

**WSR 10-24-012**  
**PROPOSED RULES**  
**OLYMPIC REGION**  
**CLEAN AIR AGENCY**

[Filed November 18, 2010, 2:18 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) regulations, amendments to Rule 1.4 Definitions and Rule 6.2 Outdoor Burning.

Hearing Location(s): Olympic Region Clean Air Agency, 2940 B Limited Lane N.W., Olympia, WA 98502, on February 9, 2011, at 10:00 a.m.

Date of Intended Adoption: February 9, 2011.

Submit Written Comments to: Robert Moody, 2940 B Limited Lane N.W., Olympia, WA 98502, e-mail robert.moody@orcaa.org, fax (360) 539-7610, by February 4, 2011.

Assistance for Persons with Disabilities: Contact Dan Nelson by February 4, 2011, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The focus of this proposal is to align ORCAA's Rule 6.2 Outdoor Burning with chapter 173-425 WAC. Language was simplified and clarified throughout this revision. The following definitions were deleted from Rule 1.4: "Open Fire," "Outdoor Burning," "Recreational Fire," "Silvicultural Burning" and "Urban Growth Area." Definitions from WAC 173-425-030 and the words "Burn Ban" and "Extinguish" were placed in Rule 6.2.2 Definitions. Changes from the existing rule and not specified in chapter 173-425 WAC include Rules 6.2.3, 6.2.4, and 6.2.8. Rule 6.2.3 included the entire city of Hoquiam as an area where residential and land clearing burning are not permitted. Under current regulations (WAC) a portion of the city is regulated as a high density area where burning is not allowed. The same rule does not apply to the remaining portion of the city. To simplify education and enforcement issues, the city of Hoquiam requested they be listed as a no-burn area. Rule 6.2.4 was added to provide enforcement ability for the Thurston County residential outdoor burning permit program. Residential fires ignited in Thurston County during the summer burn ban would be illegal under this rule and subject to enforcement. Rule 6.2.8 was added to clarify the basis for denial or revocation of a burn permit issued by ORCAA.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Moody, 2940 B Limited Lane N.W., (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the Regulatory Fairness Act (chapter 19.85 RCW) because air pollution control authorities are not deemed state agencies (RCW 70.94.141).

A cost-benefit analysis is not required under RCW 34.05.328. Air pollution control authorities are not deemed to be state agencies (RCW 70.94.141).

November 18, 2010

Francea L. McNair

Executive Director

AMENDED SECTION

**Rule 1.4 Definitions**

When used in regulations of the Olympic Region Clean Air Agency, the following definitions shall apply, unless defined otherwise in individual Regulations:

**"Actual Emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with a through c of this rule.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Agency shall allow the use of a different time period upon determination that it is more representative of normal source rates, and types of materials processed, stored, or combusted during the selected time operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production period.

(b) The Agency may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For an emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

**"Agency"** shall mean the same as "Authority."

**"Agricultural Operation"** means the growing of crops, the raising of fowl or animals as gainful occupation.

**"Air Contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

**"Air Pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, property, or which unreasonably interferes with enjoyment of life and property. For the purpose of these Regulations, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

**"Air Pollution Episode"** means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.

**"Allowable Emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR part 60, 61, or 63;

(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or;

(c) The emissions rate specified as a federally enforceable permit condition, including those with future compliance date.

**"Alteration"** means the act of altering, which means to change or make different and includes any addition to or enlargement or replacement; or change of the design, capacity, process or arrangement; or any increase in the connected loading of equipment or control facility; or any change in fuels, method of operation or hours of operation not previously approved by the Agency through a Notice of Construction Approval, which would increase or adversely affect the kind or amount of air contaminant emitted by a stationary source.

**"Ambient Air"** means the surrounding outside air.

**"Ambient Air Quality Standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which shall not be exceeded.

**"Ancillary"** for the purpose of defining "stationary source" or "source," means "related."

**"Approval Order"** is defined in "order of approval."

**"Attainment Area"** means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

**"Authority"** means the Olympic Region Clean Air Agency. "Agency" shall mean the same as "Authority."

**"Authorized Permitting Agent"** means either the county, county fire marshal, fire districts, or county conservation district, provided an agreement has been signed with the local air pollution control agency or Department of Ecology.

**"Begin Actual Construction"** means, in general, initiation of physical on-site construction activities on an emission unit, which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities with mark the initiation of the change.

**"Best Available Control Technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source which the permitting agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available control technology result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60, Part 61, and Part 62. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above

levels that would have been required under definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

**"Board"** means the Board of Directors of the Olympic Region Clean Air Agency.

**"Bubble"** means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and Rule 6.1.12 of Regulation 6.

**"Commenced"** as applied to "Construction" means that the owner or operator has all the necessary pre-construction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

For the purpose of this definition, "necessary pre-construction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

**"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

**"Control Apparatus"** means any device that prevents or controls the emission of any air contaminant.

**"Control Officer"** means the Air Pollution Control Officer of the Olympic Region Clean Air Agency. "Executive Director" means the same as "Control Officer."

**"Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

**"Criteria Pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CRF Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

**"Daylight Hours"** means the hours between official sunrise and official sunset.

**"Ecology"** means the Washington State Department of Ecology.

**"Emission"** means a release of air contaminants into the ambient air.

**"Emission Point"** means the location (place in horizontal and vertical elevation) at which an emission enters the atmosphere.

**"Emission reduction credit (ERC)"** means a credit granted pursuant to chapter 173-400 WAC. This is a voluntary reduction in emissions.

**"Emission Standard"** and "Emission Limitation" means requirements established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continu-

ous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act, chapter 70.94 RCW.

**"Emission Unit"** means any part of a stationary source or source which emits or would have a potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

**"EPA"** means the United States Environmental Protection Agency (USEPA).

**"Equipment"** means any stationary or portable device, or any part thereof, capable of causing the emission of any air contaminant into the atmosphere.

**"Establishment"** means the act of establishing, which means creating, setting up, or putting into practice any equipment, material, fuel, or operational change.

**"Excess Emission"** means emissions of an air pollutant in excess of an applicable emission standard.

**"Facility"** means all emission units in the same industrial grouping located on contiguous or adjacent properties and under common ownership and control.

**"Federal Clean Air Act (FCAA)"** means the Federal Clean Air Act, as known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

**"Federally Enforceable"** means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of approval under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to Rule 6.1.12 or WAC 173-400-091.

**"Fee Eligible Generating Equipment"** means, for the purposes of calculating Rule 3.1 fees, any equipment or process capable of generating or emitting air contaminants except for the equipment and processes listed in a through g below:

(a) Gasoline or other fuel storage tanks located at dispensing facilities as defined in Rule 8.12.

(b) Storage tanks and other equipment located at dry cleaning facilities.

(c) Combustion units with less than 10 million BTUs per hour heat input.

(d) Process equipment with less than 5,000 ACFM flow rate.

(e) Paint spray booths and related paint spraying equipment.

(f) Mobile sources.

(g) Any other equipment or process determined appropriate for this exemption by the Agency.

**"Fee Eligible Stack"** means, for the purposes of calculating fees pursuant to Rule 3.1, any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct, except for the following:

(a) Emission points associated with gasoline or fuel dispensing stations.

(b) Emission points associated with dry cleaning facilities.

(c) Pipes or ducts equal to or less than six (6) inches in diameter.

(d) Any other emission point determined appropriate for this exemption by the Agency.

**"Fuel Burning Equipment"** means any equipment, device or contrivance used for the burning of any fuel, and all appurtenances thereto, including ducts, breechings, control equipment, fuel feeding equipment, ash removal equipment, combustion controls, stacks, chimneys, etc., used for indirect heating in which the material being heated is not contacted by and adds no substances to the products of combustion.

**"Fugitive Dust"** means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

**"Fugitive Emission"** means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**"Garbage"** means refuse, animal or vegetable matter as from a kitchen, restaurant or store.

**"Generating Equipment"** means any equipment, device, process, or system that creates any air contaminant(s) or toxic air pollutant(s).

**"Good Engineering Practice (GEP)"** refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

**"Hogged-fuel"** means wood slabs, edging, trimmings, etc., which have been put through a "hog" to reduce them to a uniform small size, and also includes shavings from planing mills, sawdust from saw-kerfs, bits of bark, chips and other small recovered products from the manufacture of wood products or any combination thereof.

**"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

**"In Operation"** means engaged in activity related to the primary design function of the source.

**"Installation"** means the act of installing, which means placing, assembling or constructing equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

**"Light Detection and Ranging (LIDAR)"** means the EPA alternate method 1 determination of the opacity of emissions from stationary sources remotely by LIDAR

**"Lowest Achievable Emission Rate (LAER)"** means for any stationary source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed new or modified stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of stationary source.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any pol-

lutant in excess of the amount allowable under applicable new source performance standards.

**"Major Modification"** is defined depending on the attainment status of the area in which the project is located, or planned to be located, as follows:

**(a) Nonattainment Areas.** "Major Modification" as it applies in nonattainment areas means any physical change or change in method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

**(1)** Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

**(2)** A physical change or change in method of operation shall not include:

**(i)** Routine maintenance, repair and replacement;

**(ii)** Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

**(iii)** Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Clean Air Act;

**(iv)** Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

**(v)** Use of an alternative fuel or raw material by a stationary source which: The stationary source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or the stationary source is approved to use under any major new source review permit or approval order issued under Rule 6.1.4(b) or WAC 173-400-112;

**(vi)** An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or approval order condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

**(vii)** Any change in ownership at a stationary source.

**(viii)** The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

**(A)** When the permitting agency has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose title I of the Federal Clean Air Act, if any; and

**(B)** The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

**(ix)** The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

**(A)** The SIP; and

**(B)** Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

**(b) Attainment or unclassified areas.** "Major Modification" as it applies in attainment or unclassified areas means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

**(1)** Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

**(2)** A physical change or change in the method of operation shall not include:

**(i)** Routine maintenance, repair and replacement;

**(ii)** Use of alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

**(iii)** Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

**(iv)** Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

**(v)** Use of an alternative fuel or raw material by a stationary source which:

**(A)** The stationary source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition or approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

**(B)** The stationary source is approved to use under any PSD permit;

**(vi)** An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition or an approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

**(vii)** Any change in ownership at a stationary source.

**(viii)** The addition, replacement, or use of pollution control project at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

**(A)** When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2001) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

**(B)** The permitting agency determines that the increase will cause or contribute to a violation of any National Ambi-

ent Air Quality Standard or PSD increment, or visibility limitation.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

"Major Stationary Source" is defined depending on the attainment status of the area in which the stationary source is located, or planned to be located as follows:

(a) Nonattainment areas. "Major Stationary Source" as it applies in nonattainment areas means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act, except that lower emissions thresholds shall apply as follows:

(i) 70 tons per year of PM<sub>10</sub> in any "serious" nonattainment area for PM<sub>10</sub>.

(ii) 50 tons per year of carbon monoxide in any "serious" nonattainment area for carbon monoxide where stationary sources contribute significantly to carbon monoxide levels in the area.

(2) Any physical change that would occur at a stationary source not qualifying under (b)(1) of this rule as a major stationary source, if the change would constitute a major stationary source by itself.

(3) A major stationary source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.

(4) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the stationary source belongs to one of the following categories of stationary sources or the stationary source is a major stationary source due to (b)(1)(i) or (b)(1)(ii) of this rule:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;

(xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(xxvii) Any other stationary source category, which, as of August 7, 1980, is being regulated under section 111 of 113 of the Federal Clean Air Act.

(5) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, FACILITY, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or person under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, as amended.

(b) Attainment or unclassified areas. "Major Stationary Source" as it applies in attainment or unclassified areas means:

(1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act:

(i) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;

(ii) Coal cleaning plants (with thermal dryers);

(iii) Kraft pulp mills;

(iv) Portland cement plants;

(v) Primary zinc smelters;

(vi) Iron and steel mill plants;

(vii) Primary aluminum ore reduction plants;

(viii) Primary copper smelters;

(ix) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(x) Hydrofluoric, sulfuric, and nitric acid plants;

(xi) Petroleum refineries;

(xii) Lime plants;

(xiii) Phosphate rock processing plants;

(xiv) Coke oven batteries;

(xv) Sulfur recovery plants;

(xvi) Carbon black plants (furnace process);

(xvii) Primary lead smelters;

(xviii) Fuel conversion plants;

(xix) Sintering Plants;

(xx) Secondary metal production plants;

(xxi) Chemical process plants;

(xxii) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

(xxiii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiv) Taconite ore processing plants;

(xxv) Glass fiber processing plants; and

(xxvi) Charcoal production plants.

(2) Regardless of the stationary source size specified in (b)(1) of this rule, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under (b)(1) or (b)(2) of this rule, as a major stationary source if the change would constitute a major stationary source by itself.

(4) A major stationary source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills'

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category, which, as of August 7, 1980, is being, regulated under section 111 or 112 of the Federal Clean Air Act.

(6) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be con-

sidered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended.

"**Masking**" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

"**Material Handling**" means the handling, transporting, loading, unloading, storage, and transfer of material with no significant chemical or physical alteration.

"**Modification**" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such stationary source or that result in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

"**National Ambient Air Quality Standards (NAAQS)**" means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

"**National Emission Standards for Hazardous Air Pollutants (NESHAP)**" means the federal rules in 40 CFR Part 61.

"**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63.

"**Net Emissions Increase**" is defined depending on the attainment status of the area in which the new stationary source or modification is located, or planned to be located, as follows:

(a) Nonattainment areas. "Net Emissions Increase" as it applies in nonattainment areas means:

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) The permitting agency has not relied on it in issuing any permit or order of approval for the stationary source under this rule or a previous SIP approved nonattainment area new source review regulation, which order or permit is

in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance to the increase from the particular change; and

(iv) The permitting agency has not relied on it in issuing any permit or order of approval under this rule or a SIP approved nonattainment area new source review regulation; or the permitting agency has not relied on it in demonstrating attainment or reasonable further progress.

(6) An increase that results from a physical change at a stationary source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

(b) Attainment or unclassified areas. "Net Emissions Increase" as it applies in attainment or unclassified areas means:

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emission at the stationary source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if ecology or EPA has not relied on it in issuing a PSD permit for the stationary source, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only  $PM_{10}$  emissions can be used to evaluate the net emissions increase for  $PM_{10}$ .

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operationally only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

"New Source" means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new stationary source under the Federal Clean Air Act.

"New Source Performance Standards (NSPS)" means the federal rules set forth in 40 CFR Part 60.

"Nonattainment Area" means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a national ambient air quality standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

"Nonroad Engine" means:

(a) Except as discussed in (b) of this rule, a nonroad engine is any internal combustion engine:

(1) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(2) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(3) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(1) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(2) The engine is regulated by a New Source Performance Standard promulgated under section 111 or 112 of the Federal Clean Air Act; or

(3) The engine otherwise included in (a)(3) of this rule remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is a single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the

engine replaced will be included in calculating consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that operates at a single location approximately three months (or more) each year. The paragraph does not apply to an engine after the engine is removed from the location.

**"Notice of Construction Application"** means a written application to permit construction, installation or establishment of a new stationary source, modification of an existing stationary source, or replacement or substantial alteration of control technology at an existing stationary source.

**"Nuisance"** means an emission that unreasonably interferes with the use and enjoyment of property.

**"Olympic Air Pollution Control Authority (OAPCA)"** is the former name of Olympic Region Clean Air Agency (ORCAA). Reference to "OAPCA" shall mean ORCAA.

**"Opacity"** means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~("Outdoor Burning" means the combustion of material in an open fire or in an open container, without providing for the control of combustion or the control of the emissions from the combustion.)~~

~~("Open Fire" means a fire where any material is burned in the open or in a receptacle other than a furnace, incinerator or kiln.)~~

**"Order"** means any order issued by ecology or a local air agency pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.211, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

**"Order of Approval" or "Approval Order"** means a regulatory order issued by Ecology or the Agency to approve the Notice of Construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

**"Owner"** means person, agent, lessor, lessee, possessor, manager, supervisor, operator, or other responsible party of real property or other assets which includes equipment or control apparatus.

**"Ozone Depleting Substance"** means any substance listed in Appendices A and B to Subpart A of 40 CFR part 82.

**"Particulate Matter" or "Particulates"** means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

**"Parts Per Million (ppm)"** means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

**"Permit"** means a written warrant or license granted by the Board, Control Officer, or duly authorized Representative or Agent.

**"Permitting Agency"** means ecology or the local air pollution control agency with jurisdiction over the source.

**"Person"** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

**"PM<sub>10</sub>"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

**"PM<sub>10</sub> Emissions"** means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

**"Potential to Emit"** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

**"Prevention of Significant Deterioration (PSD)"** means the program in WAC 173-400-141. Ecology is responsible for the PSD program for stationary sources in ORCAA's jurisdiction. Contact Ecology at (360) 407-6800 for more information.

**"Process"** means any equipment, device apparatus, chemical, natural element, procedure, effort, or any combination thereof which performs a service, function, use, or method, leading to an end of a particular performance, or manufacturing production.

**"Reasonably Available Control Technology (RACT)"** means the lowest emission limit that a particular stationary source or stationary source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual stationary source or stationary source category taking into account the impact of the stationary source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any stationary source or stationary source category shall be adopted only after notice and opportunity for comment are afforded.

~~("Recreational Fire" means barbecues and campfires, using charcoal, natural gas, propane, or natural wood, which occur in designated areas, or on private property. Fires used for debris disposal purposes are not considered recreational fires.)~~

**"Refuse"** means waste as defined in Rule 1.4 of this Regulation.

**"Regulation"** means any regulation, or any subsequently adopted additions or amendments thereto, of the Olympic Region Clean Air Agency.

**"Regulatory Order"** means an order issued by Ecology or an Agency to an air contaminant source that applies to that



source, any applicable provision of chapter 70.94 RCW, or the rules adopted there under, or, for sources regulated by a local air agency, the regulations of that agency.

**"Representative"** or **"Agent"** means any person authorized by the Control Officer of the Agency to represent him in an official and specific manner.

**"Residential"** means a two or single-family unit.

**"Secondary Emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains located at the new modified stationary source; and,

(b) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

**"Significant"** is defined depending on the attainment status of the area:

(a) Nonattainment areas. "Significant" as it applies in nonattainment areas means, in reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM-10:	15 tpy

(b) Attainment or unclassified areas. "Significant" as it applies in attainment or unclassified areas means:

(1) In reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter (PM)	25 tpy of PM emissions 15 tpy of PM-10 emissions
Volatile organic compounds	40 tpy
Fluorides	3 tpy
Lead	0.6 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy

Pollutant and Emissions Rate	
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 grams per year (0.112 oz. per year or 49 grains per year)
Municipal waste combustor metals (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions (measured as non-methane organic compounds)	45 megagrams per year (50 tpy)
Ozone-depleting substances (in effect on July 1, 2000)	100 tpy

(2) In reference to a new emissions increase or the stationary source's potential to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (b)(1) of this rule does not list, any emissions rate. However, for purposes of the applicability of this rule, the hazardous air pollutants listed under section 112(b) of the Federal Clean Air Act, including the hazardous air pollutants that may have been added to the list, are not considered subject to regulation.

(3) Regardless of the definition in (b)(1) of this rule, significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or great than 1 microgram per cubic meter (twenty four hour average).

~~(**"Silvicultural Burning"** means burning on any land the Department of Natural Resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.)~~

**"Source"** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same Major Group (i.e., which have the same two digit code) as describe in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

**"Source Category"** means all sources of the same type of classification.

**"Stack"** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

**"Stack Height"** means the height of an emission point measured from the ground-level elevation at the base of the stack.

**"Standard Conditions"** means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

**"Standard Cubic Foot of Gas"** means that amount of the gas, which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor and at standard conditions.

**"State Act"** means the Washington Clean Air Act, chapter 70.94 RCW, as amended.

**"State Implementation Plan (SIP)"** or the "Washington SIP" in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

**"Stationary Source"** means any building, structure, facility, or installation, which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216(11) of the Federal Clean Air Act.

**"Synthetic Minor"** means any stationary source that's potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or permit condition.

**"Temporary"** means a period of time not to exceed one (1) year.

**"Total Reduced Sulfur (TRS)"** means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

**"Total Suspended Particulate (TSP)"** means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

**"Toxic Air Pollutant (TAP)"** or **"Toxic Air Contaminant"** means any Class A or Class B toxic air pollutant listed in WAC 173-460-150 and WAC 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or WAC 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes or compounds.

**"True Vapor Pressure"** means the equilibrium partial pressure exerted by the stored organic compound at:

(a) The annual average temperature of the organic compound as stored; or

(b) At the local annual average temperature as reported by the National Weather Service if stored at ambient temperature.

**"Unclassifiable Area"** means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant that is listed by EPA at 40 CFR part 81.

**"United States Environmental Protection Agency (USEPA)"** shall be referred to as EPA.

~~("Urban Growth Area" means an area defined by RCW 36.70A.030.)~~

**"Vent"** means any opening through which gaseous emissions are exhausted into the ambient air.

**"Volatile Organic Compound (VOC)"** means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC:

Acetone;  
carbon monoxide;  
carbon dioxide;  
carbonic acid;  
metallic carbides or carbonates;  
ammonium carbonate;  
dimethyl carbonate;  
propylene carbonate;  
methane;  
ethane;  
methylene chloride (dichloromethane);  
1,1,1-trichloroethane (methyl chloroform);  
1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113);  
trichlorofluoromethane (CFC-11);  
dichlorodifluoromethane (CFC-12);  
chlorodifluoromethane (HCFC-22);  
trifluoromethane (HFC-23);  
1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);  
chloropentafluoroethane (CFC-115);  
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);  
1,1,1,2-tetrafluoroethane (HCFC-134a);  
1,1-dichloro 1-fluoroethane (HCFC-141b);  
1-chloro 1,1-difluoroethane (HCFC-142b);  
2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124);  
pentafluoroethane (HFC-125);  
1,1,2,2-tetrafluoroethane (HFC-134);  
1,1,1-trifluoroethane (HFC-143a);  
1,1-difluoroethane (HFC-152a);  
parachlorobenzotrifluoride (PCBTF);  
cyclic, branched, or linear completely methylated siloxanes;  
perchloroethylene (tetrachloroethylene);  
3,3-dichloro 1,1,1,2,2-pentafluoropropane (HCFC-225ca);  
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);  
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);  
difluoromethane (HFC-32);  
ethylfluoride (HFC-161);  
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);  
1,1,2,2,3-pentafluoropropane (HFC-254ca);  
1,1,2,3,3-pentafluoropropane (HFC-245ea);  
1,1,1,2,3-pentafluoropropane (HFC-245eb);  
1,1,1,3,3-pentafluoropropane (HFC-245fa);  
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);  
1,1,1,3,3-pentafluorobutane (HFC-365mf);  
chlorofluoromethane (HCFC-31);  
1-chloro-1-fluoroethane (HCFC-151a);  
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);  
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);

2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>);

1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>(CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);

methyl acetate and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the Agency, or EPA.

(c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Agency, the amount of negligibly reactive compounds in the source's emissions.

**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 typographical errors in the above material occurred in the copy filed by the Olympic Region Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## REPEALER

### ~~(RULE 6.2 OUTDOOR BURNING~~

~~It is the policy of the Olympic Region Clean Air Agency (ORCAA) to achieve and maintain high levels of air quality, and, to this end, minimize to the greatest extent reasonably possible the burning of open fires. Consistent with this policy, the Board does hereby declare that such fires should be allowed only on a limited basis under strict regulation and close control, such program to be implemented by a one permit system. It is the further policy of the Board to encourage the fostering and development of an alternate technology or method of disposing of wastes, which is reasonably economical and less harmful to the environment.~~

~~(a) It shall be unlawful for any person to cause or allow any open fire:~~

~~(1) Containing prohibited materials which include, but are not limited to, garbage, dead animals, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, processed wood, construction debris, metal or any substance which when burned releases toxic emissions, dense smoke or obnoxious odors.~~

~~(2) During an air pollution episode or period of Impaired Air Quality as defined in chapter 70.94 RCW.~~

~~(3) In a no burn/nonattainment area or in any area which has been designated by the Board or Control Officer as an area exceeding or threatening to exceed State or Federal ambient air quality standards:~~

~~(i) It shall be unlawful for any person to cause or allow any open fire described in Rule 6.2 (b)(1) and Rule 6.2.1 in any area where the Board has prohibited burning;~~

~~(ii) Fires described in Rule 6.2 are prohibited in the following areas:~~

~~All areas within the city limits of Lacey, Olympia, and Tumwater, and unincorporated areas of Thurston County lying within or between the municipal boundaries.~~

~~(4) In any area in which the applicable fire district, fire protection agency, city, town, county, or conservation district has determined not to issue burning permits or has determined that selected types of open burning fires are prohibited under a valid burning permit program established pursuant to RCW 70.94.745, RCW 70.94.750, RCW 70.94.775, and/or RCW 70.94.780.~~

~~(5) Within fifty (50) feet of a structure or within five hundred (500) feet of forest slash debris.~~

~~(6) In any area within the jurisdiction of this Authority all burning requires a permit as covered in WAC 173-425-070.~~

~~(7) Urban growth areas and cities with a population of ten thousand or more will ban open burning when alternatives are available, no later than the end of the year 2000.~~

~~(8) If open burning creates a nuisance the fire must be extinguished immediately.~~

~~(b) Other than the following types:~~

~~(1) Recreational fires no larger than four feet in diameter and three feet in height for campfires at designated federal, state, county or city parks and recreation areas, provided a written permit has been issued by a fire protection agency, county, or conservation district.~~

~~(2) Residential fire set for the disposal of yard and garden refuse (except cut grass) originating on lands immediately adjacent and in close proximity to a human dwelling subject however, to the following restrictions:~~

~~(i) There shall be one (1) fire only and it shall not exceed four (4) feet in diameter and three (3) feet in height.~~

~~(ii) The material may be burned only if it is of a location, nature and condition to burn without emitting dense smoke or offensive odors or creating a nuisance.~~

~~(iii) The fire is to consist only of dry leaves and prunings (except grass cuttings which produce dense smoke), and be burned on such lands by the property owner or their designee under strict conditions such as hours, dates, smoke management, etc., provided a written permit has been issued by a fire protection agency, county, or conservation district (thirty (30) days are the maximum allowed).~~

~~(iv) There shall be compliance with all laws and regulations of other governmental agencies regarding such fires.~~

~~(v) The fire is not contrary to Rule 6.2(a)~~

~~(3) Where open burning is allowed a minimum permit (general rule burn) is allowed provided that all restrictions (i through viii) are met.~~

(i) The fire must be attended at all times by someone with the means and capability of extinguishing the fire.

(ii) Maximum pile size is four feet by four feet by three feet in height (4x4x3).

(iii) Only one pile shall be burned at a time, and each pile must be extinguished before igniting another.

(iv) No material containing garbage, asphalt, dead animals, petroleum products, paints, rubber products, plastic, paper (other than what is necessary to start a fire), cardboard, treated wood, processed wood, construction debris, metal or any substance which when burned releases toxic emissions, dense smoke or obnoxious odors.

(v) The designated permitting authority must be called to confirm burning conditions for each day or current information on burning conditions must be obtained from another designated source.

(vi) If the fire creates a nuisance, it must be extinguished.

(vii) Permission from landowner, or owner's designated representative, must be obtained before starting an open fire.

(viii) General rule burn permits under this rule may be used for the following number of days per year:

1992-1994	21 days
1995-1998	14 days
1998-1999	7 days
after 2000	7 days

The exact dates to be implemented will be determined by the Control Officer.

(4) Fires for abating a forest fire hazard, to prevent a hazard, for instruction of public officials in methods of forest fire fighting, any silvicultural operation to improve forest lands, and silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation area, parks, and other wildlife areas, provided prior written approval has been issued by the Washington Department of Natural Resources. Fires for abating a forest fire hazard, to prevent a hazard, for instruction of public officials in methods of forest fire fighting, any silvicultural operation to improve forest lands, and silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation area, parks, and other wildlife areas, provided prior written approval has been issued by the Washington Department of Natural Resources.

(5) Cooking fires consisting solely of charcoal, propane, natural gas or wood (provided that wood is not used in a no burn/nonattainment area) and used solely for the preparation of food.

(6) Fires for Native American ceremonies or for the sending of smoke signals if part of a religious ritual, (provided that proof of tribal affiliation is certified and a permit has been issued by the Control Officer in a no burn area).

(e) Any permit issued may be limited by the imposition of conditions to prevent air pollution as defined in Regulation 1. If it becomes apparent at any time to the authorized permitting agent that limitations need to be imposed, the authorized permitting agent shall notify the permittee; and any lim-

itations so imposed shall be treated as conditions under which the permit is issued.

(d) Fires started in violation of this Regulation shall be extinguished by the persons responsible for the same upon notice of the authorized permitting agent.

(e) It shall be prima facie evidence that the person who owns or controls property on which an open fire occurs, has caused or allowed said open fire.

(f) Firemen training: The Control Officer, or a duly authorized agent may allow, by permit, an open fire necessary for firemen training (other than forest fire training) by a legally authorized fire control agency and may authorize the burning of petroleum products by such permit. Conditions of this permit will agree with guidelines established by the Washington Department of Ecology.

(g) Nothing contained in Rule 6.2 shall be construed to allow open fires in those areas in which open burning is prohibited by laws, ordinances, or regulations of the state or any city, county, or fire district.

**Rule 6.2.1 Land Clearing Burning**

Land clearing fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects, (natural vegetation can not be transported from this site to be burned at another location) under strict conditions, such as hours, dates, smoke management, etc., and provided a written permit has been issued by an approved permitting agency (thirty (30) days are the maximum allowed for permit)

**Rule 6.2.2 Agricultural Burning**

Burning related to agricultural operations as approved by the agency. (A permit fee shall accompany the application.)

REPLACEMENT SECTION  
RULE 6.2 OUTDOOR BURNING

It is the policy of the Olympic Region Clean Air Agency (ORCAA) to achieve and maintain high levels of air quality, and, to this end, minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the Board does hereby declare that such fires should be allowed only on a limited basis under strict regulation and close control. It is the further policy of the Board to encourage the fostering and development of an alternate technology or method of disposing of natural vegetation, which is reasonably economical and less harmful to the environment.

**Rule 6.2.1 The provisions of this rule apply to:**

- (a) Agricultural burning
- (b) Fire training fires
- (c) Land clearing burning
- (d) Native American ceremonial fires
- (e) Recreational fires
- (f) Residential burning
- (g) Storm and flood debris burning
- (h) Weed abatement fires

**Rule 6.2.2 Definitions**

When used in this Rule the following definitions shall apply:

**"Agricultural burning"** means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.6528 or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

**"Air Pollution Episode"** means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.

**"Burn ban"** means an "air pollution episode", or a period of "impaired air quality" as defined in RCW 70.94.-473.

**"Extinguish"** means to put out a fire completely. It must be cool to the touch and not smoldering or smoking.

**"Firewood"** means clean, dry, seasoned, untreated wood used as fuel in an Indian ceremonial fire or recreational fire.

**"Land Clearing Burning"** means outdoor burning of trees, stumps, shrubbery or other natural vegetation from land

clearing projects (i.e. projects that clear the land surface so it can be developed, used for a different purpose, or left unused).

**"Outdoor Burning"** means the combustion of material in an open fire or in an open container, without providing for the control of combustion or the control of the emissions from the combustion.

**"Nuisance"** means an emission that unreasonably interferes with the use and enjoyment of property.

**"Recreational Fire"** means cooking fires or campfires using firewood which occur in designated areas, or on private property. Fires used for disposal purposes are not recreational fires.

**"Residential Burning"** means the outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on the maintained area of residential property (i.e. lands immediately adjacent and in close proximity to a human dwelling) and burned on such lands by the property owner and/or other responsible person.

**"Urban Growth Area"** (UGA) means land, generally including land associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.110.

*Rule 6.2.3 No residential or land clearing burning is allowed in the following cities and/or UGAs:*

Clallam	Grays Harbor	Jefferson	Mason	Pacific	Thurston
Carlsborg Clallam Bay Forks Joyce Port Angeles Sekiu Sequim	Aberdeen Hoquiam	Port Townsend	Allyn Belfair Shelton	Ilwaco Long Beach Raymond Seaview South Bend	Bucoda Grand Mound Lacey Olympia Rainier Tenino Tumwater Yelm

**Rule 6.2.4 Summer Burn Restrictions.**

No residential or land clearing burning is allowed in Thurston County from July 15th through October 15th.

**Rule 6.2.5 Prohibitions and restrictions. (WAC 173-425-050)**

(a) It shall be unlawful for any person to cause or allow an outdoor fire containing prohibited materials which include but are not limited to garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper, cardboard, treated wood, processed wood, construction/demolition debris, metal, or any substance which when burned releases toxic emissions, dense smoke, or obnoxious odors. A limited amount of paper may be used to start the fire. ORCAA may allow the limited burning of prohibited materials for fire training.

(b) It is illegal to burn vegetation originating in any area where burning is prohibited as listed in Rule 6.2.3.

(c) A person capable of extinguishing the fire must be in attendance at all times, and the fire must be extinguished before leaving it.

(d) Containers (not regulated under WAC 173-400-070(1)) used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other non-

combustible material with openings not larger than one-half inch.

(e) The use of burn barrels is illegal.

(f) A fire protection agency, county, conservation district, or other governing body may enforce its own regulations that are stricter than those set forth in this rule.

(g) It shall be unlawful for any person to cause or allow an emission from outdoor burning that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

**Rule 6.2.6 Curtailment (WAC 173-425-050)**

(a) No outdoor fire shall be ignited in a geographical area where a burn ban has been declared.

(b) The person responsible for an outdoor fire must extinguish the fire when a burn ban is declared.

(c) Three (3) hours after a burn ban is declared smoke visible from all types of outdoor burning, except land clearing burning, will constitute prima facie evidence of unlawful outdoor burning.

(d) Eight (8) hours after a burn ban is declared smoke visible from land clearing burning will constitute prima facie evidence of unlawful outdoor burning.

**Rule 6.2.7 Recreational Burning**

The following burn practices shall be used for recreational burning where allowed.

(a) Maximum pile size is three (3) feet in diameter and two (2) feet high. (WAC 173-425-060)

(b) Only dry, seasoned firewood or charcoal and enough clean paper necessary to start a fire may be burned.

(c) No recreational fires are allowed within the city limits of Lacey, Olympia, and Tumwater, and unincorporated areas of Thurston County lying within or between the municipal boundaries of these cities. Charcoal, propane, or natural gas may be used without a permit.

**Rule 6.2.8 Permit Program (WAC 173-425-060)**

ORCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning. Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule, for any type of burning that requires a permit.

(a) Permitting agencies may deny an application or revoke a previously issued permit if it is determined that the application contained inaccurate information, or failed to contain pertinent information.

(b) Failure to comply with any term or condition of a permit constitutes a violation of this rule and is subject to penalties pursuant to RCW 70.94.430 and RCW 70.94.431.

(c) Types of burning that require a written permit.

(1) Agricultural burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(2) Fire training fires, except as provided in RCW 52.12.150, may be conducted provided all of the following requirements are met:

(i) Fire training shall not occur during a burn ban.

(ii) The fire must be for training purposes.

(iii) The agency conducting the training fire shall obtain any permits, licenses, or other approvals required by any entity for such training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

(3) Native American ceremonial fires within the city limits of Olympia, Lacey, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.

(4) Land Clearing Burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(5) Storm and flood debris resulting from a declared emergency by a governmental authority may be burned within two years of the event (storm). Burning shall abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(6) Weed abatement fires.

(d) Where residential burning is allowed and no written burn permits are issued, burning shall abide by Rule 6.2 and the following:

(1) Maximum pile size is four (4) feet in diameter and three (3) feet high.

(2) Only one pile shall be burned at a time, and each pile must be extinguished before lighting another.

(3) Only natural vegetation may be burned.

(4) No fires are to be within fifty (50) feet of structures or within five hundred (500) feet of forest slash.

(5) No tree stumps may be burned.

**WSR 11-01-008**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed December 2, 2010, 3:08 p.m.]

The department of labor and industries is withdrawing WSR 10-22-104 filed on November 2, 2010. The department is withdrawing the proposed rule in light of the Executive Order 10-06 suspending noncritical rules.

Please call (360) 902-6348 if you have any questions.

Steve McLain  
 Assistant Director for  
 Specialty Compliance Services

**WSR 11-01-010**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed December 3, 2010, 8:52 a.m.]

The department of early learning (DEL) is withdrawing the proposed rule-making notice filed on December 1, 2010, as WSR 10-24-117, revising rules in chapter 170-290 WAC regarding the seasonal child care program.

Elizabeth M. Hyde  
 Director

**WSR 11-01-025**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed December 3, 2010, 11:19 a.m.]

The department is withdrawing the CR-102 for WAC 246-933-460 which was filed October 19, 2010, and published in WSR 10-21-081. A hearing was scheduled for December 6, 2010.

The proposal adds the following organizations, institutions and individuals to the list of entities that are presumed to qualify as continuing education providers: A veterinarian who is a board certified specialist or on faculty at an accredited veterinary college, The United States Animal Health Association, the American Association of Veterinary Laboratory Diagnosticians and the Washington state department of agriculture.

Executive Order 10-06, dated November 17, 2010, orders the suspension of noncritical rule development and adoption through December 31, 2011. The department of health is in the process of determining whether specific rules can move forward under the executive order. It is expected that this process may take several weeks beyond the scheduled time for the hearing date. For this reason, the CR-102 for WAC 246-933-460 is being withdrawn.

Individuals requiring information on this rule should contact Judy Haenke, program manager for the veterinary board of governors at (360) 236-4947.

Gregg L. Grunenfelder  
Deputy Secretary

**WSR 11-01-026**  
**PROPOSED RULES**  
**SECRETARY OF STATE**  
[Filed December 3, 2010, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-21-056.

Title of Rule and Other Identifying Information: Limited liability partnerships, clarifies filing procedures for forming and maintaining limited liability partnerships with the secretary of state's office.

Hearing Location(s): Dolliver Building, 801 Capitol Way South, 2nd Floor Conference Room, Olympia, WA 98504, on January 25, 2011, at 9:00 a.m.

Date of Intended Adoption: January 26, 2011.

Submit Written Comments to: Pamela Floyd, P.O. Box 40234, Olympia, WA 98504-0234, e-mail Pam.Floyd@sos.wa.gov, fax (360) 586-4989, by January 25, 2011.

Assistance for Persons with Disabilities: Contact Sharon Baker by close of business January 24, 2011, (360) 725-0312 or fax (360) 586-4989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current rules are out of date and incorrect because laws have changed over the past few years. These rule changes implement new law, passed in 2009 (SHB 1067) and 2010 (2SHB 2576).

Statutory Authority for Adoption: RCW 25.05.093.

Statute Being Implemented: RCW 25.05.500 - [25.05.]-536.

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

Name of Proponent: Office of the secretary of state, division of corporations, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310; and Enforcement: Kyle Crews, 1125 Washington Street S.E., Olympia, WA 98504, (360) 664-2510.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328 (5)(iii).

December 3, 2010

Steve Excell  
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 95-16-131, filed 8/2/95, effective 9/2/95)

**WAC 434-135-010 Purpose and authority.** These rules are adopted under authority of chapter ~~((25.04 RCW, the Washington Limited Liability))~~ 25.05, the Revised Uniform Partnership Act.

AMENDATORY SECTION (Amending WSR 95-16-131, filed 8/2/95, effective 9/2/95)

**WAC 434-135-090 Annual notice—Due date—Whom notified.** Each limited liability partnership ~~((shall))~~ must file an annual notice by the last day of the month of its original registration as a limited liability partnership. The corporations division ~~((shall))~~ must notify each limited liability partnership of its annual notice date forty-five days in advance by mailing to the ~~((partnership at its principal office or, if its principal office is not in this state, to its))~~ partnership's registered ((agent in care of the registered office address, in either case,)) agent's address as listed on the records of the secretary of state ~~((and provide the annual notice form)).~~ If no registered agent has been appointed, notice is sent to the principal office. Failure to receive an annual notice form with such notice is insufficient reason for failure to file the statutory required annual notice.

AMENDATORY SECTION (Amending WSR 95-16-131, filed 8/2/95, effective 9/2/95)

**WAC 434-135-150 Initial registration—Form of content.** ~~((+))~~ Any domestic or foreign limited liability partnership registering under this chapter shall file its registration on either the form provided by the secretary of state ~~((The information that shall be provided is:~~

- ~~((a) The name of the limited liability partnership;~~
- ~~((b) Principal office of the limited liability partnership in Washington or if no principal office is located in this state, the registered office address and name and address of the registered agent for service of process in this state;~~
- ~~((c) Number of partners of the limited liability partnership;~~
- ~~((d) Brief statement of the business in which the partnership engages;~~
- ~~((e) That the partnership thereby applies for status as a limited liability partnership; and~~
- ~~((f) Any other matters the partnership determines to include.~~

~~((2) Application shall be executed by a majority in interest of the partners or one or more authorized partners))~~ or in substantially the same format including the information required in RCW 25.05.500.

AMENDATORY SECTION (Amending WSR 95-16-131, filed 8/2/95, effective 9/2/95)

**WAC 434-135-160 Annual notice—Form of content.** Any limited liability partnership filing under this chapter shall file its annual notice on the form provided by the secretary of state. ~~((The information that shall be filed on the annual notice is as follows:~~

Section 1-

- (a) Limited liability partnership name;
- (b) Principal office of the limited liability partnership in Washington or if no principal office is located in this state, the registered office address and name and address of registered agent for service of process in this state;
- (c) Unified business identification number;
- (d) Internal account number;
- (e) Date registered in Washington;

Section 2-

- (a) If there has been a change in the address of principal place of business in Washington or, if the limited liability partnership's principal place of business is not located in this state, the address of the registered office and name and address of the registered agent, the correct address and name;
- (b) Any other material changes in the information included in limited liability, partnership application or subsequent annual notices;
- (c) Number of partners; and

Section 3- Signature of either a majority in interest of the partners or one or more authorized partners. The registration application shall include beneath or beside the signature the name and title of the person(s) signing the document.)

AMENDATORY SECTION (Amending WSR 95-16-131, filed 8/2/95, effective 9/2/95)

**WAC 434-135-170 Amended notice—Form of content.** (1) A limited liability partnership may, but is not required to, file an amended notice to notify the secretary of state of any material changes on the application or annual notice. ((These changes may include the following:

- (a) Change of limited liability partnership name;
- (b) Change of principal office address;
- (c) Change of registered agent or registered office address;
- (d) Change in the number of partners;
- (e) Change in the type of business the partnership engages; or
- (f) The addition of any information the partnership determines to include.))

(2) The amended notice must be signed by a majority of interest of the partners or by one or more authorized partners. ((The amended notice shall include beneath or beside the signature the printed name and title of the person(s) signing the document.))

AMENDATORY SECTION (Amending WSR 95-16-131, filed 8/2/95, effective 9/2/95)

**WAC 434-135-190 ((Filing)) Fees.** For Washington registered domestic and foreign limited liability partnerships, fees are ((as follows:

- (1) Application for registration, both domestic and foreign, one hundred seventy-five dollars;
- (2) Amended notice, both domestic and foreign, thirty dollars;
- (3) Annual notice with required information, fifty dollars;

- (4) Annual notice with required information filed after due date and before administrative dissolution, penalty fee of twenty-five dollars, plus the notice fee of fifty dollars;
- (5) Resignation of registered agent, twenty dollars;
- (6) Registered agent's consent to appointment to act as agent or agent's resignation if appointed without consent, no fee;
- (7) Voluntary withdrawal, administrative dissolution or dissolution by judicial decree, no fee;
- (8) Service of process, per defendant, fifty dollars;
- (9) Reservation of name, thirty dollars; and
- (10) Any other statement or form, ten dollars)) located in WAC 434-112-080, 434-112-085, and 434-112-090.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-135-040	Telephone services.
WAC 434-135-050	Filing requirements.
WAC 434-135-060	Execution of document.
WAC 434-135-080	Filed date.
WAC 434-135-120	Limited liability partnership name.

**WSR 11-01-031  
WITHDRAWAL OF PROPOSED RULES  
PARKS AND RECREATION  
COMMISSION**

[Filed December 6, 2010, 9:48 a.m.]

Pursuant to WAC 1-21-060 Withdrawal of proposal, Washington state parks and recreation commission decided to withdraw proposed chapter 352-32 WAC, Public use and chapter 352-37 WAC, Ocean beaches, based on Executive Order 10-06, Suspending Non-Critical Rule Development and Adoption. The agency will revisit both proposed WAC changes later in 2011.

The agency has agreed to proceed with WAC 352-24-010 Concessions and leases, WSR 10-22-095, appeal.

**WSR 11-01-050  
PROPOSED RULES  
COLUMBIA RIVER  
GORGE COMMISSION**

[Filed December 7, 2010, 11:43 a.m.]

Original Notice.  
Exempt from preproposal statement of inquiry under RCW 34.05.310(4).  
Title of Rule and Other Identifying Information:  
Amending existing rules to clarify and streamline processes for commission and other users.



Hearing Location(s): Multnomah County Rural Fire Protection District #14, 36930 East Historical Columbia River Highway, Corbett, Oregon, on February 8, 2011, at 9:00 a.m. (Note this is the beginning of the commission's regular meeting. The actual hearing time may be later.)

Date of Intended Adoption: February 8, 2011.

Submit Written Comments to: Jill Arens, Executive Director, P.O. Box 730, White Salmon, WA 98672, e-mail [crge@gorgecommission.org](mailto:crge@gorgecommission.org), by February 1, 2011.

Assistance for Persons with Disabilities: Contact Nancy Andring by February 1, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to all rules except 350-81 are being made to clarify and streamline internal commission processes and process for users of commission rules. These changes are needed to reduce workload for commission staff as a result of its significantly reduced budget during the past biennium and going forward. Changes to rule 350-81 are required by remand from the Oregon Court of Appeals and Oregon Supreme Court and a settlement agreement in another pending litigation matter. Interested persons may contact the commission office for copies of the relevant court decisions. These changes resulting from the court decisions have been adopted into the management plan for the National Scenic Area and received the concurrence of the Secretary of Agriculture. The changes resulting from the settlement agreement are procedural for users and commission staff.

The intent of these rules is to reduce the time and expense for local governments and other users of the rules. For example, the commission is proposing to allow electronic filing of records and other briefs in appeals before the commission. This will reduce the time to duplicate and mail and the expense of paper and postage. One proposed amendment, to rule 350-60-060, could require local governments to submit more paper copies of an appeal record than required by current rules, but this is not certain. The changes to Div. 81 resulting from the court decisions may require additional commission staff labor, but the commission is unable to quantify the amount or cost.

Reasons Supporting Proposal: See above description of purpose of rule.

Statutory Authority for Adoption: RCW 34.97.015, ORS 196.150, 16 U.S.C. § s544e.

Statute Being Implemented: RCW 34.97.015, ORS 196.150, 16 U.S.C. § s544e.

Rule is necessary because of federal law, and [no further information supplied by agency].

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jeffrey B. Litwak, Counsel, Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA, (509) 493-3323; Implementation and Enforcement: Jill Arens, Executive Director, Columbia River Gorge Commission, P.O. Box 730, White Salmon, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed amendments do not add substantive regulations. Most of the proposed amendments govern commission procedures and will

not have any effect on small businesses. The other rules are required by a decision of the Oregon Supreme Court in *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 346 Or 366, 213 P3d 1164 (2009).

A cost-benefit analysis is not required under RCW 34.05.328. Most of the proposed amendments govern only commission procedures and are exempt pursuant to RCW 34.05.328 (5)(b)(ii) and (iii); the substantive rules are required by a decision of the Oregon Supreme Court in *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 346 Or 366, 213 P3d 1164 (2009).

December 7, 2010

Nancy A. Andring

Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-02 issue of the Register.

## WSR 11-01-053

### PROPOSED RULES

### PUBLIC DISCLOSURE COMMISSION

[Filed December 7, 2010, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-12-110.

Title of Rule and Other Identifying Information: WAC 390-05-196 Bona fide political party—Application of term, 390-05-274 Party affiliation, party preference, etc., and 390-05-275 Definition—Party Organization.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on January 27, 2011, at 9:30 a.m.

Date of Intended Adoption: January 27, 2011.

Submit Written Comments to: Lori Anderson, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail [lori.anderson@pdc.wa.gov](mailto:lori.anderson@pdc.wa.gov), fax (360) 753-1112, by January 25, 2011.

Assistance for Persons with Disabilities: Contact Jana Greer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 42.17 RCW treats bona fide political parties differently than other political organizations. Prior to 2008, chapter 42.17 RCW relied on the secretary of state's authority under chapter 29A.20 RCW to recognize minor bona fide political parties. The March 2008 United States Supreme Court decision upholding Washington's Top Two Primary system impliedly repealed chapter 29A.20 RCW. 2SB [2SHB] 2016, section 101, chapter 204, Laws of 2010, amends chapter 42.17 RCW to remove the reference to chapter 29A.20 RCW and confirms the secretary of state's ability to recognize minor bona fide political parties effective January 1, 2012. New WAC 390-05-196 will set out which political organizations the PDC will recognize as minor bona fide political parties for the purpose of chapter 42.17 RCW until January 2012.

Amend WAC 390-05-275 to reference new WAC 390-05-196 when defining party organization.

New WAC 390-05-274 clarifies the term "party affiliation" and reference to "party," "political party," and similar terms in Title 390 WAC.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: Chapter 204, Laws of 2010.

Rule is necessary because of federal court decision, *Wash. St. Grange v. Wash. St. Republican Party*, 552 U.S. 442 (2008).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposals are intended to harmonize chapter 42.17 RCW with the decision in *Wash. St. Grange v. Wash. St. Republican Party*, 552 U.S. 442 (2008).

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules will have minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection [subsection] (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 applicable to the adoption of these rules.

December 7, 2010

Lori Anderson  
Communications and  
Training Officer

#### NEW SECTION

**WAC 390-05-196 Bona fide political party—Application of term.** (1) An organization that filed a valid certificate of nomination with the secretary of state or a county elections official under chapter 29A.20 RCW in any year from 2002 through 2007, and any organization that is otherwise recognized by the secretary of state as a minor political party after 2007, is deemed to have satisfied the definition of bona fide political party in RCW 42.17.020.

(2) This section shall terminate effective December 31, 2011, at 11:59 p.m.

#### NEW SECTION

**WAC 390-05-274 Party affiliation, party preference, etc.** (1) "Party affiliation" as that term is used in chapter 42.17 RCW and Title 390 WAC means the candidate's party preference as expressed on his or her declaration of candidacy. A candidate's preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate.

(2) A reference to "political party affiliation," "political party," or "party" on disclosure forms adopted by the commission and in Title 390 WAC refers to the candidate's self-identified party preference.

AMENDATORY SECTION (Amending WSR 07-08-044, filed 3/28/07, effective 4/28/07)

**WAC 390-05-275 Definition—Party organization.** "Party organization," as that term is used in chapter 42.17 RCW and Title 390 WAC, means a bona fide political party as defined in RCW 42.17.020 and applied in WAC 390-05-196.

#### **WSR 11-01-054**

#### **PROPOSED RULES**

#### **PUBLIC DISCLOSURE COMMISSION**

[Filed December 7, 2010, 2:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-12-110.

Title of Rule and Other Identifying Information: WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures and 390-18-030 Advertising—Exemptions from identification.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on January 27, 2011, at 9:30 a.m.

Date of Intended Adoption: January 27, 2011.

Submit Written Comments to: Lori Anderson, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by January 25, 2011.

Assistance for Persons with Disabilities: Contact Jana Greer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 390-18-010 to implement 2SHB 2016 (section 505, chapter 204, Laws of 2010), clarifying what disclaimers must be included when political advertising qualifies as an independent expenditure or electioneering communication.

Amend WAC 390-18-030 to implement 2SHB 2016 (section 505, chapter 204, Laws of 2010), confirming that certain types of political advertising are exempt from sponsor ID.

Reasons Supporting Proposal: To provide guidance and clarification to sponsors of political advertisements affected by 2010 legislation.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: Chapter 204, Laws of 2010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule amendments are designed to clarify requirements for political advertising imposed by 2SHB 2016 (section 505, chapter 204, Laws of 2010).

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection [subsection] (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 applicable to the adoption of these rules.

December 7, 2010

Lori Anderson  
Communications and  
Training Officer

**AMENDATORY SECTION** (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures.** (1) For the purposes of chapter 42.17 RCW and Title 390 WAC:

(a) "Sponsor of an electioneering communication, independent expenditure or political advertising" is defined in RCW 42.17.020.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, electioneering communications, or independent expenditures that are for political advertising and/or electioneering communications subject to the provisions of chapter 42.17 RCW and as defined in RCW 42.17.020 or 42.17.100.

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor provided the contribution is reported in accordance with applicable provisions of chapter 42.17 RCW and Title 390 WAC.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). However, printed advertising undertaken as an independent expenditure or electioneering communication shall comply with the (~~"notice to voters"~~) "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17.510 and provide this information in an area set apart from any other printed matter. Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to provide the "top five contributors" to that political committee

pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

(5)(a) Advertising consisting of more than one page but intended to be presented as a single item (e.g., 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) Advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or television advertising shall be clearly spoken or identified as required in RCW 42.17.510.

(a) All radio, telephone and television advertising undertaken as an independent expenditure as defined in RCW 42.17.020 shall comply with the (~~"notice to voters"~~) "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(b) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17.020 shall comply with the (~~"notice to voters"~~) "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(c) Political committees that sponsor independent expenditure or electioneering communication radio and television advertising are required to clearly speak or otherwise identify the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

**AMENDATORY SECTION** (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-18-030 Advertising—Exemptions from identification.** Pursuant to RCW 42.17.510(6), the following forms of advertising need not include the sponsor's name and address, the (~~"notice to voters" or~~) "no candidate authorized this ad" sponsor identification, the "top five contributors," (~~information~~) or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17.510 (1) and (2) because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers—size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less, noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants,

pennants, pens, pinwheels, plastic tableware, pocket protectors, pot holders, reader boards where message is affixed in moveable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers—size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local voters pamphlets published pursuant to law, tickets to fund raisers, water towers, whistles, yard signs—size 4' x 8' or smaller, yo-yos, and all other similar items.

**WSR 11-01-055**  
**PROPOSED RULES**  
**PUBLIC DISCLOSURE COMMISSION**

[Filed December 7, 2010, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-12-110.

Title of Rule and Other Identifying Information: WAC 390-17-060 Exempt activities—Definitions, reporting.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on January 27, 2011, at 9:30 a.m.

Date of Intended Adoption: January 27, 2011.

Submit Written Comments to: Lori Anderson, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by January 25, 2011.

Assistance for Persons with Disabilities: Contact Jana Greer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 390-17-060 to implement 2SHB 2016 (section 602, chapter 204, Laws of 2010), clarifying which activities are exempt from contribution limits.

Reasons Supporting Proposal: To provide guidance and clarification for bona fide political parties regarding use of exempt funds.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: Chapter 204, Laws of 2010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule amendments are designed to clarify requirements for political advertising imposed by 2SHB 2016 (section 602, chapter 204, Laws of 2010).

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not volun-

tarily make section 201 applicable to the adoption of these rules pursuant to subsection [subsection] (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 applicable to the adoption of these rules.

December 7, 2010

Lori Anderson  
Communications and  
Training Officer

AMENDATORY SECTION (Amending WSR 07-07-005, filed 3/8/07, effective 4/8/07)

**WAC 390-17-060 Exempt activities—Definitions, reporting.** (1)(a) "Exempt contributions" are contributions made to a political committee which are earmarked for exempt activities as described in RCW 42.17.640. Such contributions are required to be reported under RCW 42.17.090, are subject to the restrictions in RCW 42.17.105(8), but are not subject to the contribution limits in RCW 42.17.640. Any written solicitation for exempt contributions must be so designated. Suggested designations are "not for individual candidates" or "for exempt activities."

(b) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for voter registration, absentee ballot information, get-out-the-vote campaigns, sample ballots are presumed to be for the purpose of promoting individual candidates and are subject to the contribution limits in RCW 42.17.640.

(c) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for internal organization expenditures or fund-raising are presumed to be with direct association with individual candidates and are subject to the contribution limits in RCW 42.17.640.

(2) "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited and out of which only expenditures for exempt activities shall be made.

(3) "Exempt activities" are those activities referenced in RCW 42.17.640 as further clarified by subsections (4), (5), and (6)(, and (7)) of this section. Only exempt activities are eligible for payment with exempt contributions.

(4)(a) (~~Except as permitted by WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.~~

~~(b) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.~~

~~(5))~~ Activities referenced in RCW 42.17.640 (15)(a) that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message. Expenditures or contributions for electioneering communications

made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent do not qualify as exempt activities, under WAC 390-05-210.

(b) Except as permitted under WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 (15)(a) that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.

(c) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.

~~((6))~~ (5)(a) "Internal organization expenditures" referenced in RCW 42.17.640 (15)(b) are expenditures for organization purposes, including legal and accounting services, rental and purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organization's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.

(b) "Fund-raising expenditures" referenced in RCW 42.17.640 (15)(b) are expenditures for fund-raising purposes, including facilities for fund-raisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to subsections (a) and (b) above are made in direct association with individual candidates, they shall not be paid with exempt contributions.

~~((7))~~ (6) For purposes of RCW 42.17.640 and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.

**WSR 11-01-072**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**WITHDRAWAL OF PROPOSED RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Filed December 10, 2010, 4:03 p.m.]

The insurance commissioner is withdrawing the CR-101 preproposal statement of intent and the CR-102 proposed rule making for R 2010-12 Rate cap rules, transition rating rules, rate stability formulas, and other rating methods for property and casualty insurance, published by the code reviser in WSR 10-18-086 and 10-24-097 respectively.

We will contact individuals that provided comments during the CR-101 and CR-102 comment periods of the withdrawal.

Mike Kreidler

**WSR 11-01-082**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed December 13, 2010, 2:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-123.

Title of Rule and Other Identifying Information: Chapter 296-05 WAC, Apprenticeship rules.

Hearing Location(s): On January 26, 2011, at 10:00 a.m., at the Department of Labor and Industries, Spokane Service Location, 901 North Monroe Street, Suite 100, Spokane, WA; and on January 31, 2011, at 9:00 a.m., at the Department of Labor and Industries, Tukwila Service Location, 12806 Gateway Drive, Tukwila, WA 98168.

Date of Intended Adoption: May 3, 2011.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by January 31, 2011.

Assistance for Persons with Disabilities: Contact Sally Elliott at (360) 902-6411 or [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov) by January 10, 2010 [2011].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On December 29, 2008, the United States Department of Labor for the Apprenticeship Programs, Labor Standards for Registration, published the final rules to 29 C.F.R. Part 29. The department is required to adopt changes to the Washington state rules to be in compliance with the new federal rules. The department worked with the subcommittee, appointed by Washington state apprenticeship and training council and included representation from business and labor, and other interested parties to draft amendments to the apprenticeship rules.

In addition, the rule making reviewed Initiative 937, which established an incentive to utilize state registered apprentices when entities construct/build renewable energy projects. The Washington state apprenticeship and training council, under I-937, is tasked with setting the level of apprentice utilization for such projects and verifying that such levels are achieved through a review process. With the growing emphasis on renewable energy resources, the rules are being amended to outline the processes and procedures through which entities can obtain certification of apprentice utilization.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 49.04 RCW and RCW 19.285.040.

Statute Being Implemented: Chapter 49.04 RCW and RCW 19.285.040.

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

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

Name of Agency Personnel Responsible for Drafting: Melinda Nichols, Tumwater, Washington, (360) 902-5321; Implementation and Enforcement: Steve McLain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule

changes clarify language of the current rule without changing its effect; incorporate without material change federal regulations, and the contents of some changes are explicitly and specifically dictated by statute. Therefore, the department is exempt from conducting a small business economic impact statement under RCW 19.85.025(3) referencing RCW 34.05.310 (4)(c),(d) and (e).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes clarify language of the current rule without changing its effect; incorporate without material change federal regulations, and the contents of some changes are explicitly and specifically dictated by statute. Therefore, the department is exempt from conducting a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii),(iv) and (v).

December 13, 2010

Dave D'Hondt, Chair  
Apprenticeship and  
Training Council

**AMENDATORY SECTION** (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-001 Purpose, scope, and authority.** (1) The Washington State Apprenticeship and Training Act (chapter 49.04 RCW) establishes the Washington state apprenticeship and training council (WSATC) as regulatory and designates as its administrative arm the apprenticeship section of the department of labor and industries. The WSATC, acting in compliance with chapter 49.04 RCW ~~(5)~~ and in harmony with 29 CFR Part 29 and 29 CFR Part 30, has adopted these rules to:

- (a) Establish operating procedures for the WSATC;
  - (b) Establish standards for apprenticeship programs;
  - (c) Implement the intent and purpose of the Washington State Apprenticeship and Training Act;
  - (d) Perform other duties directed by the statute;
  - (e) Promote labor standards and the registration of approved programs to protect the welfare of the apprentice; and
  - (f) Encourage the establishment of apprenticeship programs and committees.
- (2) These rules are necessary to:
- (a) Strengthen apprenticeship and training in the state of Washington;
  - (b) Facilitate approval and registration of apprenticeship and training programs;
  - (c) Explain factors related to apprenticeship and training in Washington state and federal laws;
  - (d) Establish procedures for presenting matters to the WSATC;
  - (e) Govern the WSATC's operation and ability to carry out its statutory obligations;
  - (f) Establish a specific procedure to resolve an impasse if a tie vote occurs on the WSATC; and
  - (g) Regulate registered apprenticeship and training programs.

**AMENDATORY SECTION** (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-003 Definitions.** The following definitions apply to this chapter:

**Adjudicative proceeding:** A proceeding before the WSATC in which an opportunity for a hearing before the WSATC is authorized by chapter 49.04 RCW or these rules before or after the entry of an order by the WSATC.

**Apprentice:** Is ~~((an individual))~~ a worker at least sixteen years of age who is employed to learn an apprenticeable occupation and is registered with a sponsor in an approved apprenticeship program according to chapter 49.04 RCW and these rules.

**Exception:** Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations.

**Apprenticeable occupation:** Is a skilled ~~((trade(s) or craft(s)))~~ occupation which ~~((has been))~~ is recognized by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship ~~((Training, Employer, and Labor Services))~~ or the WSATC and meets the criteria established in WAC 296-05-305.

**Apprenticeship agreement:** A written agreement between an apprentice and either the apprentice's employer(s), or an apprenticeship committee acting as agent for employer(s), containing the terms and conditions of the employment and training of the apprentice.

**Apprenticeship committee:** A quasi-public entity approved by the WSATC to perform apprenticeship and training services for employers and employees.

**Apprenticeship program:** A plan for administering an apprenticeship agreement(s). The plan must contain all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

**Approved:** Approved by the WSATC or a person or entity authorized by the WSATC to do so.

**CFR:** The Code of Federal Regulations.

**Cancellation:** The termination of the registration or approval status of a program at the request of the supervisor or sponsor. Cancellation also refers to the termination of an apprenticeship agreement at the request of the apprentice, supervisor, or sponsor.

**Certificate of completion:** A record of the successful completion of a term of apprenticeship (see WAC 296-05-323).

**Certification:** Written approval by the WSATC of:

- (1) A set of apprenticeship standards established by an apprenticeship program sponsor and substantially conforming to the standards established by the WSATC.
- (2) An individual as eligible for probationary employment as an apprentice under a registered apprenticeship program.

**Committee program:** All apprenticeship programs as further described in WAC 296-05-309.

**Competent instructor:** An instructor who has demonstrated a satisfactory employment performance in his/her occupation ~~((or trade))~~ for a minimum of three years beyond

the customary learning period for that (~~trade or~~) occupation and:

(1) Meets the state board for community and technical colleges requirements for a vocational-technical instructor, or be a subject matter expert, which is an individual, such as a journey worker, who is recognized within an industry as having expertise in a specific occupation; and

(2) Has training in teaching techniques and adult learning styles, which may occur before or within one year after the apprenticeship instructor has started to provide the related technical instruction.

**Competitor:** A competing apprenticeship program that provides training in the same or overlapping occupation as the proposed program in the same geographic area proposed. In determining whether an occupation is the same or overlapping as the proposed program's occupation, the council may consider the following:

(1) Washington state apprenticeship and training council approved apprenticeship standards;

(2) Collective bargaining agreements;

(3) Dictionaries of occupational titles;

(4) Experts from organized labor, licensed contractors, and contractors' associations;

(5) Recognized labor and management industry practice;

(6) Scope of work descriptions issued by the department.

**Completion rate:** The percentage of an apprenticeship cohort who receives a certificate of apprenticeship completion within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been canceled during the initial probationary period.

**Compliance review:** A comprehensive review conducted by the apprenticeship section of the department of labor and industries regarding all aspects of an apprenticeship program's performance including, but not limited to, determining if apprentices are receiving: On-the-job training in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the registration agency is receiving notification of all new registrations, cancellations, and completions as required in this chapter.

**Current instruction:** The related/supplemental instructional content is and remains reasonably consistent with the latest (~~trade~~) occupational practices, improvements, and technical advances.

**Department:** The department of labor and industries.

**Employer:** Any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice. "Employer" includes both union and open shop employers.

**File:** To send to:

Supervisor of Apprenticeship and Training  
Department of Labor and Industries  
Apprenticeship Section  
Post Office Box 44530  
Olympia, Washington 98504-4530

Or deliver to and receipt at:  
Department of Labor and Industries  
7273 Linderson Way SE  
Tumwater, Washington 98501

**Individual agreement:** A written agreement between an apprentice and/or trainee and either the apprentice's employer or an apprenticeship committee acting as agent for the employer.

**Industry wide standards:** The current, acceptable (~~trade~~) practices, including technological advancements, (~~that are~~) being used in the different (~~trades~~) occupations.

**Journey level:** An individual who has sufficient skills and knowledge of (~~a trade, craft, or~~) an occupation, either through formal apprenticeship training or through practical on-the-job work experience, to be recognized by a state or federal registration agency and/or an industry as being fully qualified to perform the work of the (~~trade, craft, or~~) occupation. Practical experience must be equal to or greater than the term of apprenticeship.

**On-the-job training program:** A program that is set up in the same manner as an apprenticeship program with any exceptions authorized by the WSATC and as further described in WAC 296-05-311.

**Notice:** Where not otherwise specified, notice means posted in United States mail to the last known address of the person to be notified. Notice may be given by telefacsimile where copies are mailed simultaneously or by a commercial parcel delivery company.

**Petitions, requests, and correspondence:** Any written business brought before the WSATC (examples may include: (1) Requests for new committees; (2) Requests for revisions to the standards; and (3) Appeals).

**Probation:** (1) Initial: (~~The period following the apprentice's acceptance into the program which is limited in time by these rules and during which the apprentice's appeal rights are impaired.~~) A period of time reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship. The initial probationary period cannot exceed twenty percent of the term of the program, or one year, whichever is shorter. Initial probationary apprentices are not subject to an appeal under the complaint review procedures as defined in WAC 296-05-009. Transferred apprentices are not subject to additional initial probationary periods.

(2) Disciplinary: A time assessed when the apprentice's progress is not satisfactory. During this time the program sponsor may withhold periodic wage advancements, suspend or cancel the apprenticeship agreement, or take further disciplinary action. A disciplinary probation may only be assessed after the initial probation is completed. During the disciplinary probation, the apprentice has the right to file an appeal of the committee's action with the WSATC (as described in WAC 296-05-009).

**Provisional registration:** The one-year initial approval of newly registered programs that meet the required standards for program registration, after which the program approval may be made permanent, continued as provisional through the first full training cycle/term, or rescinded following a compliance review by the apprenticeship section of the department.

**RCW:** The Revised Code of Washington.

**Registration:** ~~((Maintaining the records of apprenticeship and training agreements and of training standards.))~~ (1) For the purposes of an apprenticeship agreement means the acceptance and recording of an apprenticeship agreement by the apprenticeship section of the department of labor and industries as evidence of the apprentice's participation in a particular registered apprenticeship program.

(2) For the purposes of an apprenticeship program means the acceptance and recording of such program by the WSATC and apprenticeship section of the department of labor and industries, as meeting the basic standards and requirements of the department for approval of such program. Approval is evidenced by a certificate of registration or other written indicia.

**Registration agency:** The apprenticeship section of the Washington state department of labor and industries is responsible for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR parts 29 and 30, chapters 49.04 RCW and 296-05 WAC.

**Regular quarterly meeting:** A public meeting held quarterly by the WSATC as described in WAC 296-05-200.

**Related~~(/)~~supplemental instruction:** ~~((Is instruction approved by the program sponsor and taught by an instructor approved by the program sponsor. Instructors must be competent in his/her trade or occupation. A sponsor must review related/supplemental instruction annually to insure that it is relevant and current.~~

**Relevant instruction:** ~~Is related/supplemental instructional content that is directly required in and applicable to the performance of the apprentice's work. Relevant does not mean academic course content taught by a solely academically qualified instructor except for courses approved by the committee or specified by state law.))~~ An organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the registration agency.

**Secretary:** The individual appointed by the director of the department according to RCW 49.04.030.

**Special meeting:** A public meeting of the council as described in WAC 296-05-203.

**Sponsor:** Any person, firm, association, committee, or organization operating an apprenticeship and training program and in whose name the program is registered or is to be registered.

**Standards:** Is a written agreement containing specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices, as further defined in WAC 296-05-316.

**Supervision:** The necessary education, assistance, and control provided by a journey-level employee that is on the same job site at least seventy-five percent of each working day, unless otherwise approved by the WSATC.

**Supervisor:** The individual appointed by the director of the department according to RCW 49.04.030 who acts as the secretary of the WSATC. Where these rules indicate a duty of the supervisor or secretary of the WSATC, the supervisor may designate a department of labor and industries' employee to assist in the performance of those duties subject to the supervisor's oversight and direction.

~~((Trade: Any apprenticeable occupation defined by the apprenticeship, training, employer and labor services section of the United States Department of Labor and these rules.))~~

**Trainee:** An individual registered with the supervisor according to WAC 296-05-311.

**Training agent:** Employer of registered apprentices approved by the program sponsor to furnish on-the-job training to satisfy the approved apprenticeship program standards who agrees to employ registered apprentices in that work process. The training agent shall use only registered apprentices to perform the work processes of the approved program standards.

**Training agreement:** A written agreement between a training agent and a program sponsor that contains the provisions of the apprenticeship program applicable to the training agent and the duties of the training agent in providing on-the-job training.

**Transfer:** A shift of apprenticeship registration from one sponsor to another where there is written agreement between the apprentice and the affected apprenticeship committees or program sponsors.

**WAC:** The Washington Administrative Code.

**WSATC:** The Washington state apprenticeship and training council.

**AMENDATORY SECTION** (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-005 Rule development.** (1) In developing and adopting rules, the WSATC:

(a) Seeks the cooperation and assistance of all interested persons, organizations, and agencies affected by its rules.

(b) Promotes the operation of apprenticeship programs to satisfy the needs of employers and employees for high quality training.

(c) Recognizes that rapid economic and technological changes require that workers must be trained to meet the demands of a changing marketplace.

(d) Recognizes employers will benefit if graduates of state approved apprenticeship programs are skilled workers trained to industry wide standards rather than the exclusive standards of an individual employer or group of employers.

(e) Acknowledges that approved apprenticeship programs should be organized and administered to assure the maximum protection of apprentices' rights.

(f) Recognizes that the number of apprentices in ~~((a trade))~~ an occupation or group of ~~((trades))~~ occupations in any geographic area must be sufficient to meet the needs of all employers ~~((and not be so large as to create an oversupply of apprentices)).~~

(g) Promotes comprehensive training and a variety of work experiences relevant to the occupations~~(-)~~ and seeks to assure that during the approval process all apprenticeship



standards are open to ~~((all))~~ employers on an equal and non-discriminatory basis.

(h) Recognizes that quality training, equal treatment of apprentices, and efficient delivery of apprenticeship training are best provided by registered apprenticeship programs.

(2) All amendments to this chapter must be developed and adopted according to the provisions of chapter 49.04 RCW, Apprenticeship Act; chapter 34.05 RCW, Administrative Procedure Act; and Executive Order 97-02. All proposed amendments to these rules must be approved by a two-thirds majority vote of regular WSATC members before they are published for public hearing. All WSATC members, the apprenticeship supervisor, committees and any other interested parties must be promptly notified, in writing, of any proposed rule amendments, public hearings on proposed rule amendments and new rule adoptions.

(3) The specific procedure(s) and form(s) for petitions requesting the making, amendment, or repeal of a rule are in chapter 34.05 RCW, as are the specific procedure and form for requesting declaratory rulings.

(4) Such petitions and requests must be addressed to:

The Washington State Apprenticeship and Training Council  
Attention: Supervisor of Apprenticeship and Training  
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AMENDATORY SECTION (Amending WSR 04-10-032, filed 4/28/04, effective 6/1/04)

**WAC 296-05-007 Rules of procedure.** All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapter 34.05 RCW, the Administrative Procedure Act and chapter 10-08 WAC, Model Rules of Procedure. The chair (or designee) is the presiding officer for adjudicative proceedings, held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication has been held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five ~~((working))~~ business days after the next regular quarterly meeting unless:

(1) The WSATC upon its own motion determines that the initial order should be reviewed; or

(2) A party to the proceedings files a petition for review of the initial order.

The WSATC may appoint a person to review the initial order and prepare and enter the final WSATC order.

AMENDATORY SECTION (Amending WSR 04-10-032, filed 4/28/04, effective 6/1/04)

**WAC 296-05-008 Process for objections to apprenticeship program standards.** (1) If a competitor objects to

the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must provide timely and specific written objections. Objections ~~((to apprenticeship program standards))~~ shall be submitted to the department ~~((with a copy to the program sponsor))~~ for WSATC consideration twenty calendar days prior to the regular quarterly WSATC meeting on a form provided by the department and approved by the WSATC.

(2) The department shall notify the petitioning program sponsor of objections no more than two business days after the department receives the objection.

(3) In accordance with WAC 296-05-007, the WSATC may either adjudicate matter(s) itself or refer matter(s) to the office of administrative hearings for initial adjudication.

(a) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, ~~((the individual(s) submitting))~~ a hearing on the objections shall ~~((present the objections))~~ take place at the regular quarterly WSATC meeting or at ~~((the))~~ a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program sponsor that the objection is on the agenda for consideration and shall give ~~((their))~~ its recommendation ten calendar days prior to the WSATC meeting.

(b) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters ~~((that))~~ on which the WSATC is requesting the office of administrative hearings ~~((to))~~ provide findings and conclusions for the initial order.

(4) The department may attempt to facilitate a resolution to any objections during the process identified in this section.

~~((Note: Per WAC 296-05-207, the approval or disapproval of committee programs, plant programs or amendments to those programs can only occur at regular quarterly meetings.))~~

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-009 Complaint review procedures.** If a local committee or other organization administering the agreement cannot satisfactorily resolve a complaint, any apprentice who has completed his/her initial probationary period may submit the complaint to the apprenticeship program for resolution. Complaints that involve matters covered by a collective bargaining agreement are not subject to the complaint review procedures in this section. The investigation or review of any controversy by the supervisor or the WSATC will not affect any action taken or decision made by a committee or other organization until a final decision resolving the matter is issued.

(1) Within thirty calendar days of documented, written notification of the action leading to the complaint, the apprentice must request the local committee or other organization to reconsider action.

(2) The local committee or other organization must, within thirty calendar days of the apprentice's request, provide written notification to the apprentice of its decision on the request for reconsideration. This notification shall be considered the final action of the committee.

(3) If the apprentice chooses to pursue the complaint further, the apprentice must submit a written complaint describing the controversy to the supervisor of the apprenticeship division within thirty calendar days of the final action taken on the matter by the local committee or other organization. The written complaint must be specific and include all relevant facts and circumstances contributing to the complaint. Any documents or correspondence relevant to the complaint must be attached to the complaint. The apprentice must send a copy of the complaint to the interested local committee or other organization.

(4) The supervisor must investigate complaints received from an apprentice. The supervisor must complete the investigation within thirty (~~working~~) business days. During the investigation, the supervisor must attempt to effect a settlement between the parties. During the investigation the apprentice and the committee or other organization must fully cooperate with the supervisor by providing any relevant information or documents requested. The supervisor may delegate the investigation to any employee in the apprenticeship division. If the controversy is not settled during the investigation, the supervisor must issue a written decision resolving the controversy when the investigation is concluded.

(5) If the apprentice, committee or other organization is dissatisfied with the decision of the supervisor, they may request the WSATC to review the decision. The request must be in writing and made within thirty calendar days of the supervisor's decision. It must specify the reasons supporting the request. The party requesting review must provide a copy of the request to the other parties involved in the controversy. The WSATC must conduct an informal hearing to consider the request for review of the supervisor's decision. Unless special circumstances dictate, the hearing must be held in conjunction with the regular quarterly meeting.

At the hearing, the WSATC must review the supervisor's decision and all records of the investigation. The WSATC may also accept testimony or documents from any person, including the supervisor and the supervisor's staff, who has knowledge relating to the controversy. Parties at the informal hearing may be represented by counsel and may, at the WSATC's discretion, present argument concerning the controversy. The WSATC must not apply formal rules of evidence.

(6) Within thirty calendar days after the hearing, the WSATC must issue a written decision resolving the controversy. The WSATC's decision may be to affirm the decision of the supervisor. In that case, the supervisor's decision becomes the decision of the WSATC. All parties to the informal hearing must be sent a copy of the WSATC's decision. The chair may sign the decision for the WSATC.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-013 Sanctions for noncompliance.** The WSATC is responsible to take the necessary action to bring a noncomplying program into compliance with these rules.

When the apprenticeship supervisor, based upon a compliance review or other reason, concludes that an apprentice-

ship program is not in compliance with the rules of this chapter and that the sponsor will not take voluntary corrective action, the WSATC must:

(1) Institute proceedings to withdraw the program registration;

(2) Refer the matter to the equal employment opportunity commission;

(3) Refer the matter to the attorney general with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended; or

(4) Refer the matter to the attorney general for other court action as authorized by law.

(5) For provisionally approved programs (see WAC 296-05-003) the WSATC may continue approval as provisional through the first full training cycle/term, or rescind approval following a compliance review by the apprenticeship section of the department of labor and industries.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-200 Regular meetings.** (1) Each year, regular meetings of the WSATC shall be convened on the third Thursday of January, April, July, and October. These regular quarterly meetings shall be held at locations within the state of Washington. All meetings are open to the general public.

(2) Notice of each regular quarterly meeting shall be given to all(:

~~•WSATC members;~~

~~•Ex officio members; and~~

~~•Approved program sponsors))~~ WSATC members, ex officio members, and approved program sponsors.

In addition, notices of meetings may be sent to all persons, organizations, agencies, or interested parties whose presence is desired and to any newspaper, news service, television, radio station, or other interested parties who have requested notices of WSATC meetings. The supervisor must distribute the notice of the regular meeting at least thirty calendar days prior to the meeting date.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-203 Special meetings.** (1) Special meetings of the WSATC may be called at the request of the chair or by a majority of the WSATC members. To call a special meeting, a written notice of the meeting must be personally delivered or mailed to:

((\*) (a) Each member of the WSATC;

((\*) (b) All approved program sponsors; and

((\*) (c) Each general circulation newspaper, television or radio station which has on file with the WSATC or the supervisor a written request to be notified of special meetings.

In addition, notices of meetings may be sent electronically to all persons, organizations, agencies, ((\*) and interested parties whose presence is desired.

(2) To be valid, the written notice must list the date, time and location of the meeting and specify the business to be transacted by the WSATC. The WSATC cannot take final

action on any matter that is not specified in the written notice. Special meetings must be open to the general public and adhere to the same open meeting requirements that apply to the regular quarterly WSATC meetings.

(3) Notices of special meetings must be delivered personally or by mail at least ~~((twenty-four hours))~~ seven calendar days before the specified time of the meeting.

(4) The exception is when a special meeting is called to consider rule changes according to chapter 34.05 RCW. In this case, the notice of the special meeting must be delivered at least twenty calendar days before the time specified in the notice.

(5) If the notice requirements in this section are not followed, any action taken by the WSATC at the special meeting will be null and void. However, the notice requirements can be waived if each regular WSATC member signs a written waiver of notice, at or prior to the meeting, and files it with the supervisor. With this filing, the notice shall be considered waived by any WSATC member present when the meeting convenes. Rule changes may not be made at special meetings where the notice requirements have been waived unless the requirements of chapter 34.05 RCW have been satisfied.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-205 Petitions, requests, and correspondence submitted to the WSATC.** (1) For the WSATC to act upon petitions or requests at a regular quarterly meeting, the petitions or requests must be submitted in writing to the supervisor at least forty-five calendar days prior to the date of the regular quarterly meeting. Any petitions or requests not submitted forty-five calendar days prior to a quarterly meeting must be deferred to the next regular quarterly meeting. If a petition or request is deferred, the supervisor must notify the petitioner.

(2) Generally, correspondence not related to apprenticeship and training agreements and meetings, petitions and requests, must be submitted in writing to the supervisor of apprenticeship at least fifteen ~~((working))~~ business days before the quarterly meeting at which the WSATC's consideration is requested. However, if the WSATC determines that the correspondence is crucial to any deliberations regarding approval or disapproval of an apprenticeship agreement, the supervisor may waive this ~~((fifteen-day))~~ fifteen business day requirement.

(3) Noncrucial correspondence submitted less than fifteen ~~((working))~~ business days before the quarterly meeting must be considered by the WSATC at the next quarterly meeting.

(4) When an apprenticeship committee petitions the council or the supervisor, only the signature of the elected chair and secretary of the committee shall be accepted as a valid signature unless the petitioning committee has asked the council to recognize and accept the signature of another person. A petition requesting the recognition of a signature other than that of the elected chair and secretary must be signed by a quorum of the members from the petitioning committee.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-207 Other regulations that apply to council meeting conduct.** (1) All council meetings must be open to the general public. Members of the public cannot be required to register his/her name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, the Open Public Meetings Act and chapter 34.05 RCW, the Administrative Procedure Act. The following WSATC activities must take place in open public meetings:

- (\*) (a) All transactions of official business;
- (\*) (b) All commitments or promises;
- (\*) (c) All collective discussions;
- (\*) (d) All collective decisions; and
- (\*) (e) All council actions.

(2) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting under WAC 296-05-203.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-209 Voting.** (1) A quorum is two-thirds of the WSATC members entitled to vote.

(2) All council members appointed by either the director or the governor are voting members of the council. Ex officio members may not vote on any issue.

(3) To resolve tie votes, the chair shall establish a standing tie-breaker committee. The committee shall be comprised of an employer representative, an employee representative, and the public member on the WSATC. In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within thirty calendar days. The supervisor or a designee of the supervisor shall act as secretary to the committee and furnish all information necessary for a decision.

#### NEW SECTION

**WAC 296-05-215 Limitations.** Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(1) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(2) Any special provision for veterans, minority persons, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

AMENDATORY SECTION (Amending WSR 02-10-083, filed 4/29/02, effective 6/1/02)

**WAC 296-05-300 Apprenticeship and training programs—Approval.** The WSATC is the body responsible for

matters concerning apprenticeship and training in the state of Washington. The principal function of the WSATC is to approve, register, and regulate apprenticeship and training agreements. Persons or organizations desiring to institute an apprenticeship or training program must follow these steps:

(1) Organize an apprenticeship and training committee, if applicable, according to WAC 296-05-303 and file affidavits with the WSATC requesting that the committee be recognized.

(2) ~~((One))~~ In conjunction with the proposed committee ~~((is recognized, it))~~, persons or organizations desiring to institute an apprenticeship or training program must propose standards conforming to these rules and to chapter 49.04 RCW. In addition, the standards must include the composition of the committee and general rules that it will follow in administering the program. (The apprenticeship supervisor and department apprenticeship ~~((coordinators))~~ consultants are available to give assistance drafting standards.)

(3) ~~((These))~~ The proposed committee and/or standards must be presented to the supervisor at least forty-five calendar days before the regular quarterly meeting at which the WSATC is requested to consider such proposed standards.

(4) At the regular quarterly meeting, the proposed committee and/or standards will be considered by the WSATC. The WSATC will:

- (a) Approve;
- (b) Approve provided the sponsor accepts the changes recommended by the WSATC; or
- (c) Disapprove.

At the regular quarterly meeting, the WSATC will allow changes to correct clerical errors. The addition of standard language will be allowed if authorized representatives of the sponsor are present and authorized to accept changes. At the regular quarterly meeting, the WSATC will not accept changes to the format, language, or provisions of the submitted program standards which are not reasonably consistent with previously approved program standards.

If the WSATC disapproves the standards, it shall direct the department to inform the sponsor in writing the reason for disapproval.

(5) Once the WSATC approves the program standards ~~((the committee))~~, they are provisionally registered for a period of one year and the sponsor is authorized to function and perform its duties as described in WAC 296-05-316.

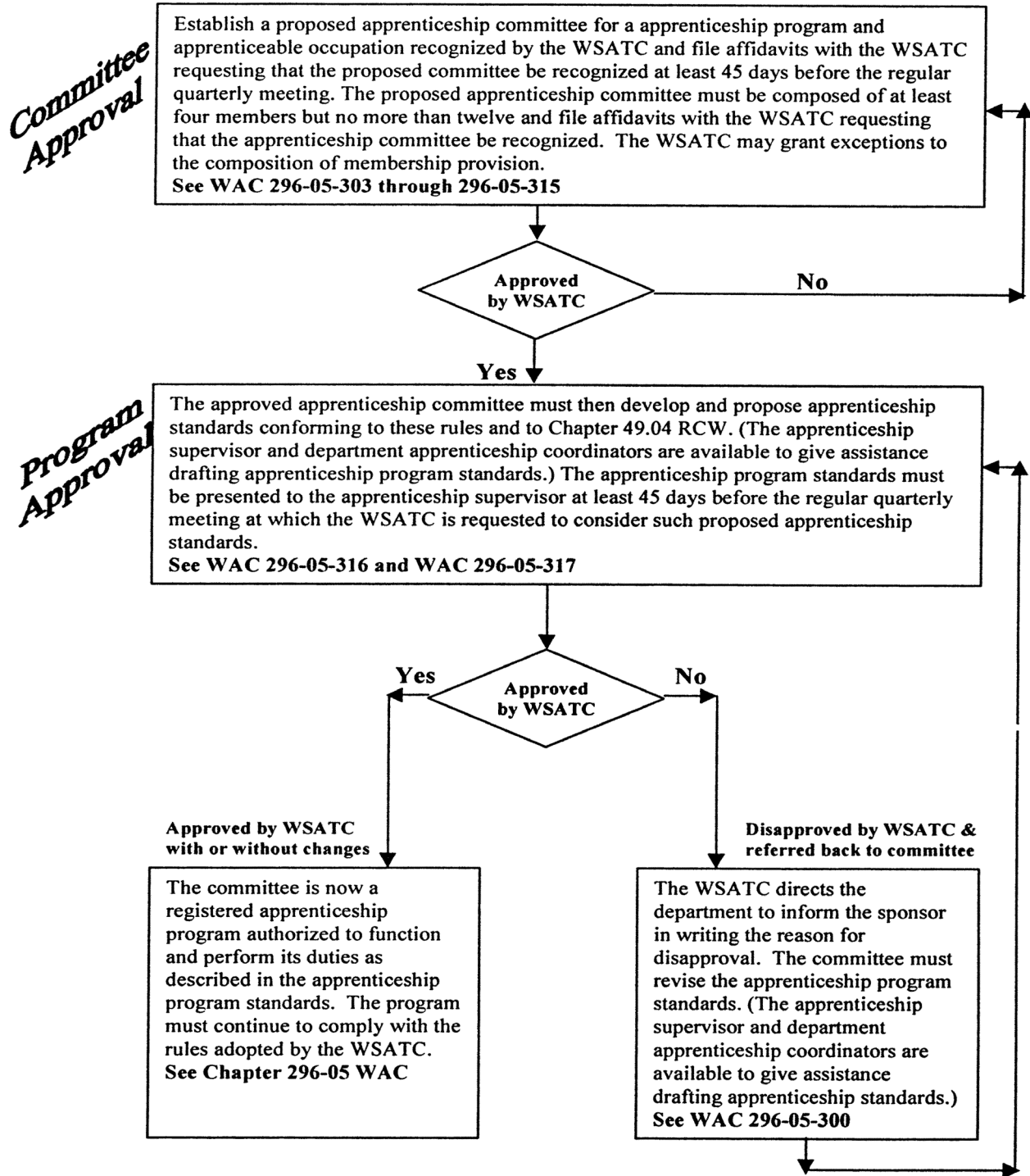
(6) ~~((If a competitor objects to the proposed standards or proposed amendment(s) to existing standards, the WSATC may either adjudicate the objection(s) with the proposed standards or refer the objection(s) with the proposed standards or proposed amendment(s) to existing standards to an administrative hearing as described in WAC 296-05-007. For purposes of this subsection "competitor" means a competing apprenticeship program in a similar or subset of the trade, craft, or occupation within the geographic area served.))~~ Objections shall be handled pursuant to WAC 296-05-008.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-302 Apprenticeship committee/program approval process.

((STRICKEN GRAPHIC))

### Apprenticeship Committee/Program Approval Process



((STRICKEN GRAPHIC))

((Note: This flowchart represents the general process for apprenticeship committee/program approval and does not include exceptions and variations.))



((\*) (e) Removing apprentices from the program as provided by the approved program standards;

((\*) (f) Informing the supervisor of any matters that affect the standing of individuals as apprentices; and

((\*) (g) Entering into agreements with other apprenticeship committees for the use of apprentices by training agents that are working outside their approved geographic area served.

The WSATC will only recognize apprentices registered with the supervisor.

((4)) (5) Committees approved by the WSATC must offer training opportunities on an equal basis to all employers and apprentices including all rights, appeals, and services available in the existing apprenticeship program. All existing committees that represent multiple employer or employer associations, except for committees that represent individual or plant programs, are expected to provide access to apprenticeship and training opportunities to employers not currently participating in the program. Those opportunities must:

((\*) (a) Ensure that apprentices work only for approved training agents;

(b) Provide training at a cost equivalent to that incurred by currently participating employers and apprentices;

((\*) (c) Grant equal treatment and opportunity for all apprentices;

((\*) (d) Offer reasonable working and training conditions and apply those conditions to all apprentices uniformly and equally;

((\*) (e) Not require an employer to sign a collective bargaining agreement as a condition of participation in an apprenticeship program;

((\*) (f) Require all employers requesting "approved training agent" status to comply with ((an)) a WSATC approved agreement and all federal and state apprenticeship rules and the appropriate apprenticeship standards. (The training agent shall employ only registered apprentices when training for ((that)) a given occupation ((or trade)));

((\*) (g) Require sponsors((, who)) to approve ((approved)) training agent((s)) agreements((, to)) and to have training agents sign a training agent agreement. The sponsor must furnish the department with a copy of the agreement and/or the list of approved training agents within thirty calendar days of committee approval; and

((\*) (h) Require sponsors who rescind "approved training agent" agreements and/or the list of approved training agents to notify the department that they have done so within thirty calendar days of said action.

((5) Apprenticeship program sponsors may send registered apprentices to limited training agents.

This shall be called a "limited training agent agreement," which is when an employer that is not currently a registered training agent to a set of apprenticeship standards, enters into a single public works project agreement with the program sponsor for the purposes of apprenticeship utilization. The limited training agent agreement must specify that:

~~The program sponsor must ensure that all program requirements are being followed.~~

~~Apprenticeship utilization requirements must be in the public works contract.~~

~~The agreement is for a specific trade(s) or occupation(s).~~

~~The limited training agent must sign the training agent form.~~

~~This limited training agent agreement does not obligate the employer to use registered apprentices in any other type of work or trade or occupation other than the one for which the limited training agreement is entered into.~~

~~This is a pilot program lasting for two years (July 2004 - July 2006) in Spokane County only.~~

~~The department must conduct a study and provide a report back to the Washington state apprenticeship and training council on the effect of the rule. This report should contain vital information including the numbers of apprenticeship hours generated, any adverse impacts on apprenticeship programs and apprentices, any compliance problems, any health and safety problems, or other considerations requested by the council at a later date. This report is due to the WSATC by March 15, 2006.)~~

(6) If an existing committee fails to or refuses to offer apprenticeship and training opportunities to all employers, the WSATC may take action to remove the restrictions to access in order to comply with the intent of chapter 49.04 RCW and these rules. Action may include, but is not limited to, the decertification of the existing committee and recognition of a new committee.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-305 Apprenticeship occupations.** An apprenticeship occupation is a skilled ((trade)) occupation which possesses all of the following characteristics:

(1) ((It is)) Involve skills that are customarily learned in a practical way through ((related instruction and)) a structured, systematic program of on-the-job supervised ((training)) learning.

(2) ((It)) Is clearly identified and commonly recognized throughout an industry.

(3) ((It)) Is not part of an occupation previously recognized by the registering agency as apprenticeship, unless such part is practiced industry wide ((as an)) and is identifiable and distinct ((trade)).

(4) ((It)) Involves manual, mechanical, or technical skills and knowledge which require a minimum of two thousand hours of on-the-job work experience.

(5) ((It)) Requires a minimum of one hundred forty-four hours of related instruction per year to supplement on-the-job work experience.

(6) ((It)) Involves skill sufficient to establish normal career sustaining employment ((for the length of the apprentice's work life. It entails technical and theoretical considerations which are susceptible to instruction within the period defined in the program standards)).

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-309 Apprenticeship programs approved by the WSATC.** The following apprenticeship programs may be approved by the WSATC. All the follow-

ing programs with the exception of individual waiver programs must be administered by a committee. A committee may be either joint or nonjoint, as defined in WAC 296-05-303(2).

(1) Group-joint, or area joint. A program where there is a labor organization. These programs are jointly sponsored by a group of employers and a labor organization. They are administered by employer and employee representatives from an apprenticeship and training committee composed equally from management and labor.

(2) Individual-joint. A program where there is a labor organization. These programs are jointly sponsored by an individual employer and a labor organization. They are administered by employer and employee representatives from an apprenticeship and training committee composed equally from management and labor.

(3) Group nonjoint, or area group. A program where there is no labor organization. These programs are sponsored by an employer association(s) administered by an apprenticeship committee.

(4) Individual nonjoint. A program where there is no labor organization. These programs are sponsored and administered by an individual employer.

(5) Group waiver. These programs involve an employer association(s) and a labor organization. Either the employer group or the labor organization voluntarily waives participation in the program by notifying the other party in writing.

(6) Individual waiver. These programs involve an individual person, company, plant, firm, and a labor organization. Either management or labor voluntarily waives participation by notifying the other party in writing.

(7) Plant. A program for a single physical location or a group of physical locations owned by the sponsor. The WSATC, based on the authority in RCW 49.04.040, assumes jurisdiction and serves as the committee for appeals and disposition of complaints only. The apprenticeship agreement must specify the number of required hours for completion of the apprenticeship. The hours specified must represent at least two thousand hours of reasonably continuous employment. That agreement must conform to the applicable provisions of chapter 49.04 RCW and these rules.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-313 Apprenticeship committees—Composition.** (1) Apprenticeship committees must be composed of an equal number of management and nonmanagement representatives.

(2) For apprenticeship committees that represent one occupation, at least fifty percent of the members of a committee(s) must be occupationally qualified by education and experience in the specific occupation for which the committee is responsible. A committee member, who possesses journey level status as defined in WAC 296-05-003, is occupationally qualified. The committee must be able to verify the occupational qualifications of the members.

(3) For apprenticeship committees that represent multiple occupations, the committee members must either:

(\*) (a) Be occupationally qualified by education and experience in the specific occupations for which the committee is responsible and must be able to verify the occupational qualifications of the members; or

(\*) (b) Be known to represent the interests of the multiple occupations served.

(4) All committee members must be ~~((knowledgeable in))~~ provided copies of the ((process of)) applicable apprenticeship ((and/or the application of)) standards, chapter 49.04 RCW, and these rules, and directed to familiarize themselves with the information contained therein.

#### NEW SECTION

**WAC 296-05-314 Nonjoint and waiver committees—Additional requirements.** (1) The WSATC shall only recognize nonjoint and waiver standards for a specific occupation or directly related occupations.

(2) When multiple related occupations are approved on a single standard, each occupation shall be considered as an individual standard.

(3) Unrelated occupations shall be submitted under separate standards.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

~~**WAC 296-05-315 ((Nonjoint and waiver committees—Additional requirements-)) Term of apprenticeship—Standards requirement.** ((1) The WSATC shall only recognize nonjoint and waiver standards for a specific occupation or directly related occupations.~~

~~(2) When multiple related occupations are approved on a single standard, each occupation shall be considered as an individual standard.~~

~~(3) Unrelated occupations shall be submitted under separate standards-)) The term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job learning (at least two thousand hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach).~~

(1) The time-based approach measures skill acquisition through the individual apprentice's completion of at least two thousand hours of on-the-job learning as described in a work process schedule.

(2) The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of registered apprenticeship. The program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

(3) The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the



successful demonstration of competency as described in a work process schedule.

**AMENDATORY SECTION** (Amending WSR 07-22-096, filed 11/6/07, effective 1/1/08)

**WAC 296-05-316 Apprenticeship agreements—Standards requirements.** The WSATC shall have the authority to develop, administer, and enforce program standards for the operation and success of an apprenticeship and training program.

The sponsor's proposed program standards must include a list of duties and responsibilities of the program sponsor reasonably consistent with other approved program standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the (~~(trade or craft))~~ occupation to be taught and the required hours for completion of apprenticeship which must not be less than two thousand hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee.

**Exception:** This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be at least three times per year, be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Conference call meetings may be conducted in lieu of regular meetings but must not exceed the number of attended meetings and no disciplinary action shall be taken at conference call meetings.

(c) Explain the program sponsor's request for apprentices in the area covered by the apprenticeship standards established under these rules and a plan to include reasonable continuous employment.

(d) Establish minimum standards of education and skilled occupational experience required of apprentices.

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker.

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards.

**Exception:** This does not apply to plant programs.

(g) Recommend competent instructors as defined in WAC 296-05-003 and related/supplemental instruction in accordance with (~~(local vocational))~~ state board for community and technical college requirements.

(h) (~~(Recommend a course outline for related/supplemental instruction, as well as))~~ Coordinate related/supplemental instruction with on-the-job work experience.

(i) Hear and adjust all complaints of violations of apprenticeship agreements.

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules.

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period.

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules. (See WAC 296-05-318.)

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex, color, religion, national origin, age, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an (~~(affirmative action))~~ equal employment opportunity plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in collective bargaining agreement, if any. The ratio must be described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, and hours of study per year (~~((which)).~~ Related/supplemental instruction shall not be ((a minimum of)) less than one hundred forty-four hours per year((9)) and defined in the standards per:

(a) Twelve-month period from date of registration; or

(b) Defined twelve-month school year; or

(c) Two thousand hours of on-the-job training.

If a sponsor does not prescribe hours of study, the WSATC shall adopt (a) of this subsection for compliance purposes.

(7) An attendance policy which includes (~~(a provision that))~~ the following provisions:

(a) If the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the apprenticeship agreement. ((A provision))

(b) That time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not required to be paid for the classroom time. ((A provision that the))

(c) That all hours of actual attendance by the apprentice in related supplemental instruction classes must be reported to the department on a quarterly basis.

(d) That the hours reported to the department will clearly identify unpaid, supervised related/supplemental instruction time versus paid or unsupervised time for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the ~~((department))~~ supervisor.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including:

~~((Certificate of completion;~~

~~Additional credit;~~

~~Suspension;~~

~~Military service;~~

~~Reinstatement;~~

~~Cancellation; and~~

~~Corrections-))~~ Certificate of completion; additional credit; suspension; military service; reinstatement; cancellation; and corrections.

(11) A provision for ~~((advancing an apprentice's))~~ granting of advanced standing ((based on previous)) or credit for demonstrated competency, acquired experience, training, education, or skills in ((the skilled trade)) or ((in some other)) related ~~((capacity))~~ to the occupation and:

(a) In licensed trades regulated by electrical, plumbing and elevator programs at the department, apprenticeship sponsors may give advanced credit or grant hours to apprentices only up to the hours that have been approved by the appropriate licensing entity prior to the sponsor granting credit to the registered apprentice. Programs are not required to use all hours granted by the regulatory section of the department.

(b) All apprenticeship programs need to ensure that a fair and equitable process is applied to apprentices seeking advanced standing or credit.

(12) A provision for the transfer of an apprentice from one training agent to another training agent or the sponsor in order to provide ~~((as much as))~~ to the extent possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04, 34.05 RCW, and these rules.

(15) A statement of the processes ~~((in))~~ within the ((trade or craft divisions)) occupation in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related/supplemental instruction ~~((which instruction shall be not less than one hundred forty-four hours per year)).~~ For competency based and hybrid models as defined in WAC 296-05-315, the program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than sixteen years of age. Note: Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established ~~((trade))~~ apprenticeship standards procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement~~((s));~~ it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.

(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

~~((a))~~ (a) Withhold periodic wage advancements;

~~((b))~~ (b) Suspend or cancel the apprenticeship agreement;

~~((c))~~ (c) Take further disciplinary action; or

~~((d))~~ (d) The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal, of the committee's action, to the WSATC.

(22) A provision for an initial probation which the WSATC or the supervisor of apprenticeship may terminate an apprenticeship agreement at the written request by any affected party. The initial probation must not exceed twenty percent of the term of apprenticeship unless an exemption has been granted for longer probationary periods as specified by Civil Service or law. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause. An appeal process is available to apprentices who have completed the initial probationary period.

(23) Provisions prohibiting discrimination on the race, sex, color, religion, national origin, age, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure adequate records of the selection process are kept for a period of at least five years and are available to the WSATC or its representative on request. ("Adequate records" means at least a brief summary of any interviews and the conclusions reached on each of the spe-

cific factors which are part of the total judgment concerning each applicant.)

(25) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

(26) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry(~~(, craft or trade)~~) occupation in question. The goal is to achieve general statewide uniformity of standards in each industry(~~(, trade or craft)~~) occupation. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship for a (~~(trade, craft, or)~~) given occupation. If the United States Department of Labor has not established a minimum number of hours for (~~(a trade, craft, or)~~) an occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must be achieved. In addition, the course content and delivery method must be designed to achieve (~~(the same levels of)~~) reasonably consistent skills as existing standards within the state for that industry(~~(, trade, or craft)~~) occupation.

(27) A provision to ensure (~~(that the)~~) progressively increasing wage scales based on specified percentages of journey-level wage(~~(, which)~~). Sponsors must (~~(be submitted,)~~) submit the journey-level wage at least annually(~~(,)~~) or whenever changed to the (~~(WSATC)~~) department. (~~(These)~~) Wage reports may be submitted on a form provided by the department.

A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-317 Related/supplemental instruction.** The WSATC (~~(shall establish)~~) may approve apprentice-related/supplemental instruction for (~~(trades and)~~) apprenticeable occupations based on recommendations from the state board for community and technical colleges.

Program sponsors may allow credit for previously completed related/supplemental instruction under WAC 296-06-316(1).

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-318 Records required by the WSATC.** Each sponsor must keep adequate records including, but not limited to, the following:

- (1) Selection of applicants:
  - (a) A summary of the qualifications of each applicant;
  - (b) The basis for evaluation and for selection or rejection of each applicant;
  - (c) The records pertaining to the interviews of applicants; and
  - (d) The original application for each applicant.
- (2) Operation of the apprenticeship program:
  - (a) On-the-job training assignments;

- (b) Promotion, demotion, layoff, or termination;
- (c) Rates of pay or other forms of compensation or conditions of work;

(d) Hours of training provided on-the-job by work process and in related supplemental instruction in accordance to the sponsor's approved plan; (~~(and)~~)

(e) Signed and approved training agency agreement forms; and

(f) Any other records needed by WSATC to determine compliance with these rules.

(3) (~~(Affirmative action)~~) Equal employment opportunity plans:

(a) A copy of the program's complete (~~(affirmative action)~~) equal employment opportunity plan. All data and analysis made to determine enrollment deficiencies;

(b) Evidence that (~~(affirmative action)~~) equal employment opportunity plans are reviewed on an annual basis; and

(c) Evidence that (~~(affirmative action)~~) equal employment opportunity plans, goals and timetables are updated when necessary.

(4) Documentation necessary to establish a sponsor's good faith effort in implementing its (~~(affirmative action)~~) equal employment opportunity plan:

- (a) Who was contacted;
- (b) When the contacts were made;
- (c) Where the contacts occurred;
- (d) How the contacts were made; and
- (e) The content of each contact.

(5) Qualification standards: Evidence that the sponsor's qualification standards meet the requirements of WAC 296-05-316.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-321 Apprenticeship agreement—Cancellation.** The supervisor may recommend that an agreement and program be canceled when a program does not comply with these rules or the program's standards. The procedures for cancellation are as follows:

(1) When any program is found to be operating inconsistently or contrary to these rules or its established program standards, the supervisor must notify the offending committee, person, firm or agency of the violation(s).

(2) The offending committee, firm, or agency has sixty calendar days to correct the violation(s).

(3) If the supervisor does not receive notice, within sixty calendar days, that action has been taken to correct the violations, the supervisor may recommend cancellation of the apprenticeship or training program and agreement to the WSATC.

(4) A recommendation to cancel a program must be in writing, addressed to each WSATC member, and detail the reasons for the recommendation.

(5) A copy of the recommendation, along with a notice that the WSATC will consider the recommendation, must be mailed to the last known address of each member of the committee administering said program, or to those persons responsible for the program.

(6) The WSATC must consider the recommendation at its next regularly scheduled quarterly meeting. However, at least thirty calendar days must pass between the date of the recommendation and the date of the regular quarterly meeting. If thirty calendar days ~~((has))~~ have not passed, the recommendation must be considered at the subsequent regular quarterly meeting.

(7) At the regular quarterly meeting, all interested person(s) may present evidence or testimony regarding the recommendation.

(8) The WSATC must act on the recommendation by a majority vote of the members present and voting.

(9) Once the WSATC has voted, it must give written notification of its decision to all interested parties along with the reasons supporting it.

(10) The cancellation of any program or agreement automatically cancels any agreement(s) registered under them. However, any organization or firm not responsible for the violations that caused the cancellation may petition the WSATC for approval of the canceled agreement or program as a new program.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-323 Certificate of completion.** At the request of the apprenticeship committee, the WSATC shall issue certificates of completion. An affidavit of the secretary, chair, or authorized official of the committee concerned must accompany the request. The affidavit must state that the apprentice ~~((has been an active,))~~ was registered with the department and an active participant of that committee's program for at least six months and has successfully completed his/her apprenticeship. These may be submitted on a form provided by the department.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-325 Union waiver.** (1) When apprenticeship programs allowing for the substantive union participation are proposed for registration by an employer or employers' association and the union does participate, the proposal must be accompanied by a written statement from the union supporting the registration. Such a statement is referred to as a "no objection" statement.

(2) When there is no evidence of any union participation, the employer or employers' association must simultaneously furnish to the union that serves as the collective bargaining agent of the employees to be trained, copies of the registration application and the apprenticeship program. Before taking a final action on the application, the supervisor must give the union a reasonable time period to respond. (A "reasonable time" shall be ~~((at least thirty))~~ within forty-five calendar days ~~((but no more than sixty days))~~ before final action on the application for registration and/or approval.) If the union fails to comment within the allotted time period, it will have waived its right to participate in the program.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-327 Reciprocity.** (1) For state purposes reciprocity means that the WSATC ~~((with))~~ may recognize and approve out-of-state apprenticeship programs and standards ~~((of employers and unions in other than the building and construction industry))~~ if certain conditions are met and the out-of-state sponsoring entity requests it. ~~((To qualify for reciprocity, the out of state sponsoring employers and unions must:~~

(1) Jointly form a sponsoring entity on a multistate basis; and

(2) Register) The conditions shall include consideration of, but not be limited to, the following:

(a) Registration with any recognized state apprenticeship agency/council or with the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship ~~((Training and Employer Labor Services))~~ according to the requirements of 29 CFR Part 29 ~~((as adopted February 15, 1977)).~~

(b) Present reasonably consistent apprenticeship standards, working conditions and apprentice to journey worker ratios.

(c) Occupations must be recognized as apprenticeable.

The terms and conditions of reciprocity may be suspended or revoked by the WSATC when it is determined that an apprenticeship program, sponsor approved training agent/approved employer, is not operating in a manner consistent with these requirements.

(2) For federal purposes the WSATC will accord reciprocal approval to apprentices, apprenticeship programs and standards that are registered in other states by the office of apprenticeship or a registration agency if such reciprocity is requested by the apprenticeship program sponsor. All program sponsors seeking reciprocal approval for federal purposes must meet the wage and hour provisions and apprentice ratio standards of Washington state.

NEW SECTION

**WAC 296-05-329 Certification of apprentice labor standard on renewable energy projects.** The WSATC shall establish the minimum level of apprentice labor hours to qualify for the renewable energy credit pursuant to RCW 19.285.040 (2)(h)(ii) and provide, upon sufficient evidence presented, a letter certifying that the renewable energy project met the apprentice labor standard. This section outlines information and required elements for the WSATC apprentice labor standard certification process. These provisions shall be in effect for projects that commence on or after July 1, 2011.

(1) The minimum level of Washington approved apprentice labor hours necessary to qualify for WSATC apprentice labor certification is fifteen percent of the total labor hours used in the construction of the renewable energy project (WAC 194-37-120(1)).

(a) "Washington approved" extends to reciprocally recognized programs.

(b) The WSATC adopts the definition of "labor hours" as presented in RCW 39.04.310(3) with the noted exception below:

**Exception:** Hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements must be reported and included in the total labor hours if such individual is counted in satisfying the required apprentice to journey supervision ratio as stated in the standards of apprenticeship.

(c) The WSATC will defer to the prevailing wage statute (chapters 39.04 and 39.12 RCW and 296-127 WAC) as it defines "work" on a site.

(d) Apprentice registration number and occupation title must be provided in tracking documentation for all apprentices on the project.

(2) A letter of intent to request the apprentice labor standard certification is required within forty-five days of the start of on-site construction for a generation facility or work on incremental efficiency improvements. Send letters of intent to:

Washington State Apprenticeship & Training Council  
Attn: Program Manager, Apprenticeship Section  
P.O. Box 44530  
Olympia, WA 98504-4530

Include the following information with the letter of intent:

- (a) Name and location of the renewable energy project;
- (b) A description of the scope of the project and estimated total labor hours;
- (c) Anticipated start and completion dates;
- (d) Anticipated date for final records to be submitted to the department; and
- (e) Plan to record all apprentice and journey labor hours by occupation and employer for the project.

The WSATC may grant exceptions to the letter of intent requirement for a period of two years from the effective date of this rule.

(3) For the WSATC to act upon the request for certification of apprentice labor standard at a regular quarterly meeting, the request and documentation must be submitted in writing to the supervisor at least forty-five calendar days before the next regular quarterly meeting. Documentation required includes:

- (a) The name of each registered apprentice, his/her occupational title and apprentice registration number;
- (b) The number of apprentices and labor hours worked, categorized by occupational title and employer;
- (c) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
- (d) Copies of weekly or monthly reporting forms used to capture the required information throughout the project duration. This must be supported by certified payroll records (electronic copies are acceptable); and
- (e) A statement affirming that reported hours reflect all hours worked on the project as defined in subsection (1)(b) of this section.

Sample affirmation statement: On behalf (insert name of project), I do hereby affirm that the reported hours presented

with this letter reflect all labor hours as defined in WAC 296-05-329 (1)(b) for this project.

(4) The department will review the apprentice labor standard request and supportive records and make a recommendation to the WSATC. Following consideration and action by the WSATC, the chair of the WSATC will provide a letter to the requesting party within thirty calendar days either:

- (a) Certifying that the project met the apprentice labor standard of at least fifteen percent of the total labor hours;
- (b) Denying the request for certification and providing the reasons for denial; or
- (c) Requiring additional information for reconsideration of the request at the next regularly scheduled meeting.

(5) The Washington department of labor and industries, apprenticeship section will maintain a list of renewable energy projects that achieve fifteen percent cumulative level of apprenticeship labor.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-400 Equal employment opportunity plan—Purpose, scope and authority.** The WSATC's (~~affirmative action~~) equal employment opportunity plan is based on the statutory authority granted in chapter 49.04 RCW and according to the provisions of 29 CFR Part 30. The purpose of the (~~affirmative action~~) equal employment opportunity plan is to promote equality of opportunity in apprenticeship by:

- Prohibiting discrimination in apprenticeship programs based on race, sex, color, religion, national origin, age disability or as otherwise specified by law;
- Requiring equal employment opportunities in apprenticeship programs through affirmative action; and
- Coordinating the WSATC's equal employment opportunity programs with affirmative action policies and procedures with other equal opportunity programs.

The following sections contain the policies and procedures to promote equality of opportunity and equity of treatment of apprentices in apprenticeship programs approved by the WSATC. These policies and procedures are to be used to:

- Recruit and select apprentices;
- Review and revise apprenticeship programs;
- Process equal employment opportunity complaints;
- Take corrective action when appropriate;
- Deregister noncomplying apprenticeship programs; and
- Continue recognition or withdraw recognition of apprenticeship programs.

An affirmative action program must not be used to discriminate against any qualified applicant or apprentice on the basis of race, sex, color, religion, national origin, age, disability or as otherwise specified by law.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-407 Apprenticeship program sponsor's obligations.** (1) A sponsor of an approved apprenticeship program must:

(a) Promote equal opportunity in its apprenticeship program; and

(b) Recruit, select, employ and train apprentices without discrimination based on race, sex, color, religion, national origin, age, disability or as otherwise specified by law.

(2) A sponsor of an approved apprenticeship program with five or more apprentices must uniformly apply all rules related to apprentices. Such rules include, but are not limited to:

- Equality of wages;
- Periodic advancement;
- Promotion;
- Assignment of work;
- Job performance;
- Rotation among all work processes ~~((of))~~ for the ~~((trade))~~ occupation;
- Imposition of penalties or other disciplinary action; and
- All other aspects of the apprenticeship program administered by the program sponsors.

(3) Adopt and implement an affirmative action plan and selection procedure as required by chapter 49.04 RCW, 29 CFR Part 30, and these rules unless the approved apprenticeship program qualifies for an exception (see WAC 296-05-405).

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-413 Outreach and recruitment requirements—Specific.** To gain approval, an affirmative action plan must include the following specific provisions for outreach and recruitment criteria:

(1) To increase minority and female participation in apprenticeship, program sponsors are expected to strengthen program outreach and recruitment efforts. The affirmative action plan must specify the activities they will use to achieve this result.

(2) The program sponsor is not necessarily required to include all of the listed activities in its affirmative action program. The WSATC, when approving the sponsor's affirmative action plan, will determine the number of specific activities a sponsor must implement to satisfy this outreach and recruitment requirement. The WSATC will consider all circumstances including the size and type of the program and its resources. When special circumstances exist, the WSATC may provide financial or other assistance it deems necessary to implement the requirements of this section from any funds made available to it for such purpose.

(3) Examples of positive outreach and recruitment activities are:

(a) Distributing information about the nature of apprenticeship programs, program admission requirements, current apprenticeship opportunities, sources of apprenticeship applications, and the equal opportunity policy of the sponsor.

For programs only accepting applications at specific intervals, such information shall be disseminated at least thirty calendar days in advance of each application date. For programs that accept applications throughout the year, this information must be distributed at least semiannually.

To be effective, the information described in this section must be given to the WSATC, local schools, employment service offices, women's centers, outreach programs and community organizations which effectively reach minorities and women. Also it must be published in newspapers which are circulated in the minority community and among women as well as the general areas in which the program sponsor operates.

(b) Participating in workshops conducted by employment service agencies, school districts, and community based organizations to increase apprenticeship program awareness of apprenticeship opportunities.

(c) Cooperating with local school districts, vocational education systems, and school employees to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.

(d) Increasing awareness of a sponsor's equal opportunity policy within the sponsor's organization. The goal of this increased awareness within the sponsor's organization is to foster understanding, acceptance, and support among the sponsor's various officers, supervisors, employees, employers, and members. This is to encourage the necessary active assistance in achieving the program's obligations required by these rules.

(e) Participating in existing outreach programs whose focus is the recruitment and preparation of minority and female apprenticeship applicants. Whenever possible, these should provide applicants with pretesting experience and training.

(f) Developing outreach programs whose focus is the recruitment and preparation of minority and female apprenticeship applicants. If apprenticeship outreach programs do not exist, the sponsor should attempt to develop them. This effort may require working with other sponsors and appropriate community organizations. It may require obtaining financial assistance from the WSATC. Also, the sponsor shall initiate programs that prepare and encourage women to enter traditionally male dominated apprenticeship programs ~~((and trades))~~ occupations.

(g) Encouraging the development and use of programs for ~~((preapprenticeship))~~ apprenticeship preparation education ~~((preparatory trade training))~~ or other work related experiences that prepare candidates for apprenticeship.

(h) Granting to all applicants, without prejudice, advance standing or credit for previously acquired experience, training, skills, or aptitude.

(i) Engaging in other activities to ensure that the recruitment, selection, employment, and training of apprentices without discrimination based upon race, color, religion, national origin, sex, age, disability or as otherwise specified by law. Some examples of these activities include:

(i) General publication of advertisements, industry reports, articles on apprenticeship opportunities and advantages.

(ii) Use minority and female apprentices and journey-level workers as recruiters.

(iii) Provide career counseling to prospective applicants.

(iv) Periodically audit affirmative action programs to see if goals are being met.

(v) Develop monitoring procedures to ensure that employers are granting equal employment opportunities to apprentices (these procedures may include reporting systems, on-site reviews, or briefing sessions).

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-415 Affirmative action goals and timetables.** (1) An affirmative action plan must include goals and timetables. The first step in deciding whether goals and timetables are necessary is the completion of an analysis of the sponsor's program to determine whether there is an underutilization of minorities and/or women in the ~~((trade(s)))~~ occupations represented by the program. This analysis must be:

(a) Conducted by the sponsor with technical assistance provided by the department;

(b) In writing; and

(c) Included in the sponsor's affirmative action plan.

(2) If the sponsor's analysis demonstrates that minorities and females are underutilized in the program, the program has an enrollment deficiency that must be corrected. Enrollment goals and timetables to correct this deficiency must be established and they must be included in the sponsor's affirmative action plan. (See WAC 296-05-433.)

(3) If the sponsor's analysis demonstrates that no enrollment deficiencies exist, enrollment goals and timetables are not required. However, where no goals and timetables are established, the affirmative action plan must include a detailed explanation why no goals and timetables have been established.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-417 Selection of apprentices for approved apprenticeship programs.** In addition to development of a written affirmative action plan, the sponsor must submit a written plan for the selection of apprentices. The selection plan must ensure that minorities and women have an equal opportunity to be selected as apprentices and that full utilization and equal opportunity in apprenticeship is achieved promptly. The selection procedures must use one of the methods specified in this section.

(1) A sponsor may not implement any selection method until the WSATC approves the program's affirmative action plan. In the affirmative action plan, the sponsor must identify the approved selection method it has adopted. The WSATC allows the following selection methods to be used:

(a) **Selection on basis of rank from pool of eligible applicants.** With this method, a sponsor selects apprentices from a pool of eligible applicants based upon a rank ordering of applicant qualifying standard scores. A sponsor adopting this method must create a pool of eligible candidates who have either reached the minimum legal working age and meet the sponsor's minimum physical requirements or who have reached the minimum legal working age and meet the sponsor's qualification standards.

(b) **Random selection from pool of eligible applicants.** A pool of eligible applicants must be created from persons who have either reached the minimum legal working age and

meet the sponsor's minimum physical requirements or who have reached the minimum legal working age and meet the sponsor's qualification standards. With WSATC approval, a sponsor may randomly select apprentices from a pool of eligible applicants. This method must be supervised by an impartial person(s) not associated with the administration of the apprenticeship program. The time and place of the selection, and the number of apprentices to be selected, must be publicly announced before the selection takes place. The selection process must be open to all applicants and the public. The names of apprentices drawn by this method shall be posted immediately following the selection at the program sponsor's place of business.

(c) **Selection from pool of current employees.** A sponsor may select apprentices from an eligibility pool of program employees. The actual selection process may be prescribed by a collective bargaining agreement where one exists, or by the sponsor's established promotion policy.

(d) **Alternative selection methods.** In addition to the above specified methods, the WSATC allows a sponsor to select apprentices by alternative methods, including its present selection method. However, the sponsor who adopts an alternative method of selection must submit the following information to the apprenticeship supervisor:

(i) A detailed discussion of the selection method it proposes to use;

(ii) A copy of its affirmative action plan;

(iii) A copy of its enrollment deficiency analysis; and

(iv) If necessary, its goals and timetables for increasing the number of minority and female applicants and apprentices in the program.

The sponsor may not implement any such alternative method until the WSATC has approved the method and the affirmative action program (including its goals and timetables).

When an alternative selection method is used and the training agent selects the apprentices, the employer must sign an agreement with the WSATC, agreeing to comply with the equal employment opportunity requirements of these rules and 29 CFR Part 30.

(2) Exceptions to selection procedures may be used if:

(a) An employee of an employer not qualifying as a journey-level worker becomes a training agent, he/she shall be evaluated by the apprenticeship program using constant standard nondiscriminatory means and registered at the appropriate period of apprenticeship based on previous work experience and related training.

(b) The individual who signs an authorization card during the organizing effort by an employer wherein fifty percent or more of the employees have signed whether or not the individual is approved as a training agent, an individual not qualifying as a journey-level worker shall be evaluated by the sponsor and registered at the appropriate period of apprenticeship based on previous work experience and related training.

(3) Organizing statements specified in subsection (2) of this section, that result in direct entry into the apprenticeship program, shall be properly placed within the program selection procedure as an exemption.

(4) If the WSATC or the department fails to act upon the sponsor's selection method and affirmative action program within thirty calendar days of its submission to the department, the sponsor may implement the selection method until acted upon by the WSATC.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-419 Qualification standards.** Qualification standards are the criteria, used by sponsors to select applicants into an eligibility pool. These qualification standards and the procedures used to determine the standards must be specified in detail in the sponsor's affirmative action plan and must:

- Identify the specific criteria and attributes used to evaluate applicants;
- Specify the acceptable scores required for each qualification standard;
- Demonstrate a direct relationship between each qualification standard, its required score and the expected job performance;
- Establish a significant statistical relationship between the score required for admission to the pool and the applicant's performance in the apprenticeship program. This statistical relationship must be based upon the procedures discussed in 41 CFR Part 60-3 (Guidelines on employee selection procedures); and
- Specify that the applicant has achieved an acceptable score on all the qualification. Unless an applicant achieves an acceptable score on all the qualification standards, the applicant will be ineligible for admission to the pool.

(1) **Aptitude test scores for use as qualification standards.** Aptitude tests may be used as qualification standards; however, any aptitude test score used as a qualification standard must be directly related to apprenticeship job performance. To demonstrate this relationship, there must be a significant statistical relationship between the aptitude test scores required for admission to the pool and performance in the apprenticeship program. In determining this relationship, the sponsor must follow the procedures discussed in 41 CFR Part 60-3. These requirements also apply to any aptitude tests used by a program sponsor and administered either by a state employment agency or any person, agency or organization engaged in the selection or evaluation of personnel. If a national aptitude test is developed and administered by a national apprenticeship committee, it must meet these requirements before it will be approved by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship.

(2) **Educational achievements for use as qualification standards.** Educational achievements can be used as qualification standards; however, all such achievements used to determine admission to a program pool must be directly related to apprenticeship job performance. This direct relationship must be demonstrated by a significant statistical relationship between the achievement scores required for admission and expected performance in the apprenticeship program. In demonstrating such a statistical relationship, the sponsor must meet the requirements of 41 CFR Part 60-3.

Official school records or a certified passing grade on a general educational development (GED) test recognized by state or local public instruction officials shall be evidence of educational achievement. These education achievement requirements must be uniformly applied to all applicants.

(3) **Role of the interview in the applicant selection process.** Interviews must not be used as a qualification standard for admission to an eligibility pool for programs using the selection methods described in WAC 296-05-417 (1) and (2). However, after an applicant is placed in a pool and before selections are made from that pool, an applicant can be interviewed. When interviews are conducted, they must:

- (a) Consist only of objective questions relevant to the applicant's fitness for the apprenticeship program.
- (b) Not include questions related to qualifications previously used to determine entrance to the pool.
- (c) Require each interviewer to record the questions and the general nature of the applicant's answers.
- (d) Require each interviewer to prepare a summary of any interview conclusions.

Adequate records of the interviews must be kept including a brief summary and conclusion and how the specific factors like applicant motivation, ambition, and willingness to accept direction affected the interviewer's final decision.

(4) **Examples of qualification standards include:**

- Standardized aptitude tests;
- School diplomas or the equivalent;
- Health requirements essential to the chosen occupation;
- Interviews conducted in a fair manner (see subsection (3) of this section);
- School grades; and
- Previous work experience.

In applying these standards, the sponsor must meet the requirements of 41 CFR Part 60-3.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-429 Existing lists of eligibles and public notice.** (1) A sponsor who adopts a selection method under WAC 296-05-417 must conduct an enrollment deficiency analysis (see WAC 296-05-433). If, as a result of this analysis, the sponsor concludes that there are fewer minorities and/or women on its existing pools and lists than there should be, these pools and lists must be discarded.

(2) Once the existing pools and lists have been discarded, new eligibility pools must be established and lists must be posted at the sponsor's place of business. Sponsors must allow at least a two-week period for accepting applications for admission to the apprenticeship program. There must be at least thirty calendar days of public notice in advance of the earliest date for application for admission to the apprenticeship program (see WAC 296-05-411).

(3) Once an applicant has been placed in an eligibility pool, they must be retained on the eligibility lists for two years unless they request, in writing, that they be removed or unless they fail to respond to an apprentice job opportunity mailed to applicant's last known address by certified mail, return receipt requested. It is the applicant's responsibility to keep the sponsor informed of the applicant's current mailing



address. A sponsor, upon receiving a written request from a former applicant whose name was removed from an eligibility list, may restore the applicant's name to the list.

(4) Applicants who have been accepted in the program must be given a reasonable time in which to report for work. A "reasonable time" will be interpreted in light of the customs and practices of the industry for reporting for work. All applicants must be treated equally in the determination and application of "a reasonable time."

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-431 Affirmative action records of the WSATC retained by the department.** The WSATC must keep the following types of records in the apprenticeship supervisor's office:

- (1) Registration requirements;
- (2) Individual program standards;
- (3) Registration records;
- (4) Program compliance reviews and investigations;
- (5) Any other records pertinent to the determination of compliance with these rules; and
- (6) Any records that must be reported to the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship.

The records required by these rules and any other information relevant to compliance with 29 CFR Part 30 must be maintained for five years. Also, these records and related information must be made available upon request to the United States Department of Labor or other authorized representatives.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-433 Enrollment deficiency analysis.** (1) In analyzing a program to determine whether a deficiency exists, the sponsor must consider at least the following factors:

- (a) The percentage of the working age minority and female population in the program sponsor's labor market area;
- (b) The percentage of the minority and female labor force in the program sponsor's labor market area;
- (c) The percentage of the minority and female apprentices participating in a particular (~~trade or craft~~) occupation compared to the percentage of minorities and women in the labor force in the program sponsor's labor market area;
- (d) The percentage of minorities and women participating as journey-level employee(s) employed by the employer(s) participating in the program as compared with the percentage of minorities and women in the sponsor's labor market area and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices; and
- (e) The general availability of minorities and women in the sponsor's labor market that have present or potential capacity for apprenticeship in the program sponsor's labor market area.

(2) To calculate the above percentage(s) or any other percentages for the analysis, the sponsor must use the following formula: Divide the number of minority individuals or females in a particular classification in the labor force or population by the total labor force or population.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-443 Complaint filing.** (1) Any apprentice or applicant for apprenticeship who believes they have been discriminated against may file a complaint. The basis of the complaint may be:

- (a) Discrimination on the basis of race, sex, color, religion, national origin, age, disability or as otherwise specified by law by a sponsor or a sponsor's program;
- (b) The equal opportunity standards have not been followed; or
- (c) The sponsor's affirmative action plan does not comply with the requirements of this chapter.

(2) A complaint may be filed in person or through an authorized representative. The complainant may choose to file a complaint with the WSATC or with a private review panel as established in WAC 296-05-445.

(3) A complaint must be in writing and shall be signed by the complainant. The complaint must include the name, address, and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances leading to the complaint.

(4) The complaint must be filed not later than one hundred eighty calendar days from the date of the alleged discrimination or violation of the sponsor's affirmative action plan or the rules of this chapter. If a complaint is initially filed with the private review panel and the complainant later wishes to refer the complaint to the WSATC, the referral must occur within one hundred eighty calendar days of the circumstances leading to the complaint or within thirty calendar days of the private review panel's final decision, whichever is later. If good cause is shown, the WSATC may extend these time periods.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-447 Processing of complaints.** (1) All approved programs must establish procedures explaining the program's complaint review process. These procedures must comply with the requirements of this section. Each sponsor must give a copy of the complaint procedures to each apprenticeship applicant and to all enrolled apprentices.

(2) When the apprenticeship supervisor receives a complaint and the sponsor has a private review panel in place, the complaint must be referred to the panel unless the complainant chooses otherwise or unless the council concludes that the panel will not satisfactorily resolve the complaint.

(3) Once the complaint is referred to the private review panel, the panel has no more than thirty calendar days to resolve it. At the end of the period, the supervisor will obtain the reports from the complainant and the review body as to the disposition of the complaint. If the complaint has been satisfactorily resolved and there is no other indication of fail-

ure to apply equal opportunity standards, the case shall be closed and the parties formally notified.

(4) If the private review panel has not satisfactorily resolved the complaint within ninety calendar days, the WSATC may conduct a compliance review and take all necessary steps to resolve the complaint.

(5) If the review panel satisfactorily resolves the complaint but there is evidence that the equal opportunity practices of the sponsor's program are not in compliance with the requirements of this chapter, the council must conduct a compliance review and take all steps necessary to bring the program into compliance.

(6) When a private review panel does not exist, the WSATC may conduct a compliance review to determine the facts of the complaint and any other information necessary to resolve the dispute.

(7) If the WSATC believes that satisfactorily resolving a complaint requires a change in the time limits established in this section, it can modify the time constraints by adopting special processing procedures. However, special processing procedures must only be adopted when circumstances warrant them and only if they will not prejudice any person or party associated with the complaint.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-449 Program registration cancellation procedures.** (1) If the WSATC decides to withdraw a program's registration, it must give written notice to the sponsor that there is reasonable cause, under WAC 296-05-013, to do so.

(2) If the sponsor requests a hearing, it must be a written request to the apprenticeship supervisor within fifteen business days of the receipt of the WSATC's withdrawal notice. When the supervisor receives the sponsor's request, a hearing must be convened. The WSATC's final decision to withdraw a program's registration must be based on the compliance review file and other evidence presented at the hearing. The WSATC may allow the sponsor a reasonable time to achieve voluntary corrective action. If the WSATC decides that the apprenticeship program is not in compliance and that voluntary corrective action is not an option, the program's registration may be withdrawn. If the WSATC decides to withdraw the program's registration, it must make public notice of the order and give written notice to the sponsor. If the withdrawal was the result of complaint proceedings, the WSATC must give written notice of the withdrawal to the complainant as well.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-453 Adoption of consistent state plans.** All apprenticeship programs registered with the WSATC must comply with the requirements of these rules and 29 CFR Part 30. If a program fails to comply or is inconsistent with the requirements of these rules and/or 29 CFR Part 30, the WSATC may disapprove or deregister the program. The WSATC must notify the United States Department of Labor, Employment and Training Administration, Office of Appren-

ticeship of any state apprenticeship program disapproved and deregistered by it. The state apprenticeship program disapproved or deregistered by the WSATC for noncompliance with the requirements of these rules or 29 CFR Part 30 may, within fifteen business days of the receipt of the notice of disapproval or deregistration, appeal to the United States Department of Labor to set aside the determination of the WSATC. The United States Department of Labor must make its determination on the basis of the record. The United States Department of Labor may grant the state program sponsor, the state apprenticeship and training, and the complainant, if any, the opportunity to present oral or written argument.

## WSR 11-01-085

### WITHDRAWAL OF PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed December 14, 2010, 9:11 a.m.]

WAC 388-71-0500, 388-71-0505, 388-71-0510, 388-71-0512, 388-71-0513, 388-71-0514, 388-71-0515, 388-71-0517, 388-71-0520, 388-71-0540, 388-71-0543, 388-71-0546, 388-71-0551, 388-71-0560, 388-71-0561, 388-71-0566, 388-71-0567, 388-71-05675, 388-71-05680, 388-71-05685, 388-71-05690, 388-71-05695, 388-71-05700, 388-71-05705, 388-71-05710, 388-71-05715, 388-71-05720, 388-71-05725, 388-71-05730, 388-71-05735, 388-71-05740, 388-71-05745, 388-71-05750, 388-71-05755, 388-71-05760, 388-71-05765, 388-71-05770, 388-71-05775, 388-71-05780, 388-71-05785, 388-71-05790, 388-71-05795, 388-71-05799, 388-71-05805, 388-71-05810, 388-71-05815, 388-71-05820, 388-71-05825, 388-71-05830, 388-71-05832, 388-71-05835, 388-71-05840, 388-71-05845, 388-71-05850, 388-71-05855, 388-71-05860, 388-71-05865, 388-71-05870, 388-71-05875, 388-71-05880, 388-71-05885, 388-71-05890, 388-71-05895, 388-71-05899, 388-71-05905, 388-71-05909, 388-71-0801, 388-71-0806, 388-71-0811, 388-71-0816, 388-71-0821, 388-71-0826, 388-71-0836, 388-71-0841, 388-71-0846, 388-71-0850, 388-71-0855, 388-71-0860, 388-71-0870, 388-71-0875, 388-71-0880, 388-71-0885, 388-71-0890, 388-71-0895, 388-71-0901, 388-71-0906, 388-71-0911, 388-71-0916, 388-71-0921, 388-71-0931, 388-71-0936, 388-71-0941, 388-71-0946, 388-71-0951, 388-71-0956, 388-71-0961, 388-71-0966, 388-71-0970, 388-71-0973, 388-71-0975, 388-71-0985, 388-71-0990, 388-71-1001, 388-71-1006, 388-71-1021, 388-71-1026, 388-71-1031, 388-71-1033, 388-71-1045, 388-71-1050, 388-71-1055, 388-71-1066, 388-71-1076, 388-71-1081, 388-71-1091, 388-71-1096, 388-71-1101, 388-71-1106, 388-71-1111, 388-71-1120, 388-71-1125, 388-71-1130, 388-112-0001, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0018, 388-112-0020, 388-112-0025, 388-112-0030, 388-112-0035, 388-112-0040, 388-112-0045, 388-112-0050, 388-112-0053, 388-112-0055, 388-112-0059, 388-112-0060, 388-112-0062, 388-112-0064, 388-112-0065, 388-112-0066, 388-112-0070, 388-112-0075, 388-112-0076, 388-112-0078, 388-112-0080, 388-112-0081, 388-112-0083, 388-112-0085, 388-112-0088,

388-112-0090, 388-112-0091, 388-112-0095, 388-112-0100, 388-112-0105, 388-112-0106, 388-112-0108, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0122, 388-112-0125, 388-112-0130, 388-112-0132, 388-112-0135, 388-112-0140, 388-112-0142, 388-112-0145, 388-112-0150, 388-112-0152, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0195, 388-112-0200, 388-112-0205, 388-112-0210, 388-112-0220, 388-112-0225, 388-112-0230, 388-112-0235, 388-112-0240, 388-112-0245, 388-112-0255, 388-112-0260, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625, 388-112-02630, 388-112-0270, 388-112-0290, 388-112-0295, 388-112-0300, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0337, 388-112-0340, 388-112-0345, 388-112-0350, 388-112-0352, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0375, 388-112-0380, 388-112-0385, 388-112-0390, 388-112-0395, 388-112-0405, 388-112-0410, 388-829A-050, 388-829A-161, 388-829A-162, 388-829C-040, 388-829C-131 and 388-829C-132, proposed by the department of social and health services in WSR 10-10-121 appearing in issue 10-12 of the State Register, which was distributed on June 16, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

### WSR 11-01-105

#### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Filed December 16, 2010, 11:34 a.m.]

Continuance of WSR 10-22-017.

Preproposal statement of inquiry was filed as WSR 09-11-127.

Title of Rule and Other Identifying Information: Chapter 173-334 WAC, Children's safe products—Reporting rule, as signed into law, the Children's Safe Product Act requires manufacturers of children's products to report the presence of chemicals of high concern to children (CHCCs) to the department. The purpose of the rule is to clarify the following: The process to be used to update the reporting list for CHCCs, definitions of several key terms, and the reporting process.

Date of Intended Adoption: March 15, 2011.

Submit Written Comments to: John R. Williams Jr., P.O. Box 47600, Olympia, WA 98504-7600, e-mail john.williams@ecy.wa.gov, fax (360) 407-6102, by January 7, 2011.

Assistance for Persons with Disabilities: Contact Michelle Payne, (360) 407-6129. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To extend the public comment period to January 7, 2011.

Reasons Supporting Proposal: Due to the holidays a number of stakeholders are finding it hard to submit comments during the original comment period.

December 15, 2010

Polly Zehm

Deputy Director

### WSR 11-01-113

#### PROPOSED RULES

#### CENTER FOR CHILDHOOD DEAFNESS AND HEARING LOSS

[Filed December 17, 2010, 1:14 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: The Washington state center for childhood deafness and hearing loss (CDHL) is repealing chapter 148-171 WAC, which contains the rules for special education programs. The rules will be contained in new chapter 148-172 WAC, rules for the provision of special education. This new chapter incorporates changes required as a result of the office of superintendent of public instruction's (OSPI) repeal of chapter 392-172 WAC and adoption of chapter 392-172A WAC, to meet the requirements for receipt of federal funding under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). Amending sections of chapter 148-120 WAC: WAC 148-120-100 student conduct violations which include rule defining harassment, intimidation and bullying, 148-120-205 limitations on disciplinary action, 148-120-314 aversive interventions. Creating new sections WAC 148-120-250 discipline procedures to follow the requirements in OSPI's rules; and WAC 148-120-260 requiring reentry meeting following suspension. Repealing sections in chapter 148-120 WAC which will be superseded by new section WAC 148-120-250 adopting by reference the requirements for discipline procedures in WAC 392-172A-05140 through 392-172A-05175.

Hearing Location(s): Washington State Center for Childhood Deafness and Hearing Loss, 611 Grand Boulevard, Vancouver, WA 98661, on February 4, 2011, at 9:00 a.m.

Date of Intended Adoption: February 4, 2011.

Submit Written Comments to: Richard Hauan, Director, 611 Grand Boulevard, Vancouver, WA 98661, e-mail judy.smith@wsd.wa.gov, fax (360) 696-6291, by February 1, 2011.

Assistance for Persons with Disabilities: Contact Judy Smith, Executive Assistant, by January 28, 2011, V/TTY (360) 696-6525.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule changes are to conform to the federal regulations that implement Part B of IDEA 2004 and OSPI's rules for the provision of special education. The new chapter incorporates federal regulations and required state procedures for implementing Part B of IDEA 2004, which include rules and procedures governing student discipline.

Reasons Supporting Proposal: Federal regulations implementing Part B of IDEA 2004, effective July 5, 2006; and state regulations adopted in July 2007, apply these rules to the State School for the Deaf, under the supervision of CDHL, require these rules to be eligible for federal funding.

Statutory Authority for Adoption: RCW 72.40.0191.

Statute Being Implemented: 20 U.S.C. §§ 1400 *et seq.*; chapter 28A.155 RCW.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Washington state center for childhood deafness and hearing loss (CDHL), governmental.

Name of Agency Personnel Responsible for Drafting: Bonnie Terada, AAG, Vancouver, Washington, (360) 759-2100; Implementation and Enforcement: Rick Hauan, Director, Washington State Center for Childhood Deafness and Hearing Loss, (360) 696-6525 x0400 V/TTY.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule changes affect governmental agency requirements for provision of special education services.

A cost-benefit analysis is not required under RCW 34.05.328. CDHL is not one of the agencies required under RCW 34.05.028 [34.05.328] to complete the significant legislative analysis. In addition, this rule incorporates requirements contained in 20 U.S.C. §§ 1400 *et seq.*; 34 C.F.R. Part 300, chapters 28A.155 RCW and 392-172A WAC.

December 17, 2010

Richard Hauan

Director

AMENDATORY SECTION (Amending WSR 01-20-032, filed 9/26/01, effective 10/27/01)

**WAC 148-120-100 Conduct violations.** A student who, either as actor, aider, abettor, or accomplice, violates any provision of this chapter shall be subject to the disciplinary actions herein adopted. A student may be an accomplice, or found to have aided and abetted in the commission of a violation of the student conduct code if he or she knowingly associates with the wrongful purpose, undertaking or activity; encourages, promotes, or counsels another student in the commission of an offense, or participates in it as in something he or she desires to bring about, and seeks by his or her action to make it succeed.

The following offenses are prohibited:

(1) Physical abuse. Actual, attempted, or threatened physical abuse of any person or conduct which threatens or endangers the health and safety of any person or which intentionally causes a reasonable apprehension of harm to any person.

(2) Destroying or damaging property. Destroying, defacing, or damaging school property or the property of others on school premises or at school-sponsored activities.

(3) Sexual harassment. Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

(a) Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education;

(b) Submission to or rejection of that conduct or communication by a person is used as a factor in decisions affecting that person's education;

(c) That conduct or communication has the purpose or effect of substantially or unreasonably interfering with a person's education; or creating an intimidating, hostile, or offensive educational environment.

Sexual harassment may include, but is not limited to: Unwelcome verbal harassment or abuse; unwelcome pressure for sexual activity; unwelcome, sexually motivated or inappropriate patting, pinching, or physical contact; unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning a person's educational status; or unwelcome behavior, verbal, signed, or written words or symbols directed (~~at~~) at a person because of gender.

(4) Disruption. Disorderly, intimidating or abusive behavior which interferes with the rights of others, school, or school-sponsored activities; obstructing the free movement of people or vehicles; inciting others to engage in prohibited conduct; or threatening disruption.

(5) Insubordination. Refusal or failure to follow instructions and proper orders of school officials, while on school property, during transportation to and from school, or at school-sponsored activities, thereby infringing upon the rights and privileges of others, and/or refusal to desist from prohibited conduct.

(6) False alarms. Falsely setting off, improper use or disabling of any safety equipment, alarm, exit sign, or other device.

(7) False information. Filing a formal complaint which falsely accuses another with violation of this chapter, altering or falsifying information to school officials, or forging or tendering any forged instrument to the school.

(8) Theft. Actual or attempted theft of property or services belonging to the school, any student, school employee(~~(s))~~ or school visitor, including knowing possession of stolen property.

(9) Academic dishonesty. All forms of cheating, plagiarism and fabrication, including submitting any work product that the student misrepresents as his or her work product for the purpose of fulfilling any assignment or task required as part of the student's course of studies.

(10) Conversion. Unauthorized use or possession of school equipment or services.

(11) Unlawful entry and trespassing. Entering and/or remaining in any administrative or other employee office or any locked or otherwise closed school facility, in any manner, at any time, without permission.

(12) Smoking. Students are not allowed to smoke or use tobacco products on school (~~(property) premises~~) premises or during school-sponsored activities.

(13) Alcohol. Use, possession, distribution of, or visible intoxication from alcoholic beverages is prohibited on school property or at school-sponsored activities.

(14) Drugs and controlled substances. Use, possession, distribution, or being visibly under the influence of any controlled substance (~~(for illegal drug))~~ or illegal drug as defined in WAC (~~(148-120-300))~~ 392-172A-05145(9), except when the use or possession of a drug is specifically

prescribed as medication by an authorized medical doctor or dentist; possession of drug paraphernalia.

(15) Weapons, lasers, and dangerous chemicals. Unauthorized use, possession, carriage, exhibition, or storage of any weapon, laser, explosives, ammunition, dangerous chemicals, substances or instruments, which is capable of causing bodily harm on another or damage upon school property or personal property, or any device that looks like or is alleged to be a firearm or explosive device.

(16) Sexual violence. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts. Intimate parts include the primary genital area, groin, inner thighs, buttocks or breast, as well as the clothing covering these areas. Sexual violence may include, but is not limited to:

(a) Touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same or the opposite sex;

(b) Coercing, forcing, attempting to coerce or force the touching of anyone's intimate parts;

(c) Coercing, forcing, attempting to coerce or force sexual intercourse or a sexual act on another;

(d) Threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another; or

(e) Threatening of forcing exposure of intimate apparel or body parts by removal of clothing.

(17) Sexual activity and displays of affection. Sexual activity involves touching of another's intimate parts. Intimate parts include the primary genital area, groin, inner thighs, buttocks or breast, as well as the clothing covering these areas. Even if consensual or mutually agreed to, sexual activity is prohibited. Excessive displays of affection are not appropriate in school or at any school-related function. Prohibited conduct includes, but is not limited to: Any physical expression of affection that is intimate or sexual in nature, passionate or prolonged kissing, sexual touching, or fondling.

(18) Pornography. Possession, distribution, display, creation or production of sexually explicit or erotic material. Sexually explicit material includes material defined in RCW 9.68.130. Erotic material includes material defined in RCW 9.68.050.

(19) ~~(Malicious harassment. Harassment consists of verbal or physical conduct relating to a person's actual or perceived national origin, disability, race, sexual orientation, or religion, which has the purpose or effect of creating an intimidating, hostile or offensive academic, residential or work environment, or the purpose or effect of substantially or unreasonably interfering with a person's academic or work performance, or otherwise adversely affects a person's academic or work opportunities. Harassment may include: Name calling, gestures, bullying, mimicking, mocking, derogatory jokes, remarks or rumors, unwelcome touching of a person or clothing, offensive or graphic posters, book covers, notes or cartoons, graffiti, display or circulation of written materials or pictures, or any other malicious or insensitive conduct of a severe or pervasive nature directed at the characteristics of a person's national origin, customs, culture, disability, race, sexual orientation, or religion.)~~ Harassment, intimidation or bullying based on actual or perceived race, color, religion, ancestry, national origin, gender, gender iden-

ity, disability, socio-economic status, physical appearance, or other distinguishing characteristic. For purposes of this rule, harassment, intimidation, and bullying includes any intentionally written message or image, including those that are electronically transmitted including, but not limited to, sexting, which constitutes any threat of or act of physical, verbal, or emotional abuse, or attacks on the property of another, which has the effect of materially interfering with a student's education; is so severe, pervasive, or persistent, and objectively offensive as to threaten an individual or limit the individual's ability to work, study or participate in the activities of WSD, creates an intimidating or threatening education or residential environment, or has the effect of materially disrupting the orderly operation of the school or residential program.

The term "sexting" as used in this rule means the sending, possession, displaying, or distribution of text messages and picture of an explicit sexual nature. Intentional acts refer to the individual's choice to engage in the act rather than the ultimate impact of the action(s).

Harassment, intimidation, and bullying may include, but is not limited to, taunts, sexting, slurs, rumors, jokes, innuendos, demeaning comments, drawings, cartoons, pranks, gestures, ostracism, extortion of money, physical attacks, threats or other written, oral, physical or electronically transmitted messages or images.

Harassment, intimidation, and bullying are often carried out through acts of misconduct, which are addressed and prohibited under other rules in this chapter.

This rule does not prohibit the civil, respectful expression of religious or political views, provided that the expression does not materially disrupt the education environment.

(20) Unauthorized absence. Absconding from supervision; leaving or running away from the campus, a residential facility, a school building, school activity or school-related function, or school-provided transportation without permission.

(21) Gang activity. Claiming membership in, association with, affiliation with, or participation in a gang or gang-related activities at school ((or)), during school-related functions((. A gang is a self-formed association of peers having the following characteristics: A gang name and recognizable symbols, identifiable leadership, a geographic territory, a regular or recurrent meeting pattern, may be identified by law enforcement as a gang, and collective actions to engage in serious criminal, or violent behavior. The type of dress, apparel, activities, acts, behavior, or manner of grooming displayed, reflected, or participated in by a student shall not:

(a) Lead school officials to reasonably believe that such behavior, apparel, activities, acts, or other attributes are gang-related, and would disrupt or interfere with the school environment or activity, and/or educational objectives;

(b) Present a safety hazard to self, students, or staff;

(c) Create an atmosphere in which a student, or other person's well-being is hindered by undue pressure, behavior, intimidation, overt gesture, or threat of violence; or

(d) Imply gang membership or affiliation by written communication, marks, drawings, painting, design, emblem upon any school or personal property, or one's person)), or on any school property. "Gang" has the meaning given the term

under RCW 28A.600.455. Prohibited dress, appearance and activities includes, but is not limited to: Clothing, accessories, personal items, or body markings, which symbolizes gang membership as reported by law enforcement agencies.

(22) Extortion. Obtaining or attempting to obtain by threat or bribery, money, property or services (including sexual favors) of another. Threats include direct as well as indirect communication.

(23) Hazing. Conspiring to engage in or participating in any method of initiation into a student organization or group, or any pastime or amusement engaged in with respect to such an organization or group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student. This does not include customary athletic events or other similar contests or competitions.

(24) Misuse of computers, electronic data or electronic communications((-)), which may include, but is not limited to:

(a) Unauthorized copying of school-owned or licensed software, copyrighted material, or another computer user's data for personal or external use((-));

(b) Modifying or damaging, attempting to modify or damage, computer equipment, software, data bases, files needed in another person's school work, or communications lines;

(c) Disrupting or attempting to disrupt computer operations;

(d) Invading the privacy of another person by using electronic means to obtain confidential information, even if access to such information is inadvertently allowed;

(e) Abusing, bullying, or harassing another person through electronic means;

(f) Using the school's computing facilities in the commission of a crime or a violation of the student conduct code;

(g) Using computer services without authorization;

(h) Allowing another person to use one's computer identity/account or using another person's computer identity/account. This includes, but is not limited to, logging on to the account, accessing programs, and reading or altering computer records without authorization.

(25) Other conduct. Any other conduct or action, the terms and violations of which are published annually in the student/parent handbook, in which the school can demonstrate a clear and distinct interest and which substantially threatens the educational process or other legitimate function of the school or the health or safety of any member of the school community is prohibited.

AMENDATORY SECTION (Amending WSR 94-13-058, filed 6/8/94, effective 7/9/94)

**WAC 148-120-205 Limitations.** (1) No form of disciplinary action shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirement: Provided, That a student's academic grade or credit in a particular subject or course may be adversely affected as a result of excessive tardiness or absences.

(2) Corporal punishment as defined by the ~~((board of education))~~ superintendent of public instruction in WAC

~~((180-40-235))~~ 392-400-235(4) as now or hereafter amended, is prohibited.

#### NEW SECTION

**WAC 148-120-250 Discipline procedures.** Disciplinary procedures for students at WSD who are eligible for special education shall follow the requirements in WAC 392-172A-05140 through 392-172A-05175, which are adopted by reference. Students at WSD are subject to rules and procedures governing discipline for all students in public schools in chapter 392-400 WAC. WSD shall determine on a case-by-case basis whether and to what extent the rules and procedures in chapter 392-400 WAC may apply.

#### NEW SECTION

**WAC 148-120-260 Reentry meeting following suspension.** After completing a period of suspension, the student shall be required to meet with an administrator and/or designated staff person upon return to school. Parents or guardians of students who have not reached the age of majority may accompany the student. The student should be prepared to acknowledge the behavior that led to suspension and commit to a plan to abide by the student conduct code, meet specific behavior expectations, and avoid repeated misconduct.

#### ~~((DISCIPLINARY EXCLUSION))~~

AMENDATORY SECTION (Amending WSR 01-16-100, filed 7/27/01, effective 8/27/01)

**WAC 148-120-314 Aversive interventions.** WAC ~~((392-172-388))~~ 392-172A-03129 through ~~((392-172-396))~~ 392-172A-03135 are adopted by reference.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 148-120-220	Short-term suspension.
WAC 148-120-225	Short-term suspension— Notice and conference— Grievance procedure.
WAC 148-120-230	Long-term suspension.
WAC 148-120-234	Long-term suspension— Misconduct not a manifestation of disability—Notice.
WAC 148-120-236	Long-term suspension— Misconduct not a manifestation of disability—Hearing.
WAC 148-120-300	Disciplinary exclusion— Definitions.
WAC 148-120-301	Change of placement for disciplinary removals.

WAC 148-120-302	Removals—Ten school days or less.	WAC 148-171-230	Parent participation and involvement.
WAC 148-120-303	Required services.	WAC 148-171-240	Individualized education program.
WAC 148-120-304	Change of placement—Removals for weapons or drugs.	WAC 148-171-242	Individualized education program—Implementation.
WAC 148-120-305	Functional behavioral assessment and intervention plan.	WAC 148-171-244	Individualized education program—Development, review, revision—Consideration of special factors.
WAC 148-120-306	Dangerous behavior—Authority of hearing officer.	WAC 148-171-410	Reevaluation.
WAC 148-120-307	Determination of interim alternative educational setting.	WAC 148-171-500	When prior notice must be given.
WAC 148-120-308	Manifestation determination review requirements.	WAC 148-171-510	Contents of prior written notice.
WAC 148-120-309	Procedures for conducting a manifestation determination.	WAC 148-171-512	Parent consent.
WAC 148-120-310	Determination that behavior was not manifestation of disability.	WAC 148-171-514	Transfer of parental rights at age of majority.
WAC 148-120-311	Expedited due process hearings.	WAC 148-171-550	Mediation.
WAC 148-120-312	Placement during appeals.	WAC 148-171-601	Due process rights and procedures.
WAC 148-120-415	Appeals—Long-term suspension and expulsion.	WAC 148-171-605	Request for hearing, notice by parent.
		WAC 148-171-650	Surrogate parents.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 148-171-001	Purposes.
WAC 148-171-010	Definitions.
WAC 148-171-015	Definition and eligibility criteria for deafness and hearing impairment.
WAC 148-171-100	Initial assessment.
WAC 148-171-110	General areas of evaluation.
WAC 148-171-120	Evaluation procedures.
WAC 148-171-131	Evaluation report and documentation of determination of eligibility.
WAC 148-171-140	Independent educational evaluation.
WAC 148-171-150	Admission and placement—Annual review.
WAC 148-171-210	IEP meetings.
WAC 148-171-220	Participants in IEP meetings.

**Chapter 148-172 WAC****RULES FOR THE PROVISION OF SPECIAL EDUCATION****NEW SECTION**

**WAC 148-172-001 Purposes.** The purposes of this chapter are:

(1) To implement chapter 72.40 RCW in a manner that is compatible with chapters 28A.155 RCW and 392-172A WAC, and in compliance with the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Sec. 1400 et seq.; and

(2) To meet the obligations of additional federal and state civil rights laws (e.g., 29 U.S.C. Sec. 794, 42 U.S.C. Sec. 12132, RCW 49.60.030) that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(3) Unless the context clearly requires otherwise, the rules for the provision of special education, contained in chapter 392-172A WAC, are incorporated by reference: Provided, That the Washington state center for childhood deafness and hearing loss (center) may undertake the responsibilities of a local educational agency (LEA) in providing a free appropriate public education only to the extent authorized by chapter 72.40 RCW and inclusion as an LEA makes the cen-

ter eligible for assistance under the Individuals with Disabilities Education Act.

(4) This chapter sets forth rules and procedures applicable to the provision of special education and related services for eligible students at the center. It should be read in conjunction with chapter 392-172A WAC. In case of any conflict between specific rules and procedures adopted herein, and the rules and regulations in chapter 392-172A WAC, the specific rules and procedures shall control.

(5) Where the term "school district" is used in this chapter, it shall mean the LEA or local school district, as defined and described in RCW 28A.315.025, where a student would be enrolled and/or attending.

#### NEW SECTION

##### **WAC 148-172-100 Admission and initial evaluation.**

(1) A parent, guardian, local education agency or school district may refer a student for admission to the Washington state school for the deaf (WSD) at the center. Students who are eighteen years old or are deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.-020, and who are eligible for special education may self-refer for admission.

(2) An application packet for new students may be obtained by contacting the office of the superintendent at 360-696-6525 x0401 V/TTY, or through the link on the school's web site at <http://www.wsd.wa.gov/about/admissions.aspx>. Applications for admission shall include the reason(s) for referral.

(3) WSD will assess the appropriateness of admission by first considering the student for evaluation in a diagnostic placement. A diagnostic placement allows school personnel to obtain necessary information about the student's needs and to evaluate how the student will fare in a placement at WSD. The diagnostic placement is limited to forty-five school days. A visit by the parent(s)/guardian(s) and student to WSD is required before a diagnostic placement is initiated.

(4) WSD will request the following records from the student's current school district. All requested records must be received before the admissions team will consider and make a decision on the application for a diagnostic placement:

- (a) All completed forms and material in the application packet;
- (b) Student's most recent individualized education program (IEP);
- (c) Student's most recent triennial evaluation report;
- (d) All psychological records;
- (e) High school transcripts or academic records and report cards;
- (f) Records of all behavioral information, including history of criminal or violent behavior; past, current or pending disciplinary history; and other behavior that indicates the student could be a threat to the safety of staff and students; and information that would be required under RCW 28A.225.-330. Any falsification of or withholding of information will result in the termination of the application process, the evaluation, or continued placement; and
- (g) Needs assessment inventory interview (NAII) and safety risk matrix completed by the parent(s).

If access to necessary information requires parental or student consent for the exchange of information with a third party, all such written consents must be attached to the completed application.

(5) If a student is deemed to pose a safety risk after review of the records submitted during the admissions process, the admissions team and/or the superintendent may:

- (a) Deny the application for diagnostic placement; or
- (b) Develop a safety plan designed to mitigate perceived safety risk(s).

If the safety plan can be implemented within existing resources at WSD, the admissions team may accept the student for diagnostic placement. If all elements of the safety plan cannot be accomplished within existing resources at Washington school for the deaf, the application shall be denied unless additional resources which are needed to ensure the safety of the student, staff and other students can be provided through an interagency agreement with the LEA or other agency.

(6)(a) Upon approval of the application for diagnostic placement, the admissions team will establish the beginning date of the diagnostic placement.

(b) The LEA or school district is responsible for ensuring that the student's IEP and evaluations remain current and valid through the end of the diagnostic placement.

(c) The admissions team will review the student's current IEP from the LEA or school district to ascertain whether any modifications should be considered or made for the purposes of the diagnostic placement. All modifications must be approved by the parent. Modifications to a student's educational program for the purposes of a diagnostic placement shall not constitute a change in placement for purposes of the Individuals with Disabilities in Education Act or stay-put under WAC 392-172A-05125.

(d) The admissions team will provide prior written notification to the parent, LEA or school district that the diagnostic placement shall not exceed forty-five school days and shall not become the student's stay-put or current educational placement should the parent(s) or school district contest the decision on the student's educational placement at the conclusion of the diagnostic placement.

(7) Residential program services may be available to a student during a diagnostic placement: Provided, That:

- (a) The student is accepted into the academic program for diagnostic purposes;
- (b) The residential program has space available and can provide the needed services;
- (c) A one-way commute by school bus is greater than sixty minutes; and
- (d) The student is able to finger-feed, chew and swallow most foods, indicated need for help when self-soiled or wet, and assist in self-dressing and bathing.

(8) Prior to the end of the diagnostic placement timeline, the admissions team will meet to determine whether the student may be enrolled at WSD.

(a) If enrollment is approved, one of the following options will occur:

- (i) The student's evaluation and IEP from the school district is reviewed and adopted following office of the superintendent of public instruction (OSPI) transfer procedures;



(ii) The student's evaluation from the school district is reviewed and accepted following OSPI transfer procedures, and a new IEP is developed; or

(iii) WSD will conduct a reevaluation and develop a new IEP.

(b) If enrollment is denied, partnerships and interagency agreements with LEAs and school districts may be developed to support a student's educational placement at the school for the deaf when a lack of existing resources is a reason for denying enrollment. WSD does not constitute a potential stay-put placement for students who have been denied enrollment but may be receiving services at WSD pursuant to an interagency agreement.

(9) Pursuant to RCW 72.40.040, WSD shall not admit and may not retain any student who is an adjudicated sex offender, classified level III pursuant to RCW 13.40.217 or 72.09.345. It is the policy of the school to deny admission to any student who has sexually abused, assaulted or victimized any student who is currently enrolled at WSD.

#### NEW SECTION

**WAC 148-172-105 Assessment to identify students at risk for sexually aggressive behavior is not an evaluation.** The assessment to identify residential students who present a moderate or high risk of sexually aggressive behavior or who may be vulnerable to victimization by such students, required by RCW 72.40.270, shall not be considered an evaluation for eligibility for special education and related services.

#### NEW SECTION

**WAC 148-172-200 Child find.** The purpose of child find is to locate, evaluate and identify children with suspected disabilities in need of special education services including those who are not currently receiving special education and related services and who may be eligible for those services. In conjunction with child find activities conducted by school districts pursuant to WAC 392-172A-02040 and the reports on deaf or hard of hearing children provided by educational service districts pursuant to RCW 72.40.070, CDHL will provide an on-line survey three times per school year (fall, winter, spring) to all special education directors to identify children within their districts who are deaf, deaf-blind or hard of hearing; information to school districts regarding service delivery options in the state for students who are deaf, deaf-blind or hard of hearing; a resource and referral guide listing programs and services available statewide; and a mechanism for school districts to request training and/or consultation support for district personnel.

#### NEW SECTION

**WAC 148-172-300 Least restrictive environment.** Notwithstanding the provisions of WAC 392-172A-02050, the IEP team may conclude that a student will receive greater benefit from education in a specialized setting due to specific instructional and related services needs such that the least restrictive environment and appropriate placement for a student may be WSD.

#### **WSR 11-01-127**

#### **PROPOSED RULES**

#### **TRANSPORTATION COMMISSION**

[Filed December 20, 2010, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-095.

Title of Rule and Other Identifying Information: Toll and fee setting for toll facilities in Washington state.

Hearing Location(s): Gig Harbor City Hall, 3510 Grandview Street, Gig Harbor, WA, on January 25, 2011, at 6:30 p.m.

Date of Intended Adoption: January 25, 2011.

Submit Written Comments to: Reema Griffith, P.O. Box 47308, Olympia, WA 9804-7308 [98504-7308], e-mail transc@wstc.wa.gov, fax (360) 705-6802, by January 20, 2011.

Assistance for Persons with Disabilities: Contact Reema Griffith by January 20, 2011, (360) 705-6802.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is required to establish toll rates and fees for vehicles using the Tacoma Narrows Bridge (TNB) that are adequate to cover the debt, operations and maintenance. The purpose of the proposed rules is to amend the transportation commission administrative codes to:

(1) Create new WAC 468-270-045, establish what costs may be paid with toll revenues on the TNB.

(2) Amend WAC 468-270-070, establish toll rates for photo toll transactions.

(3) Amend WAC 468-270-090, remove inapplicable exemptions and update language to be consistent with Washington state department of transportation operations.

(4) Create new WAC 468-270-095, establish what is required to claim an exemption on the TNB and SR 520 Bridge.

Reasons Supporting Proposal: The transportation commission is required to establish charges and exemptions for vehicles using the TNB and all other toll facilities in the state. The proposed changes are necessary for the implementation of photo tolling. The rates are calculated to provide sufficient revenue to repay bonds, cover operating costs, and other expenses.

Statutory Authority for Adoption: RCW 47.46.105, 47.56.030, 47.56.795, 47.56.850, 46.63.160.

Statute Being Implemented: RCW 46.56.030 [47.56-030], 46.63.160.

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

Name of Proponent: Washington state transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Reema Griffith, Olympia, Washington, (360) 705-7070; and Implementation: Craig Stone, Seattle, Washington, (206) 464-1220.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not apply to "business in an industry," as described in RCW 19.85.030 (1)(a), but rather the rules apply to vehicles using the TNB.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to subsection (5) of RCW 34.05.328, RCW 34.05.328 does not apply to the transportation commission and it is not required to develop a cost-benefit analysis.

December 20, 2010  
 Reema Griffith  
 Executive Director

AMENDATORY SECTION (Amending WSR 07-13-010, filed 6/8/07, effective 7/9/07)

**WAC 468-270-010 Who sets the toll rates and exemptions?** The Washington state transportation commission determines and establishes toll rates and exemptions for state toll facilities in Washington ((pursuant to RCW 47.56.030; 47.46.100 (Tacoma Narrows Bridge); and RCW 47.56.403 (SR 167 HOT lanes))).

NEW SECTION

**WAC 468-270-045 Which Tacoma Narrows Bridge costs may be paid with toll revenues?** Costs that may be paid with toll revenues must directly relate to the Tacoma Narrows Bridge and may include costs related to debt service, operations, maintenance, insurance and management. The commission will review detailed financial information including quarterly reports on toll expenditures as provided by the department to determine the appropriate costs to be paid with toll revenues. Determinations will, at a minimum, be based upon the costs allowed under current law, including RCW 47.46.100, 47.46.110, 47.46.140, 47.56.165, and 47.56.245 which include:

- (1) Maintenance, operations, repairs, insurance, and management;
- (2) Debt service payments on bonds issued, financing, and costs associated with complying with all financial and other covenants made by the state in the bond proceedings; and
- (3) Obligations to reimburse the motor vehicle fund for excise taxes on motor vehicle and special fuels applied to the payment of bonds issued for eligible toll facilities.

AMENDATORY SECTION (Amending WSR 09-13-038, filed 6/10/09, effective 7/11/09)

**WAC 468-270-070 What ((will)) are the toll rates ((be for)) on the Tacoma Narrows Bridge?** The toll charges for the Tacoma Narrows Bridge are shown in Table 1.

((Tacoma Narrows Bridge  
 Proposed Toll Rates<sup>1</sup> for All Vehicles<sup>2</sup>

Vehicle Type	Axles	Cash	Electronic <sup>3</sup>
Passenger vehicle/Motoreycle	2	\$4.00	\$2.75
Passenger vehicle with small trailer	3	\$6.00	\$4.15
Tractor trailer rig/Passenger vehicle with trailer	4	\$8.00	\$5.50

((Tacoma Narrows Bridge  
 Proposed Toll Rates<sup>1</sup> for All Vehicles<sup>2</sup>

Vehicle Type	Axles	Cash	Electronic <sup>3</sup>
Tractor trailer with big trailer	5	\$10.00	\$6.90
Tractor trailer with bigger trailer (6 or more axles)	6	\$12.00	\$8.25

- Note:
- <sup>1</sup>The toll rates are in effect until changed by the commission.
  - <sup>2</sup>The base toll rate per axle. It is only used to calculate multi-axle rates, which are calculated as a multiplier of the base toll rate (\$2.00 for cash and \$1.375 for electronic toll rates).
  - <sup>3</sup>The rate for the electronic tolls has been rounded up to the nearest five cents where appropriate.)

**Table 1  
 Tacoma Narrows Bridge Toll Rates**

Vehicle Axles	<u>Good To Go!™ Pass</u>	<u>Cash</u>	<u>Pay By Mail</u>
<u>2</u>	<u>\$2.75</u>	<u>\$4.00</u>	<u>\$5.50</u>
<u>3</u>	<u>\$4.15</u>	<u>\$6.00</u>	<u>\$8.25</u>
<u>4</u>	<u>\$5.50</u>	<u>\$8.00</u>	<u>\$11.00</u>
<u>5</u>	<u>\$6.90</u>	<u>\$10.00</u>	<u>\$13.75</u>
<u>6 or more</u>	<u>\$8.25</u>	<u>\$12.00</u>	<u>\$16.50</u>

AMENDATORY SECTION (Amending WSR 07-13-010, filed 6/8/07, effective 7/9/07)

**WAC 468-270-090 What vehicles are exempt from paying tolls on the Tacoma Narrows Bridge?** Except as provided herein, all vehicles crossing the Tacoma Narrows Bridge in an eastbound direction must pay the required toll. ((All vehicles that use the ETC lanes on the Tacoma Narrows Bridge must have a transponder and a valid "Good To Go!™" account. Emergency vehicles not equipped with transponders must pay cash as a cash customer.)) Only qualified vehicles may be exempted from paying tolls. The registered owner and operator of the qualified vehicle must comply with the requirements of the department in order to maintain the exemption. The following vehicles shall qualify for exemptions:

- (1) ((Only the following vehicles providing service directly to the Tacoma Narrows Bridge are exempt from paying tolls, but must be equipped with transponders:
  - (a) ~~Washington state department of transportation (WSDOT)) Department~~ maintenance vehicles directly involved in bridge and roadway maintenance on the Tacoma Narrows Bridge;
  - ((b)) (2) Washington state patrol vehicles directly providing service to the SR 16 corridor in the vicinity of the Tacoma Narrows Bridge; ((c) Vehicles under the Tacoma Narrows Bridge design build contract that must cross the bridge as part of their construction duties to complete the requirements of the design build contract. This exemption status will expire on July 1, 2008, or upon completion of their construction duties, whichever comes first.

(2)) and

(3) Authorized emergency vehicles on bona fide emergencies (~~as defined herein may apply for credit for their emergency trips and for the return trip from an emergency call.~~

(a) ~~To be eligible for a credit, an authorized emergency vehicle must be equipped with a transponder and have an authorized prepaid account.~~

(b) ~~Emergency vehicles that use the ETC lanes on a bona fide emergency may apply for a credit for each emergency trip. The credit must be applied for within six months of the trip date. The department will establish and oversee the procedure for emergency vehicle toll credits).~~

#### NEW SECTION

**WAC 468-270-095 What is required to claim an exemption on the Tacoma Narrows Bridge and the SR 520 Bridge?** Unless otherwise provided in this chapter and described in chapter 468-305 WAC, in order to receive the exemption and to maintain eligibility for toll exemptions, the department may require that the registered owner of the qualified vehicle or an authorized representative of the owner:

- (1) Open and maintain in good standing a "Good To Go!<sup>TM</sup>" toll account;
- (2) Equip the vehicle with a pass;
- (3) Equip the vehicle with identification signage; and/or
- (4) Submit a certification that the vehicle meets the exemption requirements.

**WSR 11-01-129  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed December 20, 2010, 3:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-121 on June 22, 2010.

Title of Rule and Other Identifying Information: WAC 220-56-350 Clams other than razor clams, mussels—Areas and seasons and 220-56-380 Oysters—Areas and seasons.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on February 4-5, 2011, at 8:30 a.m.

Date of Intended Adoption: On or after March 4, 2011.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by January 27, 2011.

Assistance for Persons with Disabilities: Contact Susan Galloway by January 27, 2011, at (360) 902-2267 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: An analysis of clam [clam] and oyster survey data, sport harvest projections, and negotiations affecting intertidal treaty and nontreaty fisheries allows for recreational clam and oyster seasons to be opened or extended on some public beaches and requires

some beaches to be closed or the seasons shortened. This proposal reflects those openings and closures.

Statutory Authority for Adoption: RCW 77.04.012 and 77.12.047.

Statute Being Implemented: RCW 77.04.012 and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Childers, 1000 Point Whitney Road, Brinnon, WA 98320, (360) 586-1498; Implementation: James Scott, 1111 Washington Street, Olympia, (360) 902-2736; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule only affects recreational shellfishers.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

December 20, 2010

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

**WAC 220-56-350 Clams other than razor clams, mussels—Areas and seasons.** A person can take, dig for, and possess clams and mussels (~~(taken)~~) for personal use on Puget Sound the entire year(=) ~~except ((that))~~ from public tidelands at the (~~(following))~~ beaches listed below, which are closed unless otherwise provided(=).

- (1) Ala Spit: Open May 1 through May 31.
- (2) Alki Park: Closed the entire year.
- (3) Alki Point: Closed the entire year.
- (4) Bay View State Park: Closed the entire year.
- (5) Belfair State Park: (~~(Closed the entire year.))~~ Open January 1 through December 31.
- (6) Brown's Point Lighthouse: Closed the entire year.
- (7) Cama Beach State Park: Closed the entire year.
- (8) Camano Island State Park: Closed the entire year.
- (9) Chuckanut Bay: Closed the entire year.
- (10) Coupeville: Closed the entire year.
- (11) Dash Point State Park: Closed the entire year.
- (12) Dave Mackie County Park: Closed the entire year.
- (13) Des Moines City Park: Closed the entire year.
- (14) Discovery Park: Closed the entire year.
- (15) DNR-79: Closed the entire year.
- (16) DNR-142: Closed the entire year.
- (17) DNR-144 (Sleeper): Closed the entire year.
- (18) Dockton County Park: Closed the entire year.
- (19) Dosewallips State Park: Open March 1 through (~~(October))~~ July 31 only in area defined by boundary markers and signs posted on the beach.
- (20) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands - Open May 15 through September 30.
- (21) Eagle Creek: Open July 1 through July 31.
- (22) East San de Fuca: Closed the entire year.

- (23) Fort Flagler State Park including that portion of the spit west of the park boundary (Rat Island): Open ~~((May))~~ April 15 through July 31.
- (24) Fort Ward State Park: Closed the entire year.
- (25) Freeland County Park: Closed the entire year.
- (26) Frye Cove County Park: Open January 1 through May 15.
- (27) Garrison Bay: Tidelands at Guss Island and those tidelands at British camp between the National Park Service dinghy dock at the north end and the park boundary at the south end are closed the entire year.
- (28) Gertrude Island - All tidelands at Gertrude Island closed the entire year.
- (29) Golden Gardens: Closed the entire year.
- (30) Graveyard Spit: Closed the entire year.
- (31) Harrington Beach: Closed the entire year.
- (32) Hoodspout: Tidelands at Hoodspout Salmon Hatchery are closed the entire year.
- (33) Hope Island State Park (South Puget Sound): Open May 1 through May 31.
- (34) Howarth Park: Closed the entire year.
- (35) Illahee State Park: Open April 1 through July 31.
- (36) Kayak Point County Park: Closed the entire year.
- (37) Kitsap Memorial State Park: Open May 15 through ~~((July 15))~~ June 30.
- (38) Kopachuck State Park: Open June 1 through July 31.
- (39) Liberty Bay - All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed to the harvest of clams the entire year.
- (40) Lincoln Park: Closed the entire year.
- (41) Lions Park (Bremerton): Closed the entire year.
- (42) Little Clam Bay: Closed the entire year.
- (43) Lower Roto Vista Park: Closed the entire year.
- (44) Manchester State Park: Closed the entire year.
- (45) McNeil Island - All tidelands on McNeil Island are closed the entire year.
- (46) Meadowdale County Park: Closed the entire year.
- (47) Mee-Kwa-Mooks Park: Closed the entire year.
- (48) Monroe Landing: Closed the entire year.
- (49) Mukilteo State Park - Closed the entire year.
- (50) Mystery Bay State Park: Open October 1 through April 30.
- (51) Nisqually National Wildlife Refuge: Closed the entire year.
- (52) North Beach County Park: Closed the entire year.
- (53) North Fort Lewis: Closed the entire year.
- (54) North Point Hudson: Closed the entire year.
- (55) Northeast Cultus Bay: Closed the entire year.
- (56) Oak Bay County Park: Open ~~((June))~~ May 1 through July 31.
- (57) Oak Harbor City Park: Closed the entire year.
- (58) Old Man House State Park: Closed the entire year.
- (59) Olympia Shoal: Closed the entire year.
- (60) Oyster Reserves: Puget Sound and Willapa Bay state oyster reserves are closed the entire year except as follows:
- (a) North Bay: State-owned oyster reserves open the entire year.
- (b) Oakland Bay: State-owned oyster reserves open the entire year except in areas defined by boundary markers and signs posted on the beach.
- (c) Willapa Bay - Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59.
- (61) Penrose Point State Park: ~~((Closed the entire year.))~~ Open March 1 through May 31.
- (62) Picnic Point County Park: Closed the entire year.
- (63) Pitship Point: Closed the entire year.
- (64) Pitt Island - All tidelands on Pitt Island are closed the entire year.
- (65) Pleasant Harbor State Park: Closed the entire year.
- (66) Point Whitney (excluding Point Whitney Lagoon): Open March ~~((+))~~ 15 through April 30.
- (67) Point Whitney Lagoon: Open ~~((May))~~ March 1 through ~~((May))~~ March 31.
- (68) Port Angeles Coast Guard: Closed the entire year.
- (69) Port Angeles Harbor: Closed the entire year.
- (70) Port Gardner: Closed the entire year.
- (71) Port Townsend Ship Canal/Portage Canal: Open January 1 through ~~((June 30))~~ July 31.
- (72) Post Point: Closed the entire year.
- (73) Potlatch DNR tidelands: Open April 1 through ~~((June 30))~~ August 15.
- (74) Potlatch State Park: Open April 1 through ~~((June 30))~~ August 15.
- (75) Priest Point County Park: Closed the entire year.
- (76) Purdy Spit County Park: The southern shore of the spit from the boat ramp to the bridge is closed the entire year.
- (77) Quilcene Bay Tidelands - All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams the entire year, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open April 1 through December 31, daily from official sunrise to official sunset only.
- (78) Reid Harbor - South Beach: Closed the entire year.
- (79) Retsil: Closed the entire year.
- (80) Richmond Beach Saltwater Park: Closed the entire year.
- (81) Saltwater State Park: Closed the entire year.
- (82) Samish Beach: Closed the entire year.
- (83) Scenic Beach State Park: ~~((Open April 15 through May 15.))~~ Closed the entire year.
- (84) Seahurst County Park: Closed the entire year.
- (85) Semiahmoo: Closed the entire year.
- (86) Semiahmoo County Park: Closed the entire year.
- (87) Sequim Bay State Park - Open May 1 through June 30.
- (88) Shine Tidelands State Park: Open January 1 through May 15.
- (89) Silverdale Waterfront Park: Closed the entire year.
- (90) Sinclair Inlet: Closed the entire year.
- (91) Skagit Wildlife Area: Closed the entire year.
- (92) South Carkeek Park: Closed the entire year.
- (93) South Gordon Point: Closed the entire year.
- (94) South Indian Island County Park: Open April 1 through ~~((May))~~ July 31.

- (95) South Mukilteo Park: Closed the entire year.  
 (96) South Oro Bay: Closed the entire year.  
 (97) South Point Wilson (Port Townsend): Closed the entire year.  
 (98) Southworth Ferry Dock: Closed the entire year.  
 (99) Spencer Spit State Park: Open March 1 through July 31.  
 (100) Suquamish (Old Man House): Closed the entire year.  
 (101) Taylor Bay: Closed the entire year.  
 (102) Triton Cove Tidelands: Open June 1 through August 31.  
 (103) Twanoh State Park: Open (~~(August 1)~~) July 15 through September 30.  
 (104) Walker County Park: Closed the entire year.  
 (105) West Dewatto: DNR Beach 44A open August 1 through September 30.  
 (106) West Pass Access: Closed the entire year.  
 (107) Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and Nahcotta Tidelands Interpretive Site are closed year-round.  
 (108) Wolfe Property State Park: Open January 1 through May 15.  
 (109) Woodard Bay: Closed the entire year.  
 (~~(It is lawful to)~~) A person can take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, (~~(taken)~~) for personal use in Grays Harbor and Willapa Harbor the entire year, except from state oyster reserves, which are closed to clam digging the entire year.  
 (~~(It is lawful to)~~) A person can take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams (~~(taken)~~), for personal use from the Pacific Ocean beaches from November 1 through March 31.

**AMENDATORY SECTION** (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

**WAC 220-56-380 Oysters—Areas and seasons.** A person can take and possess oysters (~~(taken)~~) for personal use from public tidelands the entire year(~~(;)~~) except (~~(that)~~) from public tidelands at the (~~(following)~~) beaches listed below, which are closed unless otherwise provided(~~(;)~~).

- (1) Ala Spit: Open May 1 through May 31.
- (2) Alki Park: Closed the entire year.
- (3) Alki Point: Closed the entire year.
- (4) Bangor: Closed the entire year.
- (5) Bay View State Park: Closed the entire year.
- (6) Brown's Point Lighthouse: Closed the entire year.
- (7) Cama Beach State Park: Closed the entire year.
- (8) Camano Island State Park: Closed the entire year.
- (9) Chuckanut: Closed the entire year.
- (10) Coupeville: Closed the entire year.
- (11) Dash Point State Park: Closed the entire year.
- (12) Dave Mackie County Park: Closed the entire year.
- (13) Des Moines City Park: Closed the entire year.
- (14) Discovery Park: Closed the entire year.
- (15) DNR-79: Closed the entire year.
- (16) DNR-142: Closed the entire year.
- (17) DNR 144 (Sleeper): Closed the entire year.
- (18) Dockton County Park: Closed the entire year.

- (19) Dungeness Spit/National Wildlife Refuge: Open May 15 - September 30.
- (20) East San de Fuca: Closed the entire year.
- (21) Fort Flagler State Park including that portion of the spit west of the park boundary (Rat Island): Open (~~(May)~~) April 15 through July 31.
- (22) Fort Ward State Park: Closed the entire year.
- (23) Freeland County Park: Closed the entire year.
- (24) Frye Cove County Park: Open January 1 through May 15.
- (25) Golden Gardens: Closed the entire year.
- (26) Graveyard Spit: Closed the entire year.
- (27) Harrington Beach: Closed the entire year.
- (28) Hoodspout: Tidelands at the Hoodspout Salmon Hatchery are closed the entire year.
- (29) Hope Island State Park (South Puget Sound): Open May 1 through May 31.
- (30) Howarth Park: Closed the entire year.
- (31) Illahee State Park: Open April 1 through July 31.
- (32) Kayak Point County Park: Closed the entire year.
- (33) Kitsap Memorial State Park: Open May 15 through (~~(August 15))~~ June 30.
- (34) Kopachuck State Park: Open March 1 through July 31.
- (35) Liberty Bay - All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed to the harvest of oysters the entire year.
- (36) Lincoln Park: Closed the entire year.
- (37) Lions Park (Bremerton): Closed the entire year.
- (38) Little Clam Bay: Closed the entire year.
- (39) Lower Roto Vista Park: Closed the entire year.
- (40) Manchester State Park: Closed the entire year.
- (41) Meadowdale County Park: Closed the entire year.
- (42) Mee-Kwa-Mooks Park: Closed the entire year.
- (43) Monroe Landing: Closed the entire year.
- (44) Mukilteo State Park: Closed the entire year.
- (45) Mystery Bay State Park: Open October 1 through April 30.
- (46) Nisqually National Wildlife Refuge: Closed the entire year.
- (47) North Beach County Park: Closed the entire year.
- (48) North Fort Lewis: Closed the entire year.
- (49) North Point Hudson: Closed the entire year.
- (50) Northeast Cultus Bay: Closed the entire year.
- (51) Oak Bay County Park: Open (~~(June)~~) May 1 through July 31.
- (52) Oak Harbor Beach Park: Closed the entire year.
- (53) Oak Harbor City Park: Closed the entire year.
- (54) Old Man House State Park: Closed the entire year.
- (55) Olympia Shoal: Closed the entire year.
- (56) Oyster Reserves: Puget Sound and Willapa Bay oyster reserves are closed the entire year except the following are open the entire year:
  - (a) Oakland Bay - State-owned oyster reserves open the entire years except in areas defined by boundary markers and signs posted on the beach.
  - (b) North Bay - State-owned reserves open the entire year.
  - (c) Willapa Bay - Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41

and southwest side of Long Island between reserve monuments 58 and 59.

(57) Penrose Point State Park: (~~Closed the entire year.~~)  
Open March 1 through May 31.

(58) Picnic Point: Closed the entire year.

(59) Pitt Island: Closed the entire year.

(60) Pleasant Harbor State Park: Closed the entire year.

(61) Port Angeles Coast Guard: Closed the entire year.

(62) Port Angeles Harbor: Closed the entire year.

(63) Port Gardner: Closed the entire year.

(64) Port Townsend Ship Canal/Portage Canal: Open January 1 through (~~June 30~~) July 31.

(65) Post Point: Closed the entire year.

(66) Potlatch DNR Tidelands: Open April 1 through (~~June 30~~) August 15.

(67) Potlatch State Park: Open April 1 through (~~June 30~~) August 15.

(68) Priest Point County Park: Closed the entire year.

(69) Purdy Spit County Park: The southern shore of the spit from the boat ramp to the bridge is closed the entire year.

(70) Quilcene Bay Tidelands - All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open April 1 through December 31, daily from official sunrise to official sunset, only.

(71) Reid Harbor - South Beach: Closed the entire year.

(72) Retsil: Closed the entire year.

(73) Richmond Beach Saltwater Park: Closed the entire year.

(74) Saltwater State Park: Closed the entire year.

(75) Samish Beach: Closed the entire year.

(76) Seahurst County Park: Closed the entire year.

(77) Scenic Beach State Park: (~~Open April 15 through May 15.~~) Closed the entire year.

(78) Semiahmoo: Closed the entire year.

(79) Semiahmoo County Park: Closed the entire year.

(80) Shine Tidelands State Park: Open January 1 through May 15.

(81) Silverdale Waterfront Park: Closed the entire year.

(82) Sinclair Inlet: Closed the entire year.

(83) Skagit Wildlife Area: Closed the entire year.

(84) South Carkeek Park: Closed the entire year.

(85) South Gordon Point: Closed the entire year.

(86) South Indian Island County Park: Open April 1 through (~~May~~) July 31.

(87) South Mukilteo Park: Closed the entire year.

(88) South Oro Bay: Closed the entire year.

(89) South Point Wilson (Port Townsend): Closed the entire year.

(90) Southworth Ferry Dock: Closed the entire year.

(91) Spencer Spit State Park: Open March 1 through July 31.

(92) Suquamish (Old Man House): Closed the entire year.

(93) Taylor Bay: Closed the entire year.

(94) Walker County Park: Closed the entire year.

(95) West Pass Access: Closed the entire year.

(96) Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and the Nahcotta Tide-

lands Interpretive Site are open only between boundary markers and posted signs.

(97) Woodard Bay: Closed the entire year.

(98) Wolfe Property State Park: Open January 1 through May 15.

## WSR 11-01-134

### PROPOSED RULES

### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 21, 2010, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-21-114.

Title of Rule and Other Identifying Information: Chapter 392-190 WAC, Equal educational opportunity—Unlawful discrimination prohibited, WAC 392-190-005, 392-190-010, 392-190-015, 392-190-020, 392-190-025, 392-190-026, 392-190-030, 392-190-035, 392-190-040, 392-190-045, 392-190-050, 392-190-055, 392-190-056, 392-190-057, 392-190-058, 392-190-059, 392-190-0591, 392-190-0592, 392-190-060, 392-190-065, 392-190-070, 392-190-075, 392-190-076, 392-190-077, 392-190-078, 392-190-079, 392-190-080, 392-190-081, and 392-190-082.

Hearing Location(s): Office of the Superintendent of Public Instruction, Brouillet Conference Room, 4th Floor, 600 Washington Street S.W., Olympia, WA 98504, on January 25, 2011, at 9:00 a.m. - 12:00 p.m. (noon).

Hearing via Videoconference: Host site: Office of the Superintendent of Public Instruction, 600 Washington Street S.W., Olympia, WA 98504, on January 26, 2011, at 12:30 p.m. - 5:00 p.m.

**SITE LOCATIONS: Educational Service District 101 - Northeast**, Admiralty Room, 4202 South Regal, Spokane, WA 99223-7738; at the **Educational Service District 105**, Columbia Room, 33 South 2nd Avenue, Yakima, WA 98902-3486; at the **Educational Service District 112**, Clark and Pacific Rooms, 2500 N.E. 65th Avenue, Vancouver, WA 98661-6812; at the **Educational Service District 113**, Board Room, 601 McPhee Road S.W., Olympia, WA 98502-5080; at the **Educational Service District 114 - Olympic**, Room 204, 105 National Avenue North, Bremerton, WA 98312; at the **Educational Service District 121 -Puget Sound**, Snoqualmie Room, 800 Oakesdale Avenue S.W., Renton, WA 98057-5221; at the **Educational Service District 123**, Lewis and Clark Room, 3918 West Court Street, Pasco, WA 99301; at the **Educational Service District 171 - North Central**, Ponderosa Room, 430 Old Station Road, Wenatchee, WA 98801; and at the **Educational Service District 189 - Northwest**, Classroom 1, 1601 R Avenue, Anacortes, WA 98221.

Date of Intended Adoption: January 28, 2011.

Submit Written Comments to: Yvonne Ryans, Director of Equity and Civil Rights, P.O. Box 47200, Olympia, WA 98504-7200, e-mail commentsHB3026@k12.wa.us, fax (360) 664-2967, by January 26, 2011.

Assistance for Persons with Disabilities: Contact Wanda Griffin by January 13, 2011, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency proposes amendments and additions to the rules in order to:

- Address new state law, chapter 28A.642 RCW, which prohibits discrimination in Washington public schools on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.
- Extend the existing protections available under current state sexual equality law, chapters 28A.640 RCW and 392-190 WAC, to all protected classes listed in chapter 28A.642 RCW.
- Develop rules and guidelines to eliminate discrimination based on these protected classes as it applies to public school employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students, as required under RCW 28A.642.020.
- Provide procedures for the office of superintendent of public instruction to follow when monitoring school districts for compliance with this law.
- Amend existing provisions in chapter 392-190 WAC for clarity and readability.

Reasons Supporting Proposal: Statutory authority in chapter 28A.642 RCW: Chapter 28A.642 RCW was passed in 2010, prohibiting discrimination in Washington public schools on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide of [or] service animal by a person with a disability. As provided in RCW 28A.642.020, the superintendent of public instruction will develop rules and guidelines to eliminate discrimination as it applies to public school employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students.

Statutory Authority for Adoption: RCW 28A.642.020 and 28A.640.020.

Statute Being Implemented: Chapters 28A.642 and 28A.640 RCW.

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

Name of Proponent: Office of the superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Yvonne Ryans, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6162.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose costs on businesses or industries.

A cost-benefit analysis is not required under RCW 34.05.328.

December 21, 2010

Randy Dorn

Superintendent of

Public Instruction

## Chapter 392-190 WAC

### **EQUAL EDUCATIONAL OPPORTUNITY—~~((SEX))~~ UNLAWFUL DISCRIMINATION PROHIBITED**

AMENDATORY SECTION (Amending Order 18, filed 7/19/90, effective 8/19/90)

**WAC 392-190-005 Purpose—Elimination of ~~((sex))~~ unlawful discrimination in public schools.** The purpose of this chapter is to establish rules and regulations which implement chapters 28A.640 and 28A.642 RCW. The referenced enactments prohibit~~((s))~~ discrimination on the basis of sex ~~((in grades K-12 of the)), race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability in~~ Washington public schools. Broad federal regulations implementing Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and Titles VI and VII of the Civil Rights Act of 1964 similarly prohibit ~~((sex))~~ discrimination based on sex, race, creed, religion, color, national origin, and disability, in federally assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

It is the intent of this chapter to encompass those similar substantive areas addressed by ~~((the Title IX regulations and in some aspects extend beyond the Title IX regulations))~~ federal civil rights authorities and in some aspects extend beyond those authorities. Accordingly, compliance with ~~((this chapter))~~ relevant federal civil rights law should constitute compliance with those similar substantive areas treated in ~~((the Title IX regulations))~~ this chapter, but school districts should be aware that compliance with ~~((the Title IX regulations))~~ federal civil rights laws alone may not constitute compliance with this chapter.

~~((Although))~~ In accordance with chapters 28A.640 and 28A.642 RCW ~~((and the balance of this chapter prohibit sex discrimination in grades K-12 only, the superintendent of public instruction hereby declares pursuant to the authority vested in the superintendent by Article 3, section 22 of the state Constitution that))~~ it ~~((shall be))~~ is unlawful for any public school district to discriminate on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal with regard to any activity conducted by or ~~((in))~~ on behalf of a school district including, but not limited to, pre-

school, adult education, community education and vocational-technical program activities.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-010 Counseling and guidance services—Career opportunities—Internal procedures.** (1) No school district ~~((shall))~~ will engage in discrimination against any person on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal in the counseling or guidance of students in grades K-12.

(2) Each school district ~~((shall))~~ will devise and use materials, orientation programs, and counseling techniques that will encourage participation in all school programs and courses of study based on factors other than sex ~~((and that))~~, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. School districts will encourage students to explore subjects and activities not ~~((heretofore))~~ traditional for their sex.

(3) Each school district which uses testing and other materials for ~~((appraising or))~~ counseling students ~~((shall))~~ will not use different materials for students based on ~~((the basis of))~~ their sex ~~((or use materials which permit or require different treatment of students on such basis unless (a) such))~~, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. A school district may use different materials for students on the basis of their sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal if:

(a) Such different materials cover the same occupations and interest areas; and

(b) The use of such different materials is demonstrated to be essential to eliminate ~~((sex))~~ bias based on sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

(4) Each school district ~~((shall))~~ will develop and use internal procedures for ensuring that all tests and appraisal instruments related to guidance counseling, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement do not discriminate on the basis of sex ~~((:—Provided, That where the))~~, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any

sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

(5) If a school district concludes that the use of such instruments ~~((or))~~, materials, or ~~((such))~~ programs ~~((or activities results in))~~ is causing a substantially disproportionate number of students who are members of one ((sex)) of the groups identified in WAC 392-190-005 to be placed in any particular course of study or classification, the school district ~~((shall))~~ will take such immediate action as is necessary to assure ~~((itself))~~ that such disproportion is not the result of discrimination in the ~~((program or activity or in the))~~ instrument ~~((or))~~, material, or its application ~~((:—Provided further, That))~~.

(6) Where a school district finds that a particular class contains a substantially disproportionate number of ~~((individuals of one sex))~~ students who are members of any one of the groups identified in WAC 392-190-005, the district ~~((shall))~~ will take such immediate action as is necessary to assure ~~((itself))~~ that such disproportion is not the result of discrimination on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal in tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement ~~((or))~~ by counselors.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-015 Counseling and guidance—Sex discrimination—Duty of certificated and classroom personnel—Coordination of effort.** (1) All certificated and classroom personnel ~~((shall))~~ will encourage students to explore and develop their individual interests in career and vocational technical programs and employment opportunities without regard to sex, including reasonable efforts encouraging students to consider and explore "nontraditional" occupations for men and women ~~((:—Provided, That))~~. All certificated and classroom personnel within each local school district ~~((shall))~~ will have access to an educational staff associate (ESA) certificated school counselor(s) or such other appropriate person(s), designated by the school district superintendent to coordinate compliance with the requirements of this section.

(2) All certificated and classroom personnel ~~((shall))~~ will comply fully and immediately with the requirements of this section. The superintendent of each school district shall make the designation(s) required by this section immediately.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-020 Inservice training—((Sex)) Bias awareness.** Each school district ~~((should))~~ will, where appropriate, include sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal bias awareness and ~~((sex bias))~~ elimination training sessions in such inservice



training programs as are conducted or provided for certified and/or classroom personnel.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-025 Recreational and athletic activities**~~((Equal opportunity—Separate teams)).~~ ~~(((1)))~~ No person ~~((shall))~~ will, on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal be excluded from participation in, be denied the benefits of, ~~((be treated differently from another person))~~ or otherwise be discriminated against in any interscholastic, club or intramural athletics or recreational activity offered by a school district, and no school district ~~((shall))~~ will provide any such athletics or recreational activity separately on such basis. ~~((Sports teams and programs offered by a school district shall, regardless of their nature, be equally open to participation by qualified members of both sexes: Provided, That in the case of sports and recreational activities offered for students in grades 7 through 12, a school district may maintain separate teams for members of each sex if (a) it can clearly be shown, under the factual circumstances involved in the particular case, that the maintenance of separate teams for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in the sports or games of their choice and (b) at the same time, a test of substantial equality between the two programs can be found to have been met.))~~

~~((2) For the purpose of this section and WAC 392-190-050(2) "substantial equality" shall be determined by considering factors including but not limited to the following:~~

- ~~((a) The relationship between the skill and compensation of coaching staffs;~~
- ~~((b) The size of their budgets;~~
- ~~((c) The quality of competition and game schedules;~~
- ~~((d) Uniforms;~~
- ~~((e) Equipment and facilities; and~~
- ~~((f) Sufficient numbers of participants to warrant separate teams.))~~

NEW SECTION

**WAC 392-190-026 Recreational and athletic—Sex discrimination—Equal opportunities—Separate teams.**

(1) Sports teams and programs offered by a school district will be equally open to participation by qualified members of both sexes. For sports and recreational activities offered for students in grades 7 through 12, a school district may maintain separate teams for members of each sex if:

(a) It can clearly be shown, under the factual circumstances involved in the particular case, that the maintenance of separate teams for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in the sports or games of their choice; and

(b) At the same time, a test of substantial equality between the two programs has been met.

(2) For the purpose of this section and WAC 392-190-050(2) "substantial equality" will be determined by considering factors including, but not limited to, the following:

- (a) The relationship between the skill and compensation of coaching staffs;
- (b) The size of their budgets;
- (c) The quality of competition and game schedule;
- (d) Uniforms;
- (e) Equipment and facilities; and
- (f) Sufficient numbers of participants to warrant separate teams.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-030 General—Recreational and athletic activities—Sex discrimination—Equal opportunity factors considered.** Each school district ~~((shall))~~ must evaluate its recreational and athletic program at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics which are operated, sponsored, or otherwise provided by the school district.

In determining whether equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics, each school district conducting an evaluation required by this section, and the office of superintendent of public instruction upon receipt of a complaint pursuant to WAC 392-190-075, ~~((shall))~~ will consider several factors, including but not limited to the following where provided by a school district:

- (1) Whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) The scheduling of games and practice times including the use of playfields, courts, gyms, and pools;
- (4) Transportation and per diem allowances, if any;
- (5) The opportunity to receive coaching and academic tutoring;
- (6) The assignment and compensation of coaches, tutors, and game officials;
- (7) The provision of medical and training facilities and services including the availability of insurance;
- (8) The provision of housing, laundry, and dining facilities and services, if any; and
- (9) Publicity and awards.

Unequal aggregate expenditures within a school district for members of each sex or unequal expenditures for separate male and female teams will not alone constitute noncompliance with this chapter, but the failure to provide the necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-035 Recreational and athletic activities—~~((Compliance timetable))~~Sex discrimination—Elementary and secondary level.** (1) Each school district which

operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the elementary school level (K-6) ~~((shall))~~ will provide equal opportunity and encouragement for physical and skill development to all students in the elementary grades consistent with this chapter.

(2) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the secondary school level (7-12) ~~((shall))~~ will provide equal opportunity and encouragement for physical and skill development to all students in the secondary grades consistent with this chapter.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-040 Recreational and athletic activities—Sex discrimination—Student interest—Required survey instrument.** (1) The superintendent of public instruction ~~((shall))~~ will develop a survey instrument to assist each school district in the determination of student interest for male/female participation in specific sports.

(2) A survey instrument ~~((shall))~~ will be administered by each school district at all grade levels where interscholastic, intramural and other sports and recreational activities are conducted. The results of the survey ~~((shall))~~ will be considered in the program planning and development in the area of recreational and athletic activities offered within the school district.

(3) A survey instrument developed pursuant to this section ~~((shall))~~ will be administered at least once every three years within each school district ~~((: Provided, That))~~. School districts may modify or amend the content of the survey instrument ((may be modified or amended as deemed appropriate)) if the district deems it necessary to clarify and assist in the evaluation of student interest. If a school district intends to modify or amend the instrument, the district must provide the office of superintendent of public instruction with a copy of the proposal for approval prior to its administration.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-045 Recreational and athletic activities—Sex discrimination—Facilities.** A school district which provides athletic facilities for members of one sex including showers, toilets, and training room facilities for athletic purposes ~~((shall))~~ must provide comparable facilities for members of the opposite sex ~~((: Provided, That))~~. Such facilities may be provided as either separate facilities or ~~((shall))~~ will be scheduled and used separately by members of each sex ~~((: Provided further, That))~~. This section ~~((shall))~~ will not be interpreted to require the construction of additional facilities.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-050 Course offerings—Generally—Separate sessions or groups—When permissible.** No school district ~~((shall))~~ will provide any course or otherwise carry out any of its education programs or activities sepa-

rately on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal or require or refuse participation therein by any of its students on such basis, including but not limited to health, physical education, industrial arts, business, vocational-technical, and home economics courses ~~((: Provided, That))~~. This section ~~((shall))~~ will not be construed to prohibit:

(1) The grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and applied without regard to sex ~~((: Provided, That))~~. Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district ~~((shall))~~ must immediately implement appropriate standards which do not have such effect;

(2) The separation of students by sex within physical education classes or activities offered for students in grades 7 through 12 if:

(a) It can clearly be shown under the factual circumstances involved in the particular case, that the maintenance of a separate physical education class or activity for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in such class or activity; and

(b) At the same time, a test of substantial equality between the two classes or activities can be found to have been met;

(3) ~~((The conduct of))~~ Separate sessions for boys and girls with respect to those portions of classes which deal exclusively with human sexuality; ((and))

(4) ~~((The conduct of))~~ Classes and/or activities ((within)) which a school district may establish or maintain requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex; and

(5) Classes, courses or placement of students based on the student's individual language skill development and/or based on the student's needs as identified in the student's individualized education program.

AMENDATORY SECTION (Amending Order 18, filed 7/19/90, effective 8/19/90)

**WAC 392-190-055 Textbooks and instructional materials—Scope—Elimination of ((sex)) bias((—Compliance timetable)).** (1) It is the intent of this section to eliminate bias pertaining to sex ((bias)), race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal in connection with any form of instruction provided by a school district.

(2) The instructional materials policy of each school district required by RCW 28A.320.230 ~~((shall))~~ will incorporate therein, as part of the selection criteria, a specific statement requiring the elimination of bias pertaining to sex ((bias)),

race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal in all textbooks and instructional materials including reference materials and audio-visual materials.

(3) The instructional materials committee of each school district ~~((shall))~~ will establish and maintain appropriate screening criteria designed to identify and eliminate bias pertaining to sex ((bias)), race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of trained dog guide or service animal in all textbooks and instructional materials including reference materials and audio-visual materials ~~(= Provided, That))~~. Such selection criteria ~~((shall))~~ must be consistent with the selection criteria ~~((endorsed by the state board of education dated December 6, 1974, WAC 180-48-010, as now or hereafter amended, and WAC 180-46-005 through 180-46-060))~~ identified in chapter 392-204 WAC, as now or hereafter amended. One of the aids to identification of ~~((sex))~~ is the *Washington Models for the Evaluation of Bias Content in Instructional Materials* published by the superintendent of public instruction.

(4) In recognition of the fact that current instructional materials which contain ~~((sex))~~ is bias may not be replaced immediately, each school district should acquire supplemental instructional materials or aids to be used concurrent with existing materials for the purpose of countering the ~~((sex))~~ is bias content thereof.

(5) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials such as classic and contemporary literary works, periodicals and technical journals which, although they contain ~~((sex))~~ is bias, are educationally necessary or advisable.

**AMENDATORY SECTION** (Amending Order 94-14, filed 11/10/94, effective 12/11/94)

**WAC 392-190-056 Sexual harassment—Definitions.**

(1) As used in this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature between two or more individuals if:

(a) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;

(b) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or

(c) That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

(2) For the purpose of this definition, sexual harassment may include conduct or communication that involves adult to student, student to adult, student to student, adult to adult,

male to female, female to male, male to male, and female to female.

((Note: School districts must be guided by federal and state case law in their interpretation of sexual harassment complaints and will need to determine sexual harassment on a case-by-case basis.))

(3) School districts must be guided by federal and state case law in their interpretation of sexual harassment complaints and will need to determine sexual harassment on a case-by-case basis. Nothing in this chapter should be construed as diminishing or otherwise modifying an individual's right to bring an action under state or federal law alleging that the individual has been harmed by conduct or communication related to the individual's sex, race, creed, color, national origin, honorably discharged veteran status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal that creates a hostile or abusive educational or workplace environment.

**AMENDATORY SECTION** (Amending Order 94-14, filed 11/10/94, effective 12/11/94)

**WAC 392-190-057 Sexual harassment policy—Adoption date—Required criteria.** In order to eliminate sexual harassment in connection with any responsibility, function or activity within the jurisdiction of a school district, a sexual harassment policy ~~((shall))~~ must be adopted and implemented by each district no later than June 30, 1995. This policy ~~((shall))~~ will apply to all school district employees, volunteers, parents, and students, including but not limited to, conduct between students. This policy ~~((shall))~~ will incorporate the following criteria:

(1) Definitions consistent with the categories in RCW 28A.640.020 (2)(f);

(2) District and staff responsibilities;

(3) Informal grievance procedures;

(4) Grievance procedures consistent with WAC 392-190-065 through 392-190-075 of this chapter;

(5) Investigative procedures and reasonable and prompt timelines;

(6) Remedies available to victims of sexual harassment;

(7) Disciplinary actions against violators which must conform with collective bargaining agreements and state and federal laws;

(8) Reprisal, retaliation and false accusations prohibition;

(9) Dissemination and implementation; and

(10) Internal review.

**AMENDATORY SECTION** (Amending Order 94-14, filed 11/10/94, effective 12/11/94)

**WAC 392-190-058 Sexual harassment—Procedures.**

(1) School district policies on sexual harassment ~~((shall))~~ must be reviewed by the superintendent of public instruction considering the criteria established under WAC 392-190-057 as part of the monitoring process established in RCW 28A.640.030. The superintendent of public instruction

((shall)) will supply upon request sample sexual harassment policies to school districts.

(2) The school district's sexual harassment policy ((shall)) must be easily understood and conspicuously posted throughout each school building, and provided to each employee, volunteer and student.

(3) Reasonable efforts ((shall)) will be made to inform all students and their parents about the district's sexual harassment policy and procedures.

(4) A copy of the policy ((shall)) will appear in any publication of the school or school district setting forth the rules, regulations, procedures, and standards of conduct for the school or school district.

(5) Each school ((shall)) will develop a process for discussing the district's sexual harassment policy. The process ((shall)) will ensure the discussion addresses the definition of sexual harassment and issues covered in the sexual harassment policy.

#### NEW SECTION

**WAC 392-190-059 Harassment, intimidation, and bullying prevention policy and procedure—Adoption date.** (1) By August 1, 2011, each school district shall adopt or amend if necessary a harassment, intimidation, and bullying prevention policy and procedure as provided for in RCW 28A.300.285.

(2) When monitoring school districts' compliance with this chapter pursuant to WAC 392-190-076, the office of superintendent of public instruction will review such policies and procedures to ensure that they provide that students will not be harassed, intimidated, or bullied because of their sex, race, creed, religion, color, national origin, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

#### NEW SECTION

**WAC 392-190-0591 Public school employment and contract practices—Nondiscrimination.** (1) No school district will, on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, exclude any person from participation in, deny any person the benefit of, or subject any person to discrimination in employment, recruitment, promotion or advancement, consideration or selection, whether full time or part time, in connection with employment by a school district.

(2) Each school district must make all employment decisions in a nondiscriminatory manner and will not limit, segregate, or classify any person in any way which could adversely affect a person's employment opportunities or status on the basis of sex, race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

(3) No school district will enter into any contractual or other relationship that directly or indirectly has the effect of subjecting any person to discrimination in connection with employment on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability including, but not limited to, relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees.

(4) No school district will grant preferential treatment to applications for employment on the basis of enrollment at any education institution or entity which admits as students only or predominately individuals or groups on the basis of sex, race, color or national origin, if the giving of such preferences has the effect of discriminating on the basis of sex, race, color, or national origin.

#### NEW SECTION

**WAC 392-190-0592 Public school employment—Affirmative action program.** (1) Each school district must develop and/or incorporate within any existing affirmative action employment program appropriate provisions which are consistent with the intent of chapters 28A.640 and 28A.642 RCW. Each school district's affirmative action employment program must include at least the following provisions respecting discrimination on the basis of sex:

- (a) Maintain credential requirements for all personnel;
- (b) Make no differentiation in pay scale;
- (c) Make no differentiation in the assignment of school duties except where such assignment would involve duty areas or situations such as, but not limited to, shower rooms, where persons might be disrobed;
- (d) Provide the same opportunities for advancement;
- (e) Make no difference in conditions of employment including, but not limited to, hiring practices, leaves of absence, hours of employment and assignment of, or pay for, instructional and noninstructional duties; and
- (f) Such other provisions as may be required by the superintendent of public instruction designed to facilitate the effective achievement of all reasonable affirmative action goals and objectives in public school employment respecting the elimination of discrimination on the basis of sex.

(2) Notwithstanding the requirements of this chapter respecting discrimination on the basis of sex, each school district must develop and/or incorporate within any existing affirmative action employment program appropriate provisions to eliminate discrimination on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

(3) Each affirmative action employment program of a school district must be filed with the office of superintendent of public instruction.

(4) The board of directors of each school district must adopt and implement an affirmative action employment program required by this section as expeditiously as possible but in no event later than September 30, 2011.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-060 Compliance—Local school district—Designation of responsible employee—Notification.** (1) The superintendent of each school district ~~((shall))~~ will immediately designate at least one employee who ~~((shall))~~ will be responsible directly to the superintendent for monitoring and coordinating the district's compliance with this chapter. The employee designated pursuant to this section ~~((shall))~~ will also be charged with the responsibility to investigate any complaint(s) communicated to the school district pursuant to WAC 392-190-065.

(2) Each school district ~~((shall))~~ will, once each year or more often as deemed necessary, publish notice in a manner which is reasonably calculated to inform all students, students' parents, and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this section and the complaint and appeal procedure set forth in WAC 392-190-065, 392-190-070 and 392-190-075 as now or hereafter amended.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-065 Compliance—Complaint procedure—District superintendent.** (1) ~~((Upon receipt of a complaint by a school district in the manner herein described, the employee or employees designated pursuant to WAC 392-190-060 shall investigate the allegations set forth and shall institute such other reasonable procedures to effect a prompt resolution of the complaint. Provided, That each))~~ Anyone may file a complaint with a school district alleging that the district has violated this chapter. The complaint ~~((communicated to the school district shall))~~ must be:

(a) Written ~~((:));~~

(b) Signed by the ~~((complainant))~~ complainant; and

(c) Set forth specific acts, conditions, or circumstances alleged to ~~((be violative of))~~ violate this chapter or the specific acts, conditions, or circumstances that would be prohibited by this chapter. Upon receipt of the complaint, the employee or employees designated pursuant to WAC 392-190-060 will investigate the allegations and effect a prompt resolution of the complaint.

(2) ~~((Upon))~~ Following the completion of the investigation ~~((required by this section in connection with a complaint communicated to the school district)),~~ the designated employee or employees ~~((shall))~~ will provide the district superintendent with a full written report of the complaint and the results of the investigation. The district superintendent ~~((shall))~~ must respond in writing to the complaining party as expeditiously as possible but in no event later than thirty calendar days following receipt of such complaint by the school district, unless otherwise agreed to by the complainant.

(3) The response of the school district superintendent required by this section ~~((shall))~~ must clearly state either:

(a) That the school district denies the allegations contained in the complaint received ~~((pursuant to this section));~~ or

(b) The ~~((nature of such))~~ reasonable corrective measures deemed necessary to eliminate any such act, condition, or circumstance within the school district ~~((:—Provided, That))~~. Any such corrective measures deemed necessary ~~((shall))~~ will be instituted as expeditiously as possible but in no event later than thirty calendar days following the school district superintendent's mailing of a written response to the ~~((complainant))~~ complainant required by this section, unless otherwise agreed to by the complainant.

(4) The complaint procedure required by this section ~~((shall))~~ will not prohibit the processing of grievances by an employee bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the school district level by local bargaining agreement.

(5) The school district and complainant may agree to resolve the complaint in lieu of an investigation.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-070 Compliance—Appeal procedure—Local school board.** (1) ~~((In the event))~~ A complainant ~~((remains aggrieved as a result of the action or inaction of the superintendent in resolving a complaint as))~~ has a right to appeal the school district superintendent's response provided in WAC 392-190-065 ~~((2), ((said complainant may appeal))~~ to the school district board of directors ~~((by filing a written notice of appeal)).~~ The appeal must be filed with the secretary of the school board on or before the tenth calendar day following ~~((a))~~ the date upon which the complainant received the superintendent's response ~~((or (b) the expiration of the thirty day response period provided by WAC 392-190-065, whichever occurs first)).~~

(2) In the event a school district superintendent fails to timely respond to a complaint communicated pursuant to WAC 392-190-065, a complainant has a right to an appeal to the board of directors. The appeal must be filed with the secretary of the school board on or before the tenth calendar day following the expiration of the response period provided by WAC 392-190-065(2).

(3) An appeal to the board of directors pursuant to this section ~~((shall))~~ will require the board of directors to schedule a hearing to commence on or before the twentieth calendar day following the filing of the written notice of appeal ~~((:—Both parties shall)),~~ unless otherwise agreed to by the complainant and the school district superintendent, or for good cause. The complainant and the school district superintendent will be allowed to present such witnesses and testimony as the board deems relevant and material. Unless otherwise agreed to by the complainant and the school district superintendent, or for good cause, the board of directors ~~((shall))~~ will render a written decision on or before the tenth calendar day following the termination of the hearing, and ~~((shall))~~ will provide a copy to all parties involved.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-075 Compliance—Contested case—Duty of the superintendent of public instruction.** (1) In the event a complainant (~~((remains aggrieved))~~) disagrees with the decision of a school district board of directors rendered pursuant to WAC 392-190-070, the complainant may appeal the board's decision to the superintendent of public instruction. ~~((Upon the receipt of a notice of appeal filed in compliance with this section, the superintendent of public instruction shall schedule a hearing to commence on or before the fortieth day thereafter.))~~ For purpose of hearing an appeal under this section, the superintendent of public instruction will conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal. Decisions in cases appealed pursuant to this section may be made by administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority pursuant to RCW 28A.300.120.

(2) A notice of appeal must be received by the superintendent on or before the ~~((tenth))~~ twentieth calendar day following the date upon which the complainant received written notice of the school board's decision. ~~((Furthermore.))~~ The notice is deemed received when the notice is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, to the superintendent of public instruction. The notice must be in writing and must set forth (a) a concise statement of the portion or portions of the school board's decision which is appealed from, and (b) the relief requested by the complainant/appellant.

(3) Appeals to the superintendent ~~((shall))~~ will be conducted de novo ~~((pursuant to the state Administrative Procedure Act (chapter 34.04 RCW))).~~ The complainant/appellant ~~((shall))~~ will have the responsibility for prosecuting ~~((his or her case))~~ the appeal and the school district/respondent ~~((shall))~~ will have the duty of defending the school district's decision or the portion ~~((thereof))~~ of the decision appealed.

#### NEW SECTION

**WAC 392-190-076 Monitoring—Duty of the superintendent of public instruction.** (1) The office of superintendent of public instruction will monitor school districts' compliance with chapters 28A.640 and 28A.642 RCW and the rules and guidelines adopted in furtherance thereof.

(2) Procedures for monitoring school districts may include:

- (a) Collection, review, and analysis of data and other information;
- (b) Conduct of on-site visits and interviews; and
- (c) Review of any compliance issues, including reviews by those agencies referenced in WAC 392-190-077.

#### NEW SECTION

**WAC 392-190-077 Monitoring results—Compliance.** (1) Following its monitoring of a school district pursuant to

WAC 392-190-076, the office of superintendent of public instruction will notify districts of any findings of identified noncompliance with chapters 28A.640 and 28A.642 RCW and the rules and guidelines adopted in furtherance thereof. This notification of noncompliance will initiate a process of correction, verification, and validation to ensure that the non-compliance is corrected within a compliance period identified by the office of superintendent of public instruction. The compliance period must be no longer than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan is required. The district will have thirty calendar days after its receipt of the notice of noncompliance to:

- (a) Accept the findings contained in the notification of noncompliance; or
- (b) Provide the office of superintendent of public instruction with supplemental information that may serve as a basis for amending the notification of noncompliance; or
- (c) Provide any revisions to the proposed corrective action plan.

(2) If the school district provides the office of superintendent of public instruction with supplemental information, the office of superintendent of public instruction will respond to the school district with a final monitoring report within thirty calendar days after receipt of the supplemental information.

(3) If the school district does not timely address the identified noncompliance with corrective actions, the superintendent of public instruction may, at his or her discretion, undertake actions to ensure school district compliance. Such actions may include, but are not limited to, referring the school district to appropriate state or federal agencies empowered to order compliance with the law, or the initiation of an office of superintendent of public instruction complaint against the school district.

#### NEW SECTION

**WAC 392-190-078 Monitoring results—Complaints issued by superintendent of public instruction.** (1) In the event the office of superintendent of public instruction initiates a complaint against a school district, the superintendent of public instruction will send a copy of the complaint to the school district superintendent. The complaint will include written allegations of fact and proposed corrective actions. The school will provide a written response to the complaint no later than twenty calendar days after the complaint is sent to the school district, unless otherwise agreed to, or for good cause.

(2) The school district's response to the superintendent of public instruction will clearly state either:

- (a) That the school district denies the allegations contained in the complaint and the basis of such denial; or
- (b) That the school district admits the allegations and proposes reasonable corrective action(s) deemed necessary to correct the violation.

(3) Upon review of the school district's response and all other relevant information, the superintendent of public instruction will make an independent determination as to

whether the school district is in violation of chapters 28A.640, 28A.642 RCW, or the rules of this chapter.

(4) The superintendent of public instruction will issue a written decision to the school district that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. The superintendent of public instruction may provide technical assistance necessary to resolve a complaint. All actions will be instituted as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

#### NEW SECTION

**WAC 392-190-079 Complaints issued by superintendent of public instruction—Appeal procedure.** (1) A school district that desires to appeal the written decision of the superintendent of public instruction issued pursuant to WAC 392-190-078 may file an appeal with the superintendent of public instruction in accordance with the adjudicative proceedings in RCW 34.05.413 through 34.05.494, and the administrative practices and procedures of the superintendent of public instruction in chapter 392-101 WAC. To initiate review under this section, a school district must file a written notice with the superintendent of public instruction within thirty calendar days following the date of receipt of the superintendent of public instruction's written decision.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction will conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal.

AMENDATORY SECTION (Amending Order 15, filed 11/2/89, effective 12/3/89)

**WAC 392-190-080 Compliance—Violations—Permissible sanctions.** In the event a school district is found to be in violation of the requirements of this chapter, the superintendent of public instruction may, by appropriate order pursuant to chapter ~~((34.04))~~ 34.05 RCW, impose an appropriate sanction or institute appropriate corrective measures ~~((;))~~ including, but not limited to ~~((a))~~;

(1) ~~The~~ termination of all or part of state apportionment or categorical moneys to the offending school district ~~((-b))~~;

(2) ~~The~~ termination of specified programs wherein such violation or violations are found to be flagrant in nature ~~((-c))~~;

(3) ~~The~~ institution of a mandatory affirmative action program within the offending school district ~~((-d))~~; and

~~((e))~~ (4) ~~The~~ placement of the offending school district on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever is deemed appropriate in the particular case by the superintendent of public instruction.

#### NEW SECTION

**WAC 392-190-081 Concurrent remedies—Other remedies.** (1) Except as provided in subsections (2) and (3) of this section, nothing in this chapter shall be construed as denying an aggrieved person from simultaneously pursuing other available administrative, civil or criminal remedies for an alleged violation of the law.

(2) A complaint made pursuant to WAC 392-190-065 or 392-190-075 will be held in abeyance during the pendency of any proceeding in state or federal court or before a local state or federal agency in which the same claim or claims are at issue, whether under RCW 28A.640.040, 28A.642.040, or any other law.

(3) Where the complainant elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, in some circumstances, be binding on all or portions of the claims pending before other tribunals.

#### NEW SECTION

**WAC 392-190-082 Informing citizens about complaint procedures.** The superintendent of public instruction will inform parents and other interested individuals about the complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities; and

(2) Conducting inservice training sessions on the complaint process through educational service districts or in statewide conferences.

#### **WSR 11-01-135**

#### **PROPOSED RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Filed December 21, 2010, 10:37 a.m.]

Supplemental Notice to WSR 10-21-119 filed on October 20, 2010.

Preproposal statement of inquiry was filed as WSR 09-01-024 on December 8, 2008.

Title of Rule and Other Identifying Information: WAC 232-12-071 Buying or selling game unlawful—Game-farmed meat exception.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on February 4-5, 2011, at 8:30 a.m.

Date of Intended Adoption: On or after March 4, 2011.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by January 27, 2011.

Assistance for Persons with Disabilities: Contact Susan Galloway by January 27, 2011, at (360) 902-2267 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed version of WAC 232-12-071 is similar to the version filed with the original CR-102 on October 20, 2010, as WSR 10-21-119, with a few exceptions. The language in this supplemental filing is clearer and easier to understand. Also, we added a knowledge element to subsection (2)(b), selling, purchasing, or bartering wild animals, game birds, or game fish taken in violation of any law or regulation in any jurisdiction; and to subsection (4), buying, selling, or otherwise exchanging the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap. This means a person has to know or be aware that he/she is dealing with an unlawfully taken wild animal, game bird, or game fish, or an illegally trapped wild animal, to be in violation of subsections (2)(b) or (4) of this rule. Lastly, we clarified that all of the animal parts referenced in subsection (2)(c) are considered "nonedible" even if they are used for human consumption. This will aid in enforcing the rule.

Reasons Supporting Proposal: The changes will reduce poaching by prohibiting the sale, purchase, and trade of unlawfully taken wildlife. The changes also will provide clearer guidance to people who want to buy, sell, or trade game-farm raised deer and elk, or who want to contest a denial of a permit to sell, purchase, or trade nonedible parts of wild animals, game birds, or game fish.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.12.590, and 77.12.600.

Statute Being Implemented: RCW 77.04.012, 77.12.-047, 77.12.590, and 77.12.600.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The department is presenting this at the February 2011 commission meeting pursuant to the commission's request.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Lori Preuss, 1111 Washington Street S.E., Olympia, (360) 902-2930; Implementation: Mike Cenci, 1111 Washington Street S.E., Olympia, (360) 902-2938; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

A copy of the statement may be obtained by contacting please see the CR-102 filed as WSR 10-21-119 on October 20, 2010.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

December 21, 2010

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 06-209, filed 8/16/06, effective 9/16/06)

**WAC 232-12-071 Buying or selling game unlawful—Game-farmed meat exception.** (1) ~~((Unless prohibited by federal regulations,))~~ It is unlawful to offer for sale, sell, purchase, or barter edible parts of wild animals or game birds. It is unlawful to offer for sale, sell, purchase, or barter edible parts of game fish, except pursuant to RCW 77.65.480.

(2) It is unlawful to offer for sale, sell, purchase, or barter the nonedible parts of wild animals, game birds, or game fish ~~((lawfully taken may be offered for sale, sold, purchased or traded, except it is unlawful to offer for sale, sell, purchase or trade the following unless authorized by a written permit issued by the director))~~ if:

(a) The possession, sale, selling, purchase, or barter is prohibited by federal regulations:

(b) The wild animals, game birds, or game fish were taken in violation of any law or regulation in any jurisdiction, and the seller, purchaser, or person bartering knew the animal, bird, or fish was illegally taken; or

(c) The nonedible parts are of bighorn sheep or mountain goat((-

~~(b))~~; bear gall bladders; claws or teeth of bear that are not permanently attached to a full bear skin or mounted bear; or velvet antlers of deer ((ø)), elk((-

~~(e) Gall bladder, claws, or teeth of bear, except those claws or teeth permanently attached to a full bear skin or mounted bear.~~

~~(2) It is unlawful to knowingly buy, sell, or otherwise exchange, or offer to buy, sell, or otherwise exchange the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not pursuant to permit.~~

~~(3)), or moose; and a permit has not been granted by the department allowing for the sale, purchase, or barter of any of the animal parts listed in this subsection (2)(c).~~

(3) For purposes of subsection (2)(c) of this section, all of those parts are considered "nonedible" even if they are used for human consumption.

(4) Under RCW 77.15.194, it is unlawful to knowingly buy, sell, or otherwise exchange, or to offer to buy, sell, or otherwise exchange, the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not the animal is trapped pursuant to a permit.

(5) It is ((lawful)) unlawful to offer for sale, sell, purchase ((and sell the meat of)), or barter game-farm raised deer and elk, ((provided)) unless the following conditions have been met:

(a) Proof of the source of the game-farmed meat is maintained with the meat until the meat is consumed or exported. Qualifying proof includes sales or purchase invoices or receipts containing the following information in the English language:

(i) Name of seller or importer;

(ii) Name of the company selling the meat;

(iii) The date of sale;

(iv) The quantity of meat sold; and

(v) The species of the meat sold.

(b) The meat is imported from a U.S. licensed game farm, or a game farm in another ((state ø)) country((-);).



(c) The meat is boned, and only the meat is imported  
((for sale, and)).

(d) The meat is packaged for retail sale prior to  
((import)) importation into this state. ((It is unlawful to fail  
to maintain proof of the source of the game-farmed meat  
together with the meat until the meat is consumed or  
exported.))

(6) A violation of subsection (4) of this section is punish-  
able under RCW 77.15.194. The remaining subsections in  
this section are punishable under RCW 77.15.260.

(7) If you request a written permit to offer for sale, sell,  
purchase, or barter the nonedible parts of wild animals listed  
in subsection (2)(c) of this section, and your request is  
denied, you have a right to a hearing under the provisions of  
chapter 34.05 RCW. In order to obtain a hearing, you must  
notify the department, in writing, within forty-five days of  
the date of the letter denying your permit. The address to  
send hearing requests to is:

The Washington Department of Fish and Wildlife  
Legal Affairs - Office of the Director  
Post Office Box 43137  
Olympia, Washington 98504-3137

If you do not request a hearing to contest denial of the  
permit, the permit denial will become effective forty-five  
days following the denial.