-of-court statement of a codefendant referring to him is inadmissible against him shall be granted unless:

(i) the prosecuting attorney elects not to offer the statement in the case in chief; or

(ii) deletion of all references to the moving defendant will eliminate any prejudice to him from the admission of the statement.

(2) - (4) [Unchanged.]

(d) - (e) [Unchanged.]

CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION  
(CrRLJ)

RULE 4.4. SEVERANCE OF OFFENSES AND DEFENDANTS

(a) - (b) [Unchanged.]

**(c) Severance of Defendants.**

(1) A defendant's motion for severance on the ground that an out-of-court statement of a codefendant referring to him or her is inadmissible against him or her shall be granted unless:

(i) the prosecuting attorney elects not to offer the statement in the case in chief; or

(ii) deletion of all references to the moving defendant will eliminate any prejudice to him or her from the admission of the statement.

(2) - (3) [Unchanged.]

(d) - (e) [Unchanged.]

SUPERIOR COURT CRIMINAL RULES (CrR)

RULE 4.7. DISCOVERY

**(a) Prosecutor's Obligations.**

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within the prosecuting attorney's possession or control no later than the omnibus hearing:

(i) - (v) [Unchanged.]

(vi) any record ~~or~~ of prior criminal convictions known to the prosecuting attorney of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(2) - (4) [Unchanged.]

(b) - (h) [Unchanged.]

SUPERIOR COURT CRIMINAL RULES (CrR)

RULE 7.8. RELIEF FROM JUDGMENT OR ORDER

(a) - (b) [Unchanged.]

**(c) Procedure on Vacation of Judgment.**

(1) *Motion.* Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) *Initial Consideration Transfer to Court of Appeals.* ~~The court may deny the motion without a hearing if the facts alleged in the affidavits do not establish grounds for relief. The court may shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition if such transfer would serve the ends of justice unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.~~

(3) *Order to Show Cause.* ~~Otherwise, the court~~ If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

RULES OF APPELLATE PROCEDURE (RAP)

RULE 10.4 PREPARATION AND FILING OF BRIEF BY PARTY

(a) - (g) [Unchanged.]

**(h) Unpublished Opinions.** ~~A party may not cite as an authority an unpublished opinion of the Court of Appeals. Unpublished opinions of the Court of Appeals are those opinions not published in the Washington Appellate Reports. [Reserved. See GR 14.1.]~~

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION (RALJ)

RULE 7.3 FORMAT OF BRIEFS

(a) - (b) [Unchanged.]

**(c) Unpublished Opinions.** ~~A party may not cite as authority an unpublished opinion of a Washington appellate court, nor of any other state or federal court that is not published. A party may not cite as authority a decision of a superior court, a court of limited jurisdiction, or a decision of a commissioner of the Supreme Court or Court of Appeals. [Reserved. See GR 14.1.]~~

GENERAL RULES (GR)

NEW RULE 33. Requests for Accommodation by Persons with Disabilities

**(a) Definitions.** The following definitions shall apply under this rule:

(1) "Accommodation" means measures to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by an applicant who is a qualified person with a disability, and may include but is not limited to:

(A) making reasonable modifications in policies, practices, and procedures;

(B) furnishing, at no charge, auxiliary aids and services, including but not limited to equipment, devices, materials in alternative formats, qualified interpreters, or readers; and

(C) as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a qualified person with a disability.

(2) "Applicant" means any lawyer, party, witness, juror, or any other individual who has a specific interest in or is participating in any proceeding before any court.

(3) "Court" means any court or other agency or body subject to the rulemaking authority of the Supreme Court.

(4) "Person with a disability" means a person covered by the Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 *et seq.*), RCW 49.60 *et seq.*, or other similar local, state, or federal laws. This term includes but is not limited to an individual who has a physical or mental impairment that limits one or more major life activities, has a documented history of such an impairment, or is regarded as having such an impairment.

(5) "Qualified person with a disability" means a person with a disability who is otherwise entitled to participate in any program, service, or activity made available by any court.

**(b) Process for Requesting Accommodation.**

(1) An application requesting accommodation may be presented *ex parte* in writing, or orally and reduced to writing, on a form approved by the Administrative Office of the Courts, to the presiding judge or officer of the court or his or her designee.

(2) An application for accommodation shall include a description of the accommodation sought, along with a statement of the impairment necessitating the accommodation. The court may require the applicant to provide additional information about the qualifying impairment to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated "SEALED MEDICAL AND HEALTH INFORMATION" and such information shall be sealed automatically. The court may order that such information be sealed if it has not previously automatically been sealed.

(3) An application for accommodation should be made as far in advance as practical of the proceeding for which the accommodation is sought.

**(c) Consideration.** A request for accommodation shall be considered and acted upon as follows:

(1) In determining whether to grant an accommodation and what accommodation to grant, the court shall:

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 *et seq.*), RCW 49.60 *et seq.*, and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation.

(2) If an application for accommodation is filed five (5) or more court days prior to the scheduled date of the proceed-

ing for which the accommodation is sought, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impossible for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(3) If an application for accommodation is filed fewer than five (5) court days prior to the scheduled date of the proceeding for which the accommodation is requested, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impractical for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(4) If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court must offer the applicant an alternative accommodation.

**(d) Denial.** Except as otherwise set forth in subsection (c)(2) or (c)(3) of this rule, an application for accommodation may be denied only if the court finds that:

(1) the applicant has failed to satisfy the substantive requirements of this rule;

(2) the requested accommodation would create an undue financial or administrative burden;

(3) the requested accommodation would fundamentally alter the nature of the court service, program, or activity; or

(4) permitting the applicant to participate in the proceeding with the requested accommodation would create a direct threat to the safety or well-being of the applicant or others.

**(e) Order.** The court shall issue an order consistent with its decision. If the court denies a requested accommodation pursuant to section (d) of this rule, the order shall specify the reasons for the denial. If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court's order shall include a description of:

(1) the facts and/or circumstances that make the accommodation impossible under subsection (c)(2) or impractical under subsection (c)(3); and

(2) the reasons why the proceeding cannot be continued without prejudicing a party to the proceeding.

The court shall inform the applicant and the court personnel responsible for implementing accommodations that the request for accommodation has been granted or denied, in whole or in part, and the nature of the accommodation to be provided, if any.

**(f) Duration of Accommodation.** The accommodation ordered shall commence on the date set forth in the order granting the accommodation and shall remain in effect for the period specified in the order, which may be extended as the court deems appropriate. The court may grant an accommodation for an indefinite period or for a particular proceeding or appearance.

**Comment**

Access to justice for all persons is a fundamental right. It is the policy of the courts of this state to assure that persons with disabilities have equal and meaningful access to the judicial system. Nothing in this rule shall be

construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law.

**RULES OF APPELLATE PROCEDURE (RAP)  
RULE 9.5 FILING AND SERVICE OF REPORT OF PROCEEDINGS—OBJECTIONS**

(a) - (c) [Unchanged.]

**(d) Substitute Judge May Settle Report of Proceedings.** If the judge before whom the proceedings were held is for any reason unable to promptly settle questions as provided in section (a), another judge may act in the place of the judge before whom the proceedings were held.

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

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

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 07-14-003  
NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF  
INFORMATION SERVICES  
(Customer Advisory Board)  
(Geographic Information Technology)  
[Filed June 21, 2007, 9:28 a.m.]**

Previously, the customer advisory board met from 1:30 - 3:30 p.m., in the Department of Information Services Boardroom, 2nd Floor, James R. Larson Forum Building, 605 East 11th Street, Olympia, WA, on a monthly basis. The board has been restructured and will meet from 1:30 - 2:30 in the governor's conference room on the following dates for the remainder of 2007:

- July 9
- September 24
- November 26

In addition, the June 21, 2007, geographic information technology meeting has been changed to July 26, 2007, from 10:00 a.m. to 12:00 p.m., in the Department of Information Services Academy Classroom, 1st Floor, James R. Larson Forum Building, 605 East 11th Street, Olympia, WA.

For further information please contact Laurel McMillan at (360) 902-3566.

**WSR 07-14-004  
NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF  
INFORMATION SERVICES  
(Information Services Board)  
[Filed June 21, 2007, 9:28 a.m.]**

A special information services board meeting has been scheduled for Monday, June 25, 2007 at 2:00. The meeting

will be held in the Department of Information Services Boardroom, 605 East 11th Street, Olympia, WA.

For further information please contact Laurel McMillan at (360) 902-3566.

**WSR 07-14-005  
AGENDA  
DEPARTMENT OF CORRECTIONS**

[Filed June 21, 2007, 9:25 a.m.]

**SEMI-ANNUAL RULE-MAKING AGENDA  
JULY 1 - DECEMBER 31, 2007**

Following is the department of corrections' semi-annual rule development agenda for publication in the Washington state register pursuant to RCW 34.05.314. There may be additional rule-making activity not on the agenda as conditions warrant.

**RULE DEVELOPMENT CALENDAR  
JULY - DECEMBER 31, 2007**

WAC Chapter WAC 137-08	Purpose Public disclosure - revise policies and procedures for disclosure of public records.
WAC 137-59	Facility siting.

John Nispel  
Rules Coordinator

**WSR 07-14-006  
OFFICE OF THE GOVERNOR**

[Filed June 21, 2007, 11:54 a.m.]

**NOTICE OF APPEAL  
RCW 34.05.330(3)**

Pursuant to RCW 34.05.330(3), you are hereby notified for publication in the Washington State Register that:

On May 7, 2007, the Governor's Office received an appeal from Mr. Randy Boss relating to the Department of Transportation's denial of a petition to repeal or amend WAC 468-300-801 through -890. The Governor denied the Petition on June 21, 2007.

DATE: June 21, 2007  
Richard E. Mitchell  
General Counsel to the Governor

June 21, 2007  
Randy Boss  
P.O. Box 237  
Gig Harbor, WA 98335

Re: Administrative Rule Appeal - WAC 468-300-801 through -890

Dear Mr. Boss:

Thank you for your May 1 and May 23, 2007, letters regarding the Washington State Department of Transportation's (WSDOT) final rules pertaining to the collection of tolls on



state transportation facilities. After careful review, I have decided to deny your petition.

Your April 30, 2007, e-mail to Sharon Randolph, AAG and Marta Carlo, WSDOT, outlines two primary reasons for appealing the above-referenced WSDOT rules. You state that by changing the definition of V-Toll<sup>1</sup> in the final rule, WSDOT substantially changed the proposed rule. As a result, the public did not have an opportunity to comment on the provisions of the final rule. You also state that the potential lack of notice to a "Good to Go!" customer that his or her account would be charged removes the customer's ability to challenge the photo monitoring evidence resulting in a debit to the customer's account.

I have concluded that WSDOT did not substantially change the proposed rule. The provisions of the rule regarding customers with an electronic account have not changed. The definition V-Toll in the proposed rule applied broadly to all individuals who used a toll facility and did not pay the toll. Additional language in WAC 468-300-870 (2)(a) explicitly said that customers with an electric account who did not pay the toll would have the toll automatically removed from their account. Additionally, the passage of Substitute Senate Bill (SSB) 5391 by the 2007 Legislature clarified the infraction process and provided for a penalty amount that would be distributed to the appropriate toll facility. As a result, it is no longer necessary for the WSDOT rule to provide for a process to collect tolls from non-toll payers without electronic accounts. The changes reflected in the final rule simply make the rule consistent with recent legislative actions.

I have also concluded that electronic toll customers will have sufficient notice regarding the potential of an automatic toll charge to their account. The original and final rules explicitly provide notice to the public regarding the potential for an automatic charge. Additionally, the customer agreements for customers with an electronic toll account will also reflect the process for automatically debiting the customer's account.

I appreciate your concerns regarding proper public notice in the rule-making process, as well as the necessity for notifying consumers of the potential for charges to an electronic toll account. Thank you again for your efforts to ensure that our state's rule-making practices are thorough and complete.

Sincerely,  
Christine O. Gregoire  
Governor

<sup>1</sup>"Video-toll" or "V-Toll" is an alternative method of toll collection from a "Good to Go!"<sup>TM</sup> account holder. If a "Good to Go!"<sup>TM</sup> account holder uses the toll facility but does not pay the toll because his or her transponder is not properly mounted on the account holder's registered vehicle a photo-monitoring system captures the vehicle's license plate and the toll will be posted to the "Good to Go!"<sup>TM</sup> account.

**WSR 07-14-009**  
**NOTICE OF PUBLIC MEETINGS**  
**CLEMENCY AND PARDONS BOARD**

[Filed June 21, 2007, 3:27 p.m.]

Clemency and Pardons Board Meetings for 2007

The Washington state clemency and pardons board hereby gives notice of the following dates and times of the meetings of the Washington state clemency and pardons board for the year 2008:

Date	Time	Location
March 14, 2008	10:00 a.m.	O'Brien Building, Room A <sup>1</sup>
June 13, 2008	10:00 a.m.	O'Brien Building, Room A
September 12, 2008	10:00 a.m.	O'Brien Building, Room A
December 12, 2008	10:00 a.m.	O'Brien Building, Room A

<sup>1</sup>The location of this meeting is subject to change depending on the availability of the legislative building during the 2008 legislative session.

**WSR 07-14-010**  
**NOTICE OF PUBLIC MEETINGS**  
**CENTRAL WASHINGTON UNIVERSITY**

[Filed June 22, 2007, 8:41 a.m.]

The university's board of trustees' meetings for the next academic year are listed below. A date for this summer's board retreat is included (July 31 - August 1). This is a change from the previously published dates.

Regular meetings of the Central Washington University board of trustees will be held at 1:30 p.m. in Barge Hall, Room 412, on the Central Washington University Ellensburg campus, except where noted, on the following dates:

- July 31 - August 1, 2007 (*Board Retreat at Cave B Inn at SageCliffe*)
- October 5, 2007
- December 7, 2007
- February 1, 2008
- March 7, 2008
- May 2, 2008
- June 6, 2008
- July 31 - August 1, 2008 (*Board Retreat at CWU - Pierce County*)

**WSR 07-14-020**  
**NOTICE OF PUBLIC MEETINGS**  
**CLEMENCY AND PARDONS BOARD**

[Filed June 22, 2007, 3:40 p.m.]

**Clemency and Pardons Board Meetings for 2008**

The Washington state clemency and pardons board hereby gives notice of the following dates and times of the meetings of the Washington state clemency and pardons board for the year 2008:

Date	Time	Location
March 14, 2008	10:00 a.m.	O'Brien Building, Room A <sup>1</sup>
June 13, 2008	10:00 a.m.	O'Brien Building, Room A
September 12, 2008	10:00 a.m.	O'Brien Building, Room A
December 12, 2008	10:00 a.m.	O'Brien Building, Room A

<sup>1</sup> The location of this meeting is subject to change depending on the availability of the legislative building during the 2008 legislative session.

**WSR 07-14-021**  
**CLEMENCY AND PARDONS BOARD**

[Filed June 22, 2007, 3:40 p.m.]

**Special Hearing of the Clemency and Pardons Board**

A special meeting of the clemency and pardons board is scheduled for July 12, 2007, at 1:00 p.m., in the Dean's Conference Room of the University of Seattle, Sullivan Hall, 901 12th Avenue, Seattle, WA.

The agenda items are as follows:

1. Petition of Moises Flores Arteaga.

**WSR 07-14-022**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed June 23, 2007, 11:12 a.m.]

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the department of social and health services for June 2007.

**Economic Services Administration**  
**Division of Child Support**

Document Title: PCM 07-004: Providing Services for Children Receiving Medicaid.

Subject: Providing services for children receiving medicaid.

Effective Date: June 18, 2007.

Document Description: This policy clarification memo explains DCS policy for providing services for children who receive medicaid.

To receive a copy of the interpretive or policy statements, contact Jeff Kildahl, Technical Writer, Division of Child Support, P.O. Box 11520, Tacoma, WA 98411-5520, phone (360) 664-5278, TDD/TTY (360) 753-9122, fax (360) 586-3274, e-mail [jkildahl@dshs.wa.gov](mailto:jkildahl@dshs.wa.gov), web site <http://www1.dshs.wa.gov/dcs/index.shtml>.

**WSR 07-14-023**  
**NOTICE OF PUBLIC MEETINGS**  
**EASTERN WASHINGTON UNIVERSITY**

[Filed June 25, 2007, 9:18 a.m.]

The board of trustees of Eastern Washington University will hold their annual retreat from 8:30 a.m. to 5:00 p.m. on June 26 and 27, 2007, at the Riverpoint Campus Academic Center Building, Rooms 501 and 515, Riverpoint Boulevard, Spokane, WA.

The board will convene into executive session in accordance with RCW 42.30.110 and/or 42.30.140 on June 26 at 4:15 p.m., June 27 at 9:00 a.m., and June 27 at 3:15 p.m., according to the schedule of meetings below.

The board of trustees will hold their regular open meeting on Thursday, June 28, 2007, from 9:30 a.m. to 12:00 p.m. to discuss and take action on agenda items as outlined in the agenda.

**Retreat and Meeting Schedule**  
**June 26, 27, 28, 2007**

**Tuesday, June 26, 2007**

8:20 a.m. - 5:00 p.m.	Board of Trustees Retreat	Riverpoint Campus Riverpoint Academic Center Building Rooms 501 and 515 Spokane, Washington
4:15 p.m. - 5:00 p.m.	Board Executive Committee Meeting	Riverpoint Academic Center Building Room 501 Spokane, Washington
5:15 p.m. - 7:00 p.m.	Dinner Meeting - Trustees, President, Vice Presidents	Anthony's Restaurant Spokane, Washington

**Wednesday, June 27, 2007**

8:30 a.m. - 4:30 p.m.	Board of Trustees Retreat	Riverpoint Campus Riverpoint Academic Center Building Rooms 501 and 515, Spokane, Washington
9:00 a.m. - 9:30 a.m.	Board Executive Committee Meeting	Riverpoint Academic Center Building Room 501 Spokane, Washington
3:15 p.m. - 4:15 p.m.	Board Executive Committee Meeting	Riverpoint Academic Center Building Room 501 Spokane, Washington

**Thursday, June 28, 2007**

8:30 a.m. - 9:30 a.m.	Board Committee of the Whole	Eastern Washington University Cheney Campus Tawanka Room 215 B&C
9:30 a.m. - 12:00 p.m.	Board of Trustees Regular Open Meeting	Eastern Washington University Cheney Campus Tawanka Room 215 B&C

**Thursday, June 28, 2007**

Committee of the Whole	8:30 a.m.	Cheney TAW 215 B&C
Open Public Session	9:30 a.m.	Cheney TAW 215 B&C
Executive Session	June 26, 2007 4:15 p.m. and June 27 9:00 a.m. and 3:15 p.m.	Riverpoint Academic Building

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling the president's office, (509) 359-4648.

Wednesday, January 16, 2008  
 Wednesday, February 20, 2008  
 Wednesday, March 19, 2008  
 Wednesday, April 16, 2008  
 Wednesday, May 21, 2008  
 Wednesday, June 18, 2008  
 No Meeting Scheduled for July, 2008  
 No Meeting Scheduled for August, 2008  
 Wednesday, September 17, 2008

**WSR 07-14-024**  
**NOTICE OF PUBLIC MEETINGS**  
**CASCADIA COMMUNITY COLLEGE**  
 [Filed June 25, 2007, 11:32 a.m.]

Approved by the board of trustees at their June 20, 2007, regular meeting.

2007-2008 Board of Trustees - Meeting Dates  
 Third Wednesday of Each Month

All meetings will begin at 4:00 p.m. and will take place in the Board Room (Room 260), Cascadia Community College, 18345 Campus Way N.E., Bothell, WA 98011.

2007-08 Board Meeting Dates  
 Wednesday, September 19, 2007  
 Wednesday, October 17, 2007  
 Wednesday, November 21, 2007  
 Wednesday, December 19, 2007

**WSR 07-14-040**

**AGENDA**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**  
 [Filed June 27, 2007, 1:08 p.m.]

Following is the department of natural resources' semi-annual rules development agenda for publication in the Washington state register pursuant to RCW 34.05.314. There may be additional rule-making activity not on the agenda as conditions warrant.

Please call Jamey Taylor at (360) 902-1561, or e-mail at [jamey.taylor@dnr.wa.gov](mailto:jamey.taylor@dnr.wa.gov) if you have questions.

**RULES DEVELOPMENT AGENDA**  
July 2007 to December 2007

<b>WAC Chapter or Section</b>	<b>Purpose of rule being developed or amended</b>
332-18	Update surface mining rules regarding eligibility for blanket performance securities.
332-24-710	Update boundary of forest protection zone in Kitsap County.
332-24-720	Update boundary of forest protection zone in Pierce County.
<b>WAC Chapter or Section</b>	<b>Purpose of rule being developed or amended</b>
332-24-730	Update boundary of forest protection zone in King County.
332-52	Revise and update rules to reflect current recreation and public access policy.

**WSR 07-14-042**  
**NOTICE OF PUBLIC MEETINGS**  
**COMMUNITY ECONOMIC**  
**REVITALIZATION BOARD**  
[Filed June 27, 2007, 2:04 p.m.]

The community economic revitalization board (CERB) will be having a special meeting July 18, 2007. The meeting location for the July meeting is the Satsop Development Park's Flex-Tech Facility, 100 Technology Way, Elma, WA 98541. The meeting will begin at 8:00 a.m.

Please call Kate Rothschild at (360) 725-4058 if you have any questions or require further clarification.

**WSR 07-14-043**  
**NOTICE OF PUBLIC MEETINGS**  
**FOREST PRACTICES BOARD**  
[Filed June 27, 2007, 2:07 p.m.]

Per WAC 222-08-040, the forest practices board will hold a special meeting on July 25, 2007, at 9 a.m. - 5 p.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia.

Mailing agendas to all individuals and groups on the board's mailing list also provides notice of these meetings. To be added to this distribution list, please contact Erin Daley, Board Coordinator, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1589, fax (360) 902-1428, e-mail forest.practicesboard@dnr.wa.gov.

To view meeting schedule and other board-related information on-line, log on to the forest practices board's web site at [www.dnr.wa.gov](http://www.dnr.wa.gov).

**WSR 07-14-044**  
**NOTICE OF PUBLIC MEETINGS**  
**WHATCOM COMMUNITY COLLEGE**  
[Filed June 27, 2007, 2:25 p.m.]

The board of trustees of Whatcom Community College, District Number Twenty-One, will hold its regularly scheduled board meeting on Wednesday, July 11, 2007, at 2:00 p.m. on the campus of Whatcom Community College in the Laidlaw Building Boardroom #143, 237 West Kellogg Road, Bellingham, WA 98226. The board of trustees meeting is open to the public.

**WSR 07-14-050**  
**RULES COORDINATOR**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed June 27, 2007, 5:20 p.m.]

This memorandum is to notify your office that as per RCW 34.05.312, Josh Swanson, e-mail [swaj235@LNI.wa.gov](mailto:swaj235@LNI.wa.gov), phone (360) 902-6805 or (360) 902-4425, fax (360) 902-4202, is the designated rules coordinator for the department of labor and industries.

**WSR 07-14-064**  
**NOTICE OF PUBLIC MEETINGS**  
**WHATCOM COMMUNITY COLLEGE**  
[Filed June 29, 2007, 10:11 a.m.]

**BOARD OF TRUSTEES**  
**Wednesday, July 11, 2007**  
**2:00 p.m.**  
**LDC Boardroom, 143**  
237 West Kellogg Road  
Bellingham, WA 98226

If you are a person with a disability and require an accommodation while attending the meeting, please contact the president's office at 752-6777 (or TDD 647-3279) as soon as possible to allow sufficient time to make arrangements.

Next month's meeting reminder: Wednesday, September 12, 2007.

## WSR 07-14-065

## AGENDA

## FOREST PRACTICES BOARD

[Filed June 29, 2007, 10:39 a.m.]

**Rule Development Agenda  
July - December 2007**

The forest practices board's mandate is to adopt rules to protect the state's public resources while maintaining a viable forest products industry. The following rule proposals are under development or are anticipated during this time period.

**1. Desired Future Condition:** The board will consider initiating rule making to amend chapter 222-30 WAC related to desired future condition performance targets in riparian management zones.

**2. Historic Sites:** The board is considering amending WAC 222-16-050 relating to Class IV-Special classifications to include historic sites as a SEPA trigger.

**3. Long-Term Application for Small Forest Landowners:** The board initiated rule making that amends chapters 222-12 and 222-20 WAC to allow small forest landowners to develop long-term applications for up to fifteen years. The board will consider adoption of these rules at its September meeting.

**4. Moratorium on Conversion Activities:** The board may consider a rule proposal to amend chapters 222-16 and 222-20 WAC to implement changes contained in SSSB [2SSB] 5883 passed by the 2007 legislature. Changes include removing the moratorium form requirements and associated fees as part of a complete forest practices application/notification and adding a definition for "forest conversion activities."

**5. Northern Spotted Owl:** The board approved an emergency rule to extend the moratorium to October 28, 2007, on decertifying northern spotted owl site centers. The board will consider initiating rule making for northern spotted owl decertification at its September meeting.

**6. Taylor's Checkerspot Butterfly:** The board is considering amending WAC 222-16-080 to provide habitat protection for the Taylor's Checkerspot Butterfly.

**7. Upland Wildlife:** The board, with the department of fish and wildlife, continues to conduct a comprehensive review of the forest practices rules and science for upland wildlife protection and development of cooperative management planning processes. This review and planning process, along with new species listings, and the designation of critical habitat, may result in a rule proposal.

**Contact Person:** Patricia Anderson, FPB Rules Coordinator, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1413, fax (360) 902-1428, e-mail patricia.anderson@dnr.wa.gov.

## WSR 07-14-067

RULES COORDINATOR  
DEPARTMENT OF

## GENERAL ADMINISTRATION

[Filed June 29, 2007, 11:13 a.m.]

Barton Potter is the rules coordinator for the department of general administration. Barton's contact information is P.O. Box 41000, Olympia, WA 98504-1000, (360) 902-7208, bpotter@ga.wa.gov.

Jane Rushford  
Deputy Director

## WSR 07-14-091

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

[Filed June 29, 2007, 2:44 p.m.]

NOTICE OF CHANGES TO  
STATE OF WASHINGTON NURSING FACILITY  
MEDICAID PAYMENT RATE METHODOLOGY

The 2007 state legislature has passed changes to the method for determining facility-specific, per resident day medicaid payment rates for nursing facility care in Washington. Unless otherwise indicated the changes are effective July 1, 2007. This notice includes a justification, description, and estimated rate impact of the changes.

Please address any comments or questions concerning the changes to Edward H. Southon, Department of Social and Health Services, Aging and Disability Services Administration, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2469, fax (360) 493-9484. Comments should be submitted within fourteen days after appearance of this notice.

## JUSTIFICATION

The changes are mandated by the 2007 Washington state legislature in chapter 508, Laws of 2007, and in section 206, chapter 522, Laws of 2007, the State Operating Budget Appropriations Act.

NEW RATES AND PROPOSED CHANGES  
TO RATE METHODOLOGY

In combination with a variety of other factors, including changes in the allowed costs of care, the methodological changes are estimated to result in a statewide average nursing facility medicaid payment rate of \$158.11 per resident day, at a maximum, for state fiscal year 2008, running from July 1, 2007, to June 30, 2008, and \$164.18 for state fiscal year 2009, running from July 1, 2008, to June 30, 2009.

Chapter 508, Laws of 2007, makes several changes in the medicaid nursing facility rate methodology, including:

(1) A "rebasin" of costs used to calculate the direct care, operations, support services, and therapy care component rates to the 2005 cost report, for rate setting in the period from July 1, 2007, through June 30, 2009.

(2) Beginning on July 1, 2009, those same four component rates - direct care, operations, support services, and ther-

apy care - will be automatically rebased every two years, using the cost report from the time period two years before. For example, on July 1, 2009, those four component rates will be based on the 2007 cost report, and so on every other year.

(3) Costs of the state's quality maintenance fee, or "bed tax," are expressly excluded from the 2005 cost base. Based on earlier legislative action, the quality maintenance fee expires as of July 1, 2007. To make sure that QMF costs paid in 2005 did not affect the rates paid to facilities as of July 1, 2007, the legislature expressly excluded them from the 2005 cost base.

(4) The designation of "vital local provider" given to some nursing facilities with home offices located in Washington is terminated as of July 1, 2007, along with the "hold harmless" rate previously given to facilities so designated.

(5) A new "hold harmless" rate is given to qualifying facilities as of the July 1, 2007, and July 1, 2008, rate settings. To qualify, a facility must have overspent its combined direct care, operations, support services, and therapy care component rates in either 2004 or 2005. For a qualifying facility, the department will compare the facility's combined direct care, operations, support services, and therapy care component rates calculated as of July 1, 2007 (and then again as of July 1, 2008), adjusted for economic trends and conditions in the 2007-2009 operating budget, and those same four component rates calculated as of June 30, 2007 (less the quality maintenance fee). If the combined rates as of June 30, 2007, are higher, then the facility will receive its June 30, 2007, rates for direct care, operations, support services, and therapy care, excluding the quality maintenance fee but adjusted for economic trends and conditions specified in the 2007-2009 operating budget.

### WSR 07-14-093

#### INTERPRETIVE STATEMENT DEPARTMENT OF REVENUE

[Filed June 29, 2007, 4:17 p.m.]

#### CANCELLATION OF INTERPRETIVE STATEMENTS

The department of revenue has canceled the following excise tax advisories (ETAs).

**ETA 144.04.193 Distributor for out-of-state manufacturer - Agent or seller.** This document explains that a person is considered to be a buyer/seller of goods and not merely an agent when that person has actual or constructive possession of property as evidenced by the person's ability to sell the products in its own name. In the present scenario, the taxpayer is an instate company selling products manufactured by its out-of-state parent and the agreement was explicit that the taxpayer was the buyer of the parent's goods. There is no need for this document as the tax reporting responsibilities of such arrangements are sufficiently addressed in WAC 458-20-159.

**ETA 206.08.176 Restoration of a fishing vessel in this state for exhibition purposes by and in another state.** This document explains that the exemption from retail sales tax for deep sea fishing vessels (RCW 82.08.0262) applies only

to vessels actually used for deep sea fishing, and does not apply to a fishing vessel to be used for exhibition purposes. There is no need for this document as the statute and WAC 458-20-176 both provide that the exemption is available for watercraft used in conducting commercial deep sea fishing outside the territorial waters of Washington.

**ETA 226.08.177 Automobile sales arranged by out-of-state firm but consummated through in-state dealer.** This document explains that an instate dealer making local deliveries of vehicles to consumers and showing itself as the seller in both its books of account and on the dealer's report of sale for title and registration documents. There is no need for this document as the documentation requirements for a person claiming to be acting as an agent in promoting sales of another are explained in WAC 458-20-159. This document also erroneously explains that an out-of-state business must be registered with the department in order to provide a resale certificate. WAC 458-20-102(9) explains that a seller may take a resale certificate from an unregistered nonresident buyer.

**ETA 281.04.193 Interstate mail delivery by vendor of goods sold.** This document explains that where property is delivered by a seller to a point outside the state, the seller must retain records proof that delivery was actually made outside the state. It explains that where delivery is made by mail, retention of sales slips indicating that out-of-state delivery was required and insurance receipts from the post office are sufficient to prove the interstate nature of the sales. There is no need for this document.

**ETA 344.12.145 Local use tax—Allocation when credit allocated for sales or use taxes paid another state.** This document explains that RCW 82.56.010 contains specific directions for the allocation of the credit allowed against Washington's use tax for sales or use taxes paid to another state by the present user. The document recites language from the statute, and provides an example of how such a distribution would be made. Additionally, this is an administrative process that does not affect the amount of tax owed or the amount of credit available to a taxpayer. There is no need for this document.

**ETA 386.04.159 Consignee or seller.** This document consists of one paragraph distinguishing between a contract of consignment and a contract of sale. This document is not needed. WAC 458-20-159 adequately addresses this issue and also discusses record-keeping requirements, which are not addressed in this document.

**ETA 411.04.111 Activities performed by nonprofit associations.** This document explains that a nonprofit association, in this case an incorporated association of farmers, is a person subject to B&O tax on its business activities. This document is not needed as WAC 458-20-169 provides a comprehensive explanation of the tax-reporting responsibilities of nonprofit organizations.

**ETA 481.12.178 Sales or use tax applicable to items both leased and used for personal use.** This document explains that a person that purchases an item for resale or lease without intervening use need not pay sales or use tax on that item, while a person that purchases an item for lease and personal use is subject to retail sales or use tax. It also explains that the measure of tax is not applied pro rata on the

basis of the comparable percentages of personal and leasing use. There is no need for this document as this issue is a straight-forward application of law and is addressed in multiple Washington tax decisions (WTDs) and ETA 356.12.211.

**ETA 521.04.241 1982 Standard deduction—Radio and television broadcasting.** This document provides the standard deduction for radio and television broadcasting, based on FCC statistics, for calendar year 1982. This information is not needed.

Copies of the cancelled documents are available via the department's web site at <http://dor.wa.gov/content/FindALawOrRule/>, or a request for copies may be directed to Roseanna Hodson, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6119, fax (360) 586-5543.

Alan R. Lynn  
Rules Coordinator

**Semi-annual Rules Development Agenda  
July 2007 - December 2007**

**WSR 07-14-097**

**AGENDA**

**DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed June 29, 2007, 6:42 p.m.]

In accordance with RCW 34.05.314 following is the department of labor and industries' semi-annual rules development agenda for July 1, 2007 - December 31, 2007.

Please contact Josh Swanson at (360) 902-6805 or e-mail [swaj235@lni.wa.gov](mailto:swaj235@lni.wa.gov), if you have any questions.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
<b>DIVISION: Division of Occupational Safety and Health (DOSH)</b>						
Chapter 296-155 WAC	Certification of crane inspectors	Cindy Ireland (360) 902-5522	7/17/07	2/08	5/08	The department is required by ESHB 2171 (chapter 49.17 RCW) to establish rules relating to the accreditation of crane inspectors and cranes in the construction industry.
Chapter 296-45 WAC	Electrical	Beverly Clark (360) 902-5516	TBD	TBD	TBD	OSHA has updated their electrical requirements. We are reviewing the updates and will be making any necessary changes.
Chapter 296-800 WAC	Exit routes	Cindy Ireland (360) 902-5522	TBD	TBD	TBD	Requirements pertaining to exit routes is being reviewed and updated, along with being rewritten for clarity, ease of use and understanding.
Chapter 296-52 WAC	Explosives	Beverly Clark (360) 902-5516	TBD	TBD	TBD	OSHA has updated their explosives requirements. We are reviewing the updates and will be making any necessary changes.
Chapter 296-305 WAC	Fire fighting	Cindy Ireland (360) 902-5522	TBD	TBD	TBD	We are reviewing the fire fighting rules, updating, and rewriting the rules for clarity, ease of use and understanding.
N/A	Grants	Jill Saibel (360) 902-4519	7/3/07	11/20/07	3/18/08	The legislature mandated that L&I find investment projects to employers regarding worker safety programs.
Chapter 296-800 WAC	Hazard communica- tions	Carol Stevenson (360) 902-4778	TBD	TBD	TBD	We are reviewing the language in the core rules along with other DOSH rules concerning hazard communications to update language for consistency with industry standards.
Chapter 296-817 WAC	Hearing loss	Cindy Ireland (360) 902-5522	2/6/07	TBD	TBD	We are reviewing language in the hearing loss prevention (noise) rule, to clarify technical requirements and update language for consistency with industry standards.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
Chapter 296-62 WAC	Heat related illness in the outdoor environ- ment	Jamie Scibelli (360) 902-4568	12/19/06	10/2/07	1/2/08	DOSH filed an emergency rule for heat related illness in the outdoor environment on June 5, 2007, effective June 18, 2007. We will be working on a permanent rule.
Chapters 269-24 and 296-155 WAC	Rigging	Cindy Ireland (360) 902-5522	2/17/04	TBD	TBD	We are reviewing the rigging rules, updating, and rewriting the rules for clarity, ease of use and understanding.
Chapter 296-874 WAC	Scaffolds	Carol Stevenson (360) 902-4778		CR-105 5/1/07	8/6/07	We are correcting errors and making housekeeping changes to keep this rule as effective as the federal equivalent.
Chapter 296-304 WAC	Shipyards	Cindy Ireland (360) 902-5522	2/6/07	CR-105 5/1/07	8/6/07	OSHA promulgated a new fire protection rule for shipyard employment that incorporated by reference 19 NFPA standards. We replaced the references to those NFPA standards by adding the most recent versions.
<b>DIVISION: SPECIALTY COMPLIANCE SERVICES - SCS</b>						
Chapter 296-05 WAC	Apprenticeship rules	Sally Elliott (360) 902-6411	1/23/07	7/31/07	10/2/07	The purpose of the rule making is to work with stakeholders to discuss changes to the rules regarding the demonstration of need for programs seeking geographical expansion, in WAC 296-05-316. Amendments need to be made in order for the rules to be consistent throughout the section as well as with the federal government's definition of need.
Chapter 296-05 WAC	Apprenticeship rules	Sally Elliott (360) 902-6411	8/21/07	To be deter- mined	To be deter- mined	The purpose of this rule making is to create provisional approval for new apprenticeship programs. The department will work with stakeholders to develop language and to review other possible housecleaning changes.
Chapter 296-46B WAC	Electrical	Sally Elliott (360) 902-6411	5/22/07	11/20/07	1/20/08	The department received a petition for rule making on March 30, 2007 from the Washington State HVAC/R Association. The rule making will review the need for the "establishment of a new specialty electrician, a new specialty electrical contractor administrator, and a new specialty electrical contractor in order to do all necessary electrical work to install, service, repair or replace all heating, ventilation, air conditioning and refrigeration equipment and systems commonly done in the heating, ventilation, air conditioning and refrigeration industry."



WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
Chapter 296-46B WAC	Electrical	Sally Elliott (360) 902-6411	NA	CR-105 6/19/07	9/18/07	The purpose of the rule making is to update the effective date in WAC 296-46B-905, of the electrical fees. Last year, the electrical program was able to decrease fees due to an increasing fund balance. The rule making will extend the fee decrease until December 31, 2008.
Chapter 296-96 WAC	Elevators	Sally Elliott (360) 902-6411	11/23/04	7/17/07	9/18/07	As a result of the new licensing requirements for elevator contractor and elevator mechanics, the department is working with stakeholders to identify areas where the rules need substantive, house-keeping, and clarifying changes.
Chapter 296-127 WAC	Electronic technician	Sally Elliott (360) 902-6411	5/2/06	7/31/07	10/23/07	This rule making will amend the scope of work definition for electronic technicians. The department will work with stakeholders throughout the rule-making process.
Chapter 296-150C WAC	Commercial coaches	Sally Elliott (360) 902-6411	NA	CR-105 7/3/07	9/4/07	The purpose of this rule making is to correct an error that occurred when adopting the annual fee increase.
Chapter 296-150M WAC	Manufactures [Manufactured] homes	Sally Elliott (360) 902-6411	5/22/07	7/17/07	9/18/07	This rule making is a result of SHB 2118, which passed the 2007 legislature. This bill transfers the mobile and manufactured home installation program and the state administrative agency (SAA) programs from the department of community, trade and economic development to the department of labor and industries.
Chapter 296-400A WAC	Contractor certificate of registration	Sally Elliott (360) 902-6411	5/22/07	9/18/07	11/20/07	This rule making is a result of SHB 1843, which passed the 2007 legislature. The legislation amends the contractor registration rules to be consistent with the statute. The rule making will also review the contractor registration rules for additions or revisions. The rules need to be reviewed to ensure the rules are consistent with industry practice and to clarify the rules.
<b>DIVISION: Insurance Services (Worker's compensation)</b>						
Chapter 296-17 WAC	Retrospective rating	Bill Moomau (360) 902-4774	5/1/07	6/19/07	8/21/07	Clarify how retro adjustments are calculated and allow department to use multiple loss development factors in adjustment calculations for nonpension claims.
Chapter 296-17A WAC	Classifications	Bill Moomau (360) 902-4774 JoAnne Smith (360) 902-4777	7/18/07	9/5/07	11/1/07	Housekeeping of existing risk classifications to be effective January 1, 2008.
Chapter 296-17 WAC	Rates	Bill Moomau (360) 902-4774	7/18/07	9/5/07	11/20/07	The purpose of this rule making is to review and update workers' compensation rates.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
Chapters 296-14 and 296-15 WAC	Industrial insurance- suppressing workers' compensation claims	Valerie Grimm (360) 902-5005	6/5/07	8/21/07	10/29/07	The proposed rule will assist in the implementation of chapter 77, Laws of 2007 (SSB 5443). The proposed rule making will: <ul style="list-style-type: none"> <li>• Define bona fide workplace safety and accident prevention program and first aid.</li> <li>• Establish the penalty structure for employers when there is a finding of claim suppression.</li> <li>• Consideration will be given to when and how employers may be required to notify workers of a finding of claim suppression.</li> </ul> In addition, the rule making may address additional issues identified in the rule development process.
Chapters 296-19A and 296-15 WAC  There may also be changes to chapter 296-19A WAC	Vocational rehabilita- tion	Valerie Grimm (360) 902-5005	5/22/07	9/4/07	11/30/07	The proposed rules will assist in the implementation of chapter 72, Laws of 2007 (ESSB 5920). To implement the pilot program for vocational rehabilitation services, this rule making will include new rules and may include amendments of existing rules.
Chapter 296-14 WAC	Industrial insurance- wages	Suzy Campbell (360) 902-4583	NA	CR-105 9/18/07	11/29/07	This rule making will amend existing rules for consistency with chapter 297, Laws of 2007 (SHB 1244). A new rule will be added to clarify when the value of health care benefits is included in determining the worker's monthly wage.
Chapter 296-14 WAC	Industrial insurance- confidentiality of worker's compensa- tion claim files	Valerie Grimm (360) 902-5005	11/6/04	10/2/07	11/30/07	This rule making will define the responsibility of employers, workers, and other parties who have access to worker's compensation claim files for confidentiality and release of claim information.
Chapter 296-14 WAC	Industrial insurance- pension discount rates and mortality assumptions	Valerie Grimm (360) 902-5005	6/20/01	10/23/07	12/14/07	This rule making will amend the pension discount rate and update the mortality assumptions used to determine pension reserves and actuarial benefit reductions.
Chapter 296-14 WAC	Industrial insurance- definitions	Valerie Grimm (360) 902-5005	5/3/05	3/08	6/08	This rule making will define terms used in chapter 296-14 WAC and move definitions currently in chapter 296-20 WAC to chapter 296-14 WAC. The rule making will amend the definition of temporary partial disability. This rule making will impact crime victims' compensation.
Chapter 296-14 WAC	Industrial insurance- worker employment patterns	Valerie Grimm (360) 902-5005	8/21/02	To be deter- mined	To be deter- mined	This rule making will provide clarification on how to determine a worker's employment pattern at the time of injury or on the date of disease manifestation for the purpose of calculating the worker's wage. This rule will impact crime victims' compensation.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
Chapter 296-14 WAC	Industrial insurance- transitional/light duty job	Valerie Grimm (360) 902-5005	Spring 2008	To be deter- mined	To be deter- mined	This rule making will provide clarification on: <ul style="list-style-type: none"> <li>• The required elements of a valid transitional/light duty job offered from the employer of record.</li> <li>• What is expected of the employer and worker.</li> <li>• How to determine a worker's entitlement to time-loss compen- sation and loss of earning power benefits when a transitional/light duty job is offered.</li> </ul>
Chapter 296-19A WAC and [no fur- ther information supplied by agency]	Vocational rehabilita- tion	Valerie Grimm (360) 902-5005	4/27/07	To be deter- mined	To be deter- mined	The proposed rule making will amend WAC 296-19A-310 and add a new rule to clarify how the department will purchase services from individual vocational provid- ers in contiguous service loca- tions.
Chapter 296-15 WAC	Workers' compensa- tion self-insurance rules and regula- tions—Claim admin- istrator certification and continuing educa- tion requirements	Margaret Conley (360) 902-6906	6/20/06	4/17/07	8/2007	In response to a request from the self insured community, the department has agreed to evaluate the need for a continuing educa- tion model and also look at the current requirements for recertifi- cation of department-approved claims administrators. Rule mak- ing may be implemented in response to the department's find- ings.
Chapter 296-15 WAC	Workers' compensa- tion self insurance rules and regula- tions—Electronic claim data	Margaret Conley (360) 902-6906	1/23/07	4/2008	6/2008	In response to chapter 145, Laws of 2005 (SHB 1310) the depart- ment will implement rules to enable self-insured employers to provide claim data electronically via the self insurance electronic data reporting system (SIEDRS) by July 1, 2008.
Chapter 296-15 WAC	Workers' compensa- tion self insurance rules and regula- tions—Experience rating and second injury fund	Margaret Conley (360) 902-6906	1/23/07	12/2008	Spring 2009	In response to chapter 475, Laws of 2005 (SSB 5992) the depart- ment intends to implement rules to establish an experience rating for self-insurers' and use of the second injury fund by July 1, 2009.
Chapter 296-15 WAC	Workers' compensa- tion self insurance rules and regula- tions—Self insurance certification require- ments	Margaret Conley (360) 902-6906	7/2007	8/2007	11/2007 (effective 1/1/08)	Review of minimum financial requirements for an employer to become certified to self-insure their workers' compensation obli- gation in Washington state.
Chapter 296-23 WAC	Nursing	Jami Lifka (360) 902-4941	11/1/07	7/18/07	9/5/07	In response to chapter 263, Laws of 2007, HB 1722 the department intends to implement rules relat- ing to form that may be signed by physician assistants.
Chapter 296-20 WAC	Medical aid rules	Jami Lifka (360) 902-4941	11/1/07	7/18/07	9/5/07	In response to chapter 263, Laws of 2007, HB 1666 the department intends to implement rules relat- ing to advanced registered nurse practitioners.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
Chapter 296-20 WAC	Medical aid rules	Jami Lifka (360) 902-4941	NA	8/1/07 CR-105	10/2/07	In response to chapter 262, Laws of 2007, the department intends to adopt rules to establish a new workers' compensation advisory committee.
Chapter 296-20 WAC	Evidence based prescription drug	Jaymie Mai (360) 902-6792	NA	6/19/07	8/22/07	Revision of WAC 296-20-01002 and 296-20-03011(4) to include "the refill of a immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks" as a basis for exemption from preferred drug substitution as required by RCW 69.41.190.

\*Rule making dates are subject to change. If you would like to receive updates relating to agency rule making you can subscribe to the rules list-serve at <http://listserv.wa.gov/archives/manage.html>.

**WSR 07-14-100**  
**NOTICE OF PUBLIC MEETINGS**  
**BIG BEND**  
**COMMUNITY COLLEGE**

[Filed July 2, 2007, 9:29 a.m.]

In accordance with RCW 42.30.075 please be advised that the board of trustees for Big Bend Community College, District No. 18, has revised its regular meeting schedule as follows:

The August 28, 2007 meeting is cancelled.

A study session will be held August 29 and 30, 2007, at Sleeping Lady Resort, 7375 Icicle Road, Leavenworth, WA.

A study session will be held September 11, 2007, from 10:00 a.m. to 12:00 p.m. in the Harden Community Room in the ATEC Building on the campus of Big Bend Community College, 7662 Chanute Street, Moses Lake, WA to review the 2007-08 budget.

**WSR 07-14-106**  
**ATTORNEY GENERAL'S OFFICE**

[Filed July 2, 2007, 3:22 p.m.]

**NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION**  
**WASHINGTON ATTORNEY GENERAL**

The Washington attorney general issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the attorney general's office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the attorney general's

office of your interest by July 25, 2007. This is not the due date by which comments must be received. However, if you do not notify the attorney general's office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been received. You may notify the attorney general's office of your intention to comment by calling (360) 664-3027, or by writing to the Solicitor General, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you will be provided with a copy of the opinion request in which you are interested; information about the attorney general's opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered.

If you are interested in receiving notice of new formal opinion requests via e-mail, you may visit the attorney general's web site at [www.atg.wa.gov/AGOOpinions/default.aspx](http://www.atg.wa.gov/AGOOpinions/default.aspx) for more information on how to join our opinions List-Serv.

The attorney general's office seeks public input on the following opinion request(s):

**Opinion Docket No. 07-06-01**  
**Request by Jay Rodne**  
**State Representative, 5th District**

**Does a non-profit corporation formed under an inter-local agreement (RCW 39.34) qualify to serve as the "employer" for purposes of RCW 41.26 relating to Plans 1 and 2 of Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF), RCW 41.40 relating to Plans 1, 2, and 3 of the Washington Public Employees' Retirement System, and RCW 41.24 relating to the Volunteer Fire Fighters' and Reserve Officers' Relief and Pensions?**

**WSR 07-14-112**  
**NOTICE OF PUBLIC MEETINGS**  
**RECREATION AND CONSERVATION**  
**OFFICE**

(Salmon Recovery Funding Board)

[Filed July 3, 2007, 8:52 a.m.]

NOTE: On July 1, 2007, the name of the interagency committee for outdoor recreation (IAC) changes to the recreation and conservation funding board (RCFB) and the office name will change to the recreation and conservation office (RCO). For more information on the name change visit [http://www.iac.wa.gov/oiac/temp/name\\_change.htm](http://www.iac.wa.gov/oiac/temp/name_change.htm).

July 13, 2007  
 NRB Room 172  
 Olympia, Washington

Note: Opening sessions will commence as shown; all other times are approximate. If you need special accommo-

dations to participate in this meeting, please notify us by July 6, 2007, at (360) 902-2636 or TDD (360) 902-1996.

**WSR 07-14-137**

**AGENDA**

**DEPARTMENT OF AGRICULTURE**

[Filed July 3, 2007, 3:53 p.m.]

Following is the department of agriculture's semi-annual rules development agenda for the period of July 1, 2007, through December 31, 2007. This document is being sent to you in compliance with RCW 34.05.314.

The department may undertake additional rule-making activity as conditions warrant. If you have any questions, please call Teresa Norman at (360) 902-2043 or e-mail [tnorman@agr.wa.gov](mailto:tnorman@agr.wa.gov).

**Semi-Annual Rules Agenda**  
**July 1, 2007 - December 31, 2007**

WAC Number	Rule Title	Agency Contact	Tentative Timeline			Subject of Rule Making
			CR-101	CR-102	CR-103	
Agency Operations						
Chapter 16-08	Practice and procedure	Dannie McQueen Administrative Regulations Program Manager Phone (360) 902-1809	Expedited October		TBD	Updating the rules for adjudicative proceedings.
Chapter 16-06	Public records	Dannie McQueen Administrative Regulations Program Manager Phone (360) 902-1809	May	TBD	TBD	In accordance with the Public Disclosure Act, WSDA is required to develop and maintain its public disclosure rules and processes. Amendments to chapter 16-06 WAC fall under that mandate.
Animal Services Division						
Chapter 16-30	Restricted feed lots	Lynn Briscoe Special Assistant to the State Veterinarian Phone (360) 902-1987	December 2006	September	November	Title change to "restricted feedlots and holding facilities." Adding a restricted holding facility and eliminating the category II restricted feedlot.
Chapter 16-59	Importation and movement of poultry and hatching eggs	Lynn Briscoe Special Assistant to the State Veterinarian Phone (360) 902-1987	January 2007	September	November	Title change to make this chapter regarding in-state poultry. Update requirements, rewrite rules in plain talk, remove references to importation (moved to chapter 16-54 WAC).
Chapter 16-71	Equine infectious anemia	Lynn Briscoe Special Assistant to the State Veterinarian Phone (360) 902-1987	January 2007	TBD	TBD	Title change to "equine diseases." Rewrite rules in plain talk and bring them up-to-date with current disease requirements; adding section on equine viral arteritis.
Chapter 16-86	Brucellosis and tuberculosis in cattle and goats	Lynn Briscoe Special Assistant to the State Veterinarian Phone (360) 902-1987	August 2006	August 2007	October	Title change to "cattle diseases." Rewrite rules in plain talk and bring them up-to-date with current disease requirements.
Chapter 16-89	Sheep and goat scrapie disease control	Lynn Briscoe Special Assistant to the State Veterinarian Phone (360) 902-1987	August 2006	TBD	TBD	Rewrite rules in plain talk and bring them up-to-date with current disease requirements.
Chapter 16-604	Public livestock markets	Lynn Briscoe Special Assistant to the State Veterinarian Phone (360) 902-1987	TBD	TBD	TBD	Correcting a reference to the Code of Federal Regulation and adding an additional special sale day.

WAC Number	Rule Title	Agency Contact	Tentative Timeline			Subject of Rule Making
			CR-101	CR-102	CR-103	
<b>Commodity Inspection</b>						
16-390-240 16-390-242	Fresh produce audit verification program	Jim Quigley Fruit and Vegetable Inspection Program Manager Phone (360) 902-1883		In process	TBD	Fees for audit of good agricultural practices and good handling practices.
16-461-010	Inspection requirements	Jim Quigley Fruit and Vegetable Inspection Program Manager Phone (360) 902-1883	July	TBD	TBD	Remove or rewrite exemption for certificates of compliance.
16-409-024	Asparagus standards	Jim Quigley Fruit and Vegetable Inspection Program Manager Phone (360) 902-1883	August	TBD	TBD	Write new size requirements for asparagus standards.
16-439-210 -16-439-240	Pear standards	Jim Quigley Fruit and Vegetable Inspection Program Manager Phone (360) 902-1883	September	TBD	TBD	Grade and size requirements for pears.
16-390-060	Fees for inspecting beans, peas, lentils	Jim Quigley Fruit and Vegetable Inspection Program Manager Phone (360) 902-1883	September	TBD	TBD	Housekeeping WAC reference by September or earlier.
16-390-200	Phytosanitary inspections	Jim Quigley Fruit and Vegetable Inspection Program Manager Phone (360) 902-1883	December	TBD	TBD	Possible rule making based on new user fee from USDA for state-issued phytosanitary certificates.
16-303-200	Seed program fees	Fawad Shah Seed Program Manager Phone (509) 225-2630		In process		Adjust seed testing fees.
16-303-210	Fees for special seed tests	Fawad Shah Seed Program Manager Phone (509) 225-2630		In process		Continuance of quarantine rule.
<b>Food Safety and Consumer Services Division</b>						
Chapter 16-108	Washington state egg seals and assessments	Claudia Coles Food Safety Program Manager Phone (360) 902-1905	September	October	December	Amending assessment fees.
<b>Pesticide Management Division</b>						
Chapter 16-230	Use of chemicals and chemically treated materials in certain counties	Cliff Weed Compliance Program Manager Phone (360) 902-2036	July	September	November	Modify the nozzle requirements for air and ground applications.
Chapter 16-231	Restricted use herbicides	Cliff Weed Compliance Program Manager Phone (360) 902-2036	July	September	November	Modify the nozzle requirements for air and ground applications.
Chapter 16-232	Restricted use herbicides in certain counties	Cliff Weed Compliance Program Manager Phone (360) 902-2036	July	September	November	Modify the nozzle requirements for air and ground applications.
Chapter 16-228	Wood destroying organisms	Cliff Weed Compliance Program Manager Phone (360) 902-2036	July	September	November	Modify wood destroying reporting requirements.

WAC Number	Rule Title	Agency Contact	Tentative Timeline			Subject of Rule Making
			CR-101	CR-102	CR-103	
Plant Protection Division						
New	Brassica seed production districts	Mary Toohey Plant Protection Division Assistant Director Phone (360) 902-1907	5/15/07	8/22/07	10/3/07	The department is proposing to adopt rules regarding the orderly production of <i>Brassica</i> seed crops.
New	Weights and measures penalties	Kirk Robinson Weights and Measures Program Manager Phone (360) 902-1856	9/5/07	10/24/07	12/5/07	The department is proposing to adopt penalty matrices related to violations of chapter 19.94 RCW.
New	Motor fuel quality penalties	Kirk Robinson Weights and Measures Program Manager Phone (360) 902-1856	9/5/07	10/24/07	12/5/07	The department is proposing to adopt penalty matrices related to violations of chapter 19.112 RCW.
New	Christmas trees	Tom Wessels Plant Services Program Manager Phone (360) 902-1984	8/1/07	9/19/07	10/31/07	The department is proposing to adopt rules related to the implementation of ESB 5401.
Chapter 16-324	Rules for the certification of seed Potatoes	Tom Wessels Plant Services Program Manager Phone (360) 902-1984	CR-105 8/22/07	N/A	10/24/07	The department is proposing to revise the current seed potato certification rule by repealing the requirement for PVY testing for Generation 1 lots because of changes in the US-Canada Necrotic Virus Management Plan.
Chapter 16-354	Hop rootstocks—Certification	Mary Toohey Plant Protection Division Assistant Director Phone (360) 902-1907	7/5/07	8/22/07	10/3/07	The department is proposing to amend the hop certification rule by adding hop stunt viroid to the list of diseases that certified hop planting stock needs to be free of. In addition, the department is proposing to revise the current language to make it more clear and readable and reflect current industry practices.
Chapter 16-497	Hop disease quarantine	Mary Toohey Plant Protection Division Assistant Director Phone (360) 902-1907	7/5/07	8/22/07	10/3/07	The department is proposing to amend the hop disease quarantine by adding hop stunt viroid to the list of diseases that hop planting stock entering the state needs to be certified free of. In addition, the department is proposing to revise the current language to make it more clear and readable and reflect current industry practices.
Chapter 16-662	Weights and measures—National handbooks	Kirk Robinson Weights and Measures Program Manager Phone (360) 902-1856	11/7/07	1/2/08	2/15/08	The department is proposing to adopt the most recent version of the NIST handbooks.
Chapter 16-664	National type evaluation program	Kirk Robinson Weights and Measures Program Manager Phone (360) 902-1856	10/3/07	11/21/07	1/16/08	The department is considering amending the rule to accommodate devices dispensing alternate fuels.
Chapter 16-752	Noxious weed control	Tom Wessels Plant Services Program Manager Phone (360) 902-1984	9/5/07	10/24/07	12/5/07	The department is considering adding additional species to the wetland and aquatic weed quarantine and the noxious weed seed and plant quarantine.

Teresa Norman  
Rules Coordinator

**WSR 07-14-139**

**DEPARTMENT OF ECOLOGY**

[Filed July 3, 2007, 3:58 p.m.]

**PUBLIC NOTICE**

**Announcing the Proposal of a Nonnative Invasive Aquatic Animal and Nonnative Invasive Marine Algae Management General Permit**

The department of ecology (ecology) is proposing to issue a general permit to cover nonnative invasive aquatic animal and nonnative invasive marine algae activities in surface waters of the state. These management activities may result in the discharge of chemicals to the surface waters of the state of Washington. We are requesting comments about whether or not it is appropriate for ecology to develop a permit for these activities. We are also interested in what activities and/or chemicals should be included in this permit. This comment period ends August 20, 2007, at 5 p.m. Please direct comments to: Kathy Hamel, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6562, e-mail [Kham461@ecy.wa.gov](mailto:Kham461@ecy.wa.gov).

**Purpose of the General Permit:** The proposed general permit will cover nonnative invasive aquatic animal control activities and nonnative invasive marine algae control activities that result in the discharge of chemicals and other control products into surface waters of the state of Washington. Surface waters include freshwater, brackish, marine, and estuarine waters. Products regulated under this proposed permit include algaecides, biopesticides, insecticides, molluscicides, piscicides and any other product appropriate for use in managing nonnative invasive aquatic animals or nonnative invasive marine algae.

The proposed permit would provide a mechanism to allow Washington state agencies to treat early and small localized infestations that may lead to the eradication of the invasive species from each site and from the state, or for the containment of invasive species to one area or site. This permit would not include maintenance and operation activities at

facilities that may be affected by well-established invasive animal species.

Under the Washington State Water Pollution Control Act, a permit is required for the discharge of pollutants which may alter the biological or chemical characteristics of a water body. The proposed permit addresses these legal requirements and regulates the discharge of pollutants to protect surface water quality in Washington state.

Ecology issues general permits in place of a series of individual permits when the permitted activities are similar. Agencies that receive coverage under the general permit must comply with the terms and conditions of the permit.

**WSR 07-14-151**

**AGENDA**

**UTILITIES AND TRANSPORTATION**

**COMMISSION**

[Filed July 5, 2007, 9:52 a.m.]

The Washington utilities and transportation commission submits its semi-annual report rule development agenda for publication in the Washington state register pursuant to RCW 34.05.314.

Please direct any questions to Kippi Walker at (360) 664-1139 or [kwalker@utc.wa.gov](mailto:kwalker@utc.wa.gov).

**Semi-annual Rules Development Agenda  
(July 1, 2007 - December 31, 2007)**

This report is the utilities and transportation commission's semi-annual report rule development agenda for publication in the Washington state register pursuant to RCW 34.05.314.

Additional rule-making activity not on the agenda may be undertaken to meet conditions not now anticipated.

Dates that are in "bold" print, indicate that filing has occurred. All other dates are projected. The commission maintains a schedule of rule-making activity that is updated several times per month. See [www.utc.wa.gov](http://www.utc.wa.gov).

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102	CR-103 HEARING	
Chapter 480-108 WAC	Public Utility Regulatory Policies Act standard (PURPA) compliance rule making	Dick Byers Policy (360) 664-1209	<b>6/7/06</b>	<b>7/5/07</b>	8/15/07	Examine whether new or modified regulations are needed to govern aspects of investor-owned electric utility operations for which new federal standards are included in the Energy Policy Act of 2005. These new federal standards address: (1) Net-metering, (2) fuel sources, (3) fossil fuel generation efficiency, (4) smart metering, and (5) interconnection.
Chapter 480-93 WAC	Pipeline safety rules	Ilyne Lawson Pipeline Safety (360) 664-1302	<b>7/19/06</b>	<b>5/2/07</b>	7/11/07	Review of rules in chapter 480-93 WAC, Gas safety rules.
WAC 480-120-262	Operator service providers (OSPs)	Rebecca Beaton (360) 664-1287	<b>2/7/07</b>	<b>5/10/07</b>	8/15/07	Considers abolition of subsection (8) of WAC 480-120-262 Operator service providers (OSPs)—Emergency calls.



WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102	CR-103 HEARING	
Chapter 480-100 WAC	Renewable resource rules	Nicolas Garcia (360) 664-1346	1/24/07	8/1/07	10/24/07	Consider changes to electric and gas rules related to certain conservation standards as a result of I-937 which requires that utilities obtain a certain proportion of their electricity needs from renewable resources.
Chapter 480-15 WAC	Household goods rules	Vicki Elliott (360) 664-1110	4/18/07	10/24/07	12/12/07	Review of rules in chapter 480-15 WAC.
WAC 480-120-071	Telecom line extension rule making	Wilford Saunders (360) 664-1245	7/07	To be determined	To be determined	Consider standards for line extensions to unserved areas.
Chapter 480-120 WAC	Telecom tune-up rule making	Sharyn Bate (360) 664-1295	12/07	To be determined	To be determined	Consider possible changes to rules in chapter 480-120 WAC, Telephone companies and chapter 480-80 WAC, Utilities general—Tariff and contracts, relating to telecommunications.
Chapter 480-93 WAC	Pipeline safety statutory update	Alan Rathbun (360) 664-1254	7/15/07	To be determined	To be determined	Amend gas safety rules to reflect passage of SSB 5225.
Chapter 480-75 WAC	Pipeline safety statutory update	Alan Rathbun (360) 664-1254	7/15/07	To be determined	To be determined	Amend hazardous liquids rules to reflect passage of SSB 5225.
New rule in chapters 480-93 and 480-75 WAC	Submission standards for pipeline GIS	Alan Rathbun (360) 664-1254	12/15/07	To be determined	To be determined	Consider rules establishing standards for data submitted by pipeline operators for inclusion in the UTC's geographical information system (GIS).
WAC 480-70-016(3)	Solid waste—Alternate daily cover—Definition of solid waste	Gene Eckhardt (360) 664-1249	10/1/07	4/15/08	6/26/08	Consider changing rule to eliminate interpretation that soil used as cover in a landfill has value and is regulated as a commodity under chapter 80.80 RCW instead of regulated as solid waste under chapter 81.77 RCW.

Carole J. Washburn  
Executive Secretary

**WSR 07-14-154**  
**NOTICE OF PUBLIC MEETINGS**  
**OFFICE OF THE GOVERNOR**  
(Children's Trust of Washington)  
[Filed July 5, 2007, 10:33 a.m.]

Recently the legislature changed the name of the Washington council for prevention of child abuse and neglect (WCPCAN) to children's trust of Washington.

The next council meeting of the children's trust of Washington will be on August 17, 2007, from 9:30 a.m. to 3:00 p.m. at the COSTCO Headquarters, Building C, Room 3205, 845 Lake Drive, Issaquah, WA 98027.

**WSR 07-14-159**  
**AGENDA**  
**DEPARTMENT OF ECOLOGY**  
[Filed July 5, 2007, 11:37 a.m.]

Pursuant to RCW 34.05.314, following is the department of ecology's rule agenda for July 2007 through December 2007.

If you have any questions please contact Jerry Thielen at (360) 407-7551 or e-mail [jthi461@ecy.wa.gov](mailto:jthi461@ecy.wa.gov).

<b>Rule-making Agenda</b> July 2007 - December 2007				
*The bolded dates indicate filings that have occurred.				
WAC Chapter	Program	Chapter Title	CR-102 Filing Date	CR-103 Filing Date
173-455 (new), 173-400, 173-407, 173-425, 173-491, 173-495 AO # 06-14 9/05	AQ	Air quality fee rule.	<b>Nov-06</b> <b>Continuance:</b> <b>Feb-07</b>	<b>May-07</b>
173-455 (new), 173-400, 173-407, 173-425, 173-491, 173-495 AO # 06-14 9/05	AQ	Air quality fees.	<b>CR-105</b> <b>June-07</b>	Aug-07
173-400 and 173-460 AO # 05-19 11/05	AQ	General regulation for air pollution sources (WAC 173-400-110 only) and controls for new sources of toxic air pollutants.	Dec-07	May-08
173-400 AO # 07-03 11/06	AQ	General regulation for air pollution sources.	<b>Jan-07</b> <b>Expedited</b>	<b>May-07</b>
173-480 AO # 06-15 11/06	AQ	Ambient air quality standards and emission limits for radionuclides.	<b>Jan-07</b> <b>Expedited</b>	<b>May-07</b>
173-406 and 173-400 AO # 07-07 5/06	AQ	Acid rain regulation (mercury emissions from coal burning power plants) and general regulation for air pollution sources (WAC 173-400-112 and 173-400-113 only).	July-07	Dec-07
173-700 AO # 04-13 7/04	SEA	Wetland mitigation banking—Pilot rule.	June-08	Dec-08
197-11 AO # 07-01 1/07	SEA	State Environmental Policy Act rules.	<b>Withdrawn</b> <b>June-07</b>	
173-528 AO # 05-06 3/05	WR	Salmon-Washougal instream resources protection and water management program, WRIA 28.	Dec-07	Spring-08
173-503A AO # 04-01 2/04	WR	Instream flow rule for the Samish Subbasin.	HOLD	HOLD
173-532 AO # 04-08 4/04	WR	Water resources program for the Walla Walla Basin, WRIA 32.	<b>Feb-07</b>	Aug-07
173-134A AO # 06-05 3/06	WR	Quincy groundwater subarea management policy.	Aug-07	Dec-07
173-517 AO # 04-02 3/04	WR	Quilcene-Snow instream resources protection and water management program.	Dec-07	Spring-08
173-518 AO # 04-03 3/04	WR	Focusing on the Dungeness only: Elwha Dungeness instream resources protection and watershed management program.	Dec-07	Spring-08
173-545 AO # 07-06 3/07	WR	Instream resources protection program—Wenatchee River basin, water resource inventory areas (WRIA) 45.	July-07	Oct-07
173-502 AO # 06-01 2/06	WR	Rain catchment - WRIA 2.	<b>Withdrawn</b> <b>July-07</b>	
173-160-381 AO # 06-16 4/06	WR	Minimum standards for construction and maintenance of wells.	<b>Dec-07</b> <b>Expedited</b>	<b>Feb-06</b>

Jerry Thielen  
Rules Coordinator