

**WSR 11-05-010**  
**PROPOSED RULES**  
**UNIVERSITY OF WASHINGTON**

[Filed February 3, 2011, 3:20 p.m.]

Supplemental Notice to WSR 10-22-102.

Preproposal statement of inquiry was filed as WSR 09-05-014.

Title of Rule and Other Identifying Information: Chapter 478-116 WAC, Parking and traffic rules of the University of Washington, Seattle.

Hearing Location(s): Room 231, Mary Gates Hall, UW Seattle Campus, on April 7, 2011, at 3:30 p.m.

Date of Intended Adoption: May 19, 2011.

Submit Written Comments to: Rebecca Goodwin Dearth, University of Washington, Rules Coordination Office, Box 351210, Seattle, WA 98195-1210, e-mail rules@uw.edu, fax (206) 685-3825, by April 7, 2011.

Assistance for Persons with Disabilities: Contact disability services office by March 28, 2011, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule revisions move the administrative oversight of parking enforcement from the university police department to the commuter services unit within the UW transportation services department. These changes would consolidate and improve the administration of all parking-related matters within one campus department including: Providing more cost-effective management of limited parking resources, streamlining the citation and appeal adjudication processes, providing greater alignment of enforcement regulations with the current transportation environment, and making house-keeping changes to update unit names.

Reasons Supporting Proposal: The proposed rules have been reviewed and approved by the university transportation committee.

Statutory Authority for Adoption: RCW 28B.10.560 and 28B.20.130.

Statute Being Implemented: RCW 28B.10.560.

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: Due to changing circumstances, various additional amendments proposed by the UW administration require a new public hearing on the revised chapter prior to adoption.

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: V'ella Warren, Senior Vice-President for Finance and Facilities, 4311 11th Avenue N.E., Suite 600, Seattle, WA 98105, (206) 543-8765; and Enforcement: John Vinson, Chief of UWPD, 1117 N.E. Boat Street, Seattle, WA 98105, (206) 543-0521 and Josh Kavanagh, Director of Transportation Services, 3745 15th Avenue N.E., Seattle, WA 98105, (206) 685-1567.

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

A cost-benefit analysis is not required under RCW 34.05.328. This chapter is not considered a significant legislative rule by the University of Washington.

February 3, 2011

Rebecca Goodwin Dearth  
 Director of Rules Coordination

**PART I**  
**PREAMBLE, GENERAL INFORMATION,**  
**AND DEFINITIONS**

AMENDATORY SECTION (Amending WSR 01-20-030, filed 9/26/01, effective 10/27/01)

**WAC 478-116-010 Preamble.** Pursuant to the authority granted by RCW 28B.10.560 and 28B.20.130, the board of regents of the University of Washington establishes the following rules to govern motorized and nonmotorized vehicle traffic and parking upon ~~((public))~~ lands and facilities of the University of Washington in Seattle, Washington.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-020 Objectives of parking and traffic rules.** ~~((+))~~ The objectives of these rules are:

~~((+))~~ (1) To protect and control pedestrian and vehicular traffic ~~((and parking))~~ on the campus ~~((of the university))~~;

(2) To assure access at all times for emergency vehicles and equipment ~~((of the university))~~;

~~((+))~~ (3) To minimize traffic disturbances ~~((during class hours))~~;

~~((+))~~ (4) To facilitate the ~~((work))~~ operations of the university by assuring access to its vehicles ~~((and by assigning the limited parking space and hours of operation for the most efficient use))~~;

~~((+))~~ (5) To allocate limited parking space in order to promote its most efficient use;

~~((+))~~ (6) To protect state property; and

~~((+))~~ (7) To encourage and support travel to the ~~((university))~~ campus by means other than single occupancy vehicle (SOV).

~~((2))~~ Permission to park or operate a vehicle at the University of Washington is a privilege granted by the board of regents of the University of Washington.

NEW SECTION

**WAC 478-116-022 Knowledge of parking and traffic rules.** It is the responsibility of all individuals parking or operating a vehicle on the campus to comply with these rules. Lack of knowledge of these rules shall not be grounds for the dismissal of any citation for a violation of the parking or traffic rules.

NEW SECTION**WAC 478-116-024 Definitions.** (1) **Authorized agent.**

An entity or individual authorized by the director of transportation services to facilitate services provided by the department.

(2) **Bicycle.** Any device defined as a bicycle in chapter 46.04 RCW.

(3) **Campus.** The University of Washington, Seattle, and those lands and leased facilities of the university within UWPD jurisdiction and where parking is managed by transportation services.

(4) **Fee.** A charge for the use of services provided and facilities managed by transportation services.

(5) **Impoundment.** The removal of the vehicle to a storage facility either by an authorized agent of transportation services or UWPD.

(6) **Immobilization.** The attachment of a metal device to a wheel of a parked car so that the vehicle cannot be moved.

(7) **Meter.** A single fixed device that registers and collects payment for the length of time a vehicle occupies a single parking space. A meter does not produce a receipt, physical permit, or virtual permit. A meter is not a permit-issuance machine.

(8) **Motorcycles and scooters.** Motor vehicles designed to travel with not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and which is designed to be steered with a handle bar. For the purposes of these rules, motorcycles, motorized bicycles excluding pedal assisted electric bicycles, and scooters are considered motor vehicles and are subject to all traffic and parking rules controlling other motor vehicles.

(9) **Motor vehicle.** An automobile, truck, motorcycle, scooter, or bicycle that is assisted by an engine or other mechanism, or vehicle without motor power designed to be drawn or used in conjunction with the aforementioned vehicles including, but not limited to, trailers, travel trailers, and campers. In addition, any bicycle with an electric motor that is disengaged will be considered a bicycle and not a motor vehicle under this chapter.

(10) **Nonmotorized vehicle.** A device other than a motor vehicle used to transport persons, including, but not limited to, bicycles, skateboards, in-line skates, and roller skates.

(11) **Operator or driver.** Every person who drives or is in actual physical control of a motor vehicle or nonmotorized vehicle.

(12) **Overtime parking.** The occupation by a vehicle of a time-limited space beyond the posted time limit or time provided on a permit, meter, or permit-issuance machine.

(13) **Parking product.** A product issued by transportation services to manage motorized and nonmotorized access to the university. Parking products include, but are not limited to, permits, access to bicycle lockers and other bicycle parking facilities, and parking access cards.

(14) **Parking space.** A space for parking one motor vehicle designated by lines painted on either side of the space, a wheel stop positioned in the front of the space, a sign or signs, or other markings.

(15) **Permit.** A document approved by and/or issued by transportation services that when properly displayed authorizes a person to park.

(16) **Permit-issuance machine.** A transportation services deployed and managed machine that issues physical or virtual permits for designated spaces. A permit-issuance machine is not a meter.

(17) **Registered owner.** The person who has the lawful right of possession of a vehicle most recently recorded with any state department of licensing.

(18) **Roller skate/in-line skate.** A device used to attach wheels to the foot or feet of a person.

(19) **Skateboard.** Any oblong board of whatever composition, with a pair of wheels at each end, which may be ridden by a person.

(20) **Traffic.** The movement of motorized vehicles, non-motorized vehicles and pedestrians in an area or along a street as is defined in chapter 46.04 RCW.

(21) **Transportation services.** The university department that manages and maintains parking facilities, issues parking products, issues citations, processes citation appeals, and collects fees and fines.

(22) **University.** The University of Washington, Seattle, and collectively those responsible for its control and operation.

(23) **UWPD.** University of Washington police department.

(24) **Vehicle.** Any motorized or nonmotorized vehicle.

(25) **Visitor.** A person who is neither an employee nor a student of the university.

(26) **Virtual permit.** A permit stored within a permit-issuance machine that authorizes a person to park in a designated space. Virtual permits are valid for a space through the date or time stored in the machine.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-030 Applicable parking and traffic rules.** The following laws and rules apply upon ~~((state lands devoted mainly to the activities of the University of Washington))~~ campus:

(1) Vehicle and other traffic laws of the state of Washington, Title 46 RCW.

(2) University ~~((of Washington))~~ parking and traffic rules.

NEW SECTION

**WAC 478-116-035 Enforcement of parking and traffic rules.** The university has full control of parking and traffic management on campus. Authorized agents of transportation services enforce parking rules and may conduct traffic control on campus. UWPD officers are authorized to enforce traffic and parking rules on campus. The university may impose additional traffic and parking restrictions to achieve the specified objectives of this chapter during special events and during emergencies.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-061 Liability of the university.** Except for vehicles that the university owns and operates, the university assumes no liability under any circumstance for vehicles ~~((parked on university properties))~~ on the campus. No bailment, but only a license, is created by the purchase and/or issuance of a permit.

## PART II PARKING ~~((SERVICES))~~ RULES

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-111 ~~((Valid))~~ Permit required for all motorized vehicles parked on campus.** Except as provided in WAC 478-116-112 and 478-116-155, no person shall park or leave any motorized vehicle, whether attended or unattended, upon the campus unless the person first purchases a valid permit from transportation services or a transportation services permit-issuance machine. Permission to park on campus will be shown by display of a valid permit in accordance with WAC 478-116-122.

(1) A valid permit is ~~((one of the following))~~:

~~((1) An unexpired and unrecalled vehicle permit with an area designator that is properly registered and displayed on a vehicle in accordance with WAC 478-116-223.~~

~~((2)) (a) A current, physical vehicle permit issued by an authorized agent or permit-issuance machine designated by transportation services and displayed in accordance with WAC 478-116-122;~~

~~((b) A temporary physical permit ~~((authorized))~~ issued by ~~((parking services and displayed in accordance with instructions on the permit.~~~~

~~((3) A parking permit issued by a gate attendant which is displayed face up on the vehicle dashboard and is fully visible from the exterior of the motor vehicle)) an authorized agent or permit-issuance machine designated by transportation services. Temporary permits are valid through the date or time of the permit; or~~

~~((c) A virtual permit that is stored within a permit-issuance machine for designated spaces. Virtual permits are valid for a specific space through the date or time stored in the machine and, if applicable, listed on the customer receipt.~~

(2) Parking permits are not transferable, except as provided in WAC 478-116-114.

(3) Transportation services reserves the right to refuse to issue parking permits.

(4) The university may allow persons without permits to drive through the campus without parking.

### NEW SECTION

**WAC 478-116-112 Visitor parking for motorized vehicles.** (1) No permit or payment shall be required for public safety and emergency vehicles while performing emergency services.

(2) Permits and payment of fees are required for all visitors parking on campus, unless exempted by transportation services' policy or state and local law.

(3) University departments may pay for all or part of the permit fee for their official visitors and guests.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-114 ~~((Transferable))~~ Transfer of permits limited.** (1) Permits ~~((holders))~~ may ~~((transfer one valid permit))~~ be transferred between motor vehicles~~((Improper transfer of a permit shall include, but not be limited by, the wrongful sale, lending, or bad faith transfer of a parking permit))~~ registered with transportation services for that individual permit, but may not be transferred to a third party to be used in an unregistered vehicle. The transfer of a permit by any unauthorized means including, but not limited to, resale or lending is prohibited.

(2) Permits ~~((displaying license plate numbers shall only be valid in the vehicles whose license number matches the number written on the permit))~~ are not transferrable between parking areas, unless authorized by transportation services.

### NEW SECTION

**WAC 478-116-118 Responsibility of person to whom the permit is issued.** (1) The person(s) to whom a permit is issued is responsible for paying for the permit until the permit expires or is returned to transportation services, unless stated otherwise in these rules. All associated outstanding fees must be satisfactorily settled before a parking permit may be issued, reissued, or renewed.

(2) Permit holders shall provide transportation services with the license plate numbers of any vehicles they intend to use with a permit.

(3) The person(s) to whom a permit is issued is responsible for any violations of this chapter associated with a vehicle to which the permit is affixed and/or registered pursuant to WAC 478-116-341 up to the date and time the permit expires or is reported lost or stolen.

### NEW SECTION

**WAC 478-116-122 Display of permits.** (1) Permits shall be prominently displayed and be fully visible from the exterior of the vehicle or recorded in a permit-issuance machine as required by transportation services.

(2) Instructions on how to properly display permits will be provided by transportation services at the time of sale and on the transportation services' web site.

### NEW SECTION

**WAC 478-116-124 Parking fees.** Fees for parking and the effective date thereof shall be submitted to the board of regents for approval by motion. Prior to approval by the board of regents, the university shall, after notice, hold a hearing on the proposed schedule. The hearing shall be open to the public, and shall be presided over by a presiding officer who shall prepare a memorandum for consideration by the

university, summarizing the contents of the presentations made at the hearing. Approved fee schedules shall be available in the lobby of the university transportation center and on the University of Washington web site.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-131 ((~~Parking for~~) Special events ((and other university functions)) parking and lot closures. ((~~(1) Parking for attendees to events that may displace regular parking customers or that may require added parking services staffing shall be accommodated only if parking services can find suitable alternatives for regular parking customers. Parking fees will be charged as follows:~~**

(a) ~~Parking for attendees at freshman convocation will be complimentary. Parking services will charge the cost of staff and services used expressly for the event to the sponsoring department;~~

(b) ~~An event rate will be charged to attendees of events that require staffing to collect fees; and~~

(c) ~~The cost of prepurchased parking and alternative transportation for Husky football games shall be negotiated with the department of intercollegiate athletics.~~

(2) ~~Parking services may rent available parking facilities to sponsors of events or to university departments that require parking areas to conduct their business who shall pay in advance and be charged at a per space fee for the particular rented facility.~~

(3) ~~Parking services may extend its hours of operations to encompass the hours of an event. The following conditions shall require a parking fee for events scheduled outside the normal hours of operation:~~

(a) ~~Any activity which in the judgment of parking services is expected to attract over five hundred vehicles to campus; or~~

(b) ~~Any event requiring a city of Seattle special event permit.~~

(4) ~~University departments which sponsor functions such as athletic events, conferences, seminars and dinners may arrange parking for their guests on a space available basis. Departments have the option of paying for guest parking; otherwise, their guests will be responsible for the parking fee. Departments may also collect parking fees to facilitate prepaid parking with the prior approval of parking services.~~

(5) ~~Parking services may displace permit holders from their regularly assigned areas during special events. Permit holders shall be provided an alternate area assignment during special events at no extra charge.)~~ (1) During special events causing additional or heavy traffic, the university may impose additional traffic and parking restrictions per WAC 478-116-035.

(2) The university reserves the right to close any campus parking area it deems necessary for maintenance, safety, events, construction or to meet special needs. Transportation services will, to the extent practical, provide notice to users and suitable alternatives for affected permit holders.

NEW SECTION

**WAC 478-116-135 Parking within designated spaces.**

(1) No motor vehicle shall be parked on the campus except in areas designated as parking areas, unless authorized by transportation services, or in emergency situations, by UWPD.

(2) No person shall stop, stand, or park any motor vehicle so as to create a safety hazard, obstruct traffic along or upon any street, or obstruct pedestrian movement along any plaza, path, or sidewalk.

(3) No motor vehicle shall be parked so as to occupy any portion of more than one parking space as designated within the parking area, unless authorized by transportation services. The fact that other motor vehicles may have been so parked as to require the vehicle to occupy a portion of more than one space or stall shall not excuse a violation of this section.

NEW SECTION

**WAC 478-116-155 Parking regulated by meter or permit-issuance machine.**

(1) Notwithstanding display of a valid permit to park in other parking areas/lots on campus, any motor vehicle which occupies a metered space is subject to payment of the meter fee and subject to the posted time limits. Motor vehicles displaying a disability permit or license plate issued by the state department of licensing shall not be subject to payment of fees when parked in a space which is restricted as to the length of time parking is permitted.

(2) Notwithstanding the display of a valid permit to park in other parking area/lots on campus, any motor vehicle which occupies a space requiring a space-specific permit administered by a permit-issuance machine is subject to payment of a permit fee and the posted time limits. Vehicles displaying a disability permit or license plate issued by the state department of licensing shall not be subject to payment of fees when parked in a space which is restricted as to the length of time parking is permitted.

NEW SECTION

**WAC 478-116-175 Overtime parking violations.**

After a motor vehicle has been cited for parking beyond the time posted, the vehicle may be cited a frequency of one additional citation for each period of time equal to the maximum time limit posted for the space.

NEW SECTION

**WAC 478-116-185 Operator's responsibility.** No person driving or in charge of a motor vehicle shall permit it to stand unattended without first:

(1) Stopping the engine and locking the ignition; and

(2) Effectively setting the brake and transmission to prevent movement of the vehicle.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-191 Regulatory signs, ((~~barricades, and~~)) markings, barricades, etc.** (1) ((~~Signs, barricades,~~

~~markings and directions shall be so made and placed to best meet the objectives stated in WAC 478-116-020 of these rules.))~~ The university may erect permanent or temporary signs, barricades, paint marks, and other structures or directions upon the streets, curbs, and parking areas within the campus. Drivers of motorized and nonmotorized vehicles shall obey the signs, barricades, structures, markings, and directions. Drivers of motorized and nonmotorized vehicles shall comply with directions given to them by authorized agents of transportation services and UWPD in the control and regulation of traffic, in the assignment of parking spaces, and in the collection of parking fees.

(2) No ~~((unauthorized person))~~ one without authorization from transportation services or UWPD shall ((remove,)) move, deface, or in any way change a sign, barricade, structure, marking, or direction ((so placed, or previously placed, for the purpose of regulating)) that regulates traffic or parking. ~~((Authority to make temporary changes of this nature with respect to streets or roadways must be obtained from the university police department.))~~

#### NEW SECTION

**WAC 478-116-193 Prohibited parking area(s).** (1) No motor vehicle shall be parked at any place where official signs prohibit parking such as, but not limited to, "tow zone," "fire zone," "prohibited," or "no parking."

(2) No motor vehicle shall be parked within fifteen feet of a fire hydrant.

#### NEW SECTION

**WAC 478-116-195 Prohibited parking—Space designated as disability or wheelchair.** No motor vehicle shall be parked in a disability or wheelchair space or lot without an appropriate permit.

#### NEW SECTION

**WAC 478-116-197 Motorcycle, moped, scooter, and motorized bicycle parking.** (1) Motorcycles, scooters, mopeds, and motorized bicycles powered or assisted by combustible engines are considered motor vehicles and subject to all parking rules. These vehicles shall not be permitted to park on pathways, sidewalks, authorized bicycle racks or storage facilities, pedestrian areas, or in buildings.

(2) Motorcycles, scooters, mopeds, and motorized bicycles powered or assisted by combustible engines may only be parked in designated cycle areas and require a permit.

#### NEW SECTION

**WAC 478-116-199 Bicycle parking.** (1) Bicycles and bicycles assisted by electric motors shall be parked only in bicycle racks or designated bicycle parking facilities. All bicycle owners are encouraged to secure their bicycles with a secure lock. At no time shall a bicycle be parked:

(a) In a building, except where bicycle storage rooms are provided;

(b) Near a building exit;

(c) On a path or sidewalk unless attached to a university bike rack;

(d) In planted areas; or

(e) Chained or otherwise secured to trees, lamp standards, railings, garbage receptacles, fencing, or sign posts.

(2) Bicycle racks in campus areas are for parking and shall not be used for overnight storage, except for those racks adjacent to residence halls which may be used for storage when the owner/operator is a current resident of that hall. Bicycle lockers in campus are to be used for bicycle parking and may be used for overnight storage of a bicycle.

### **PART III**

#### **((PARKING VIOLATIONS)) USE OF MOTORIZED AND NONMOTORIZED VEHICLES**

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-221 ((Parking)) Use of motorcycles ((and)), mopeds, scooters, and motorized bicycles.** ~~(1) Motorcycles, scooters, mopeds, and motorized bicycles ((and scooters must only be parked in designated cycle areas. Motorcycles, motorized bicycles, and scooters are))~~ powered or assisted by combustible engines or engaged electric motors are considered motor vehicles and subject to all traffic rules. These vehicles shall not be permitted ((to drive or park)) on paths, ((on)) sidewalks, ((on planted areas, in buildings, or in)) authorized bicycle or pedestrian areas, or in buildings.

(2) Bicycles assisted by electric motors are permitted on campus paths and sidewalks where bicycles are permitted to travel if the motor is disengaged and the bicycle is powered solely through human pedaling.

#### NEW SECTION

**WAC 478-116-232 Use of bicycles.** (1) The primary aim of the bicycle control program is safety. All bicycle owners are encouraged to register their bicycles at UWPD.

(2) Bicycles may be ridden any place where vehicles are permitted. They may be ridden on most sidewalks, though pedestrians always have the right of way. It shall be a violation of this section for any bicycle rider to fail to yield to pedestrians, or to ride a bicycle on paths, sidewalks, or streets where signs indicate it is prohibited. An audible signal or warning must be given by the bicyclist whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the bicycle.

(3) Bicycles operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.

(4) Bicycles shall be operated in a safe manner at all times. Riding at speeds too fast for conditions, weaving in and out of vehicular or pedestrian traffic, or similar unsafe actions shall be considered "negligent riding." Negligent riding shall be a violation of this section.

(5) Moving or riding a bicycle into any unauthorized area such as a building or construction zone is prohibited.

NEW SECTION

**WAC 478-116-242 Use of skateboards.** Skateboard use in pedestrian areas including, but not limited to, walkways, ramps, concourses, and plazas (such as "Red Square"), and on internal university streets and loading areas on the campus, is restricted solely to transporting an individual from one campus destination to another. Any recreational, athletic, or other exhibitional use of skateboards unrelated to transportation is strictly prohibited, unless expressly approved in advance by the appropriate committee on the use of university facilities, pursuant to chapter 478-136 WAC. The use of skateboards for any purpose within parking lots or parking garages is strictly prohibited.

**PART IV****((MOTOR VEHICLE CITATION ISSUANCE)) FINES, CITATIONS, IMMOBILIZATION, AND IMPOUNDMENT**

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-301 Issuance of parking and traffic citations ~~((for motor vehicle violations))~~.** (1) ~~((The university police department))~~ Upon probable cause to believe that a violation of this chapter related to motorized vehicle parking has occurred, an authorized agent of transportation services may issue a parking citation ~~((for a violation of these rules. The citation shall set))~~ setting forth the date, approximate time, locality, ~~((and))~~ nature of the violation ~~((The citation shall be served upon the person charged with the violation by delivery, mail, or placement upon the vehicle involved)), identifiable characteristics of the vehicle if applicable, and the amount of the fine(s).~~

(2) Upon probable cause to believe that a violation related to parking, traffic, or nonmotorized vehicles has occurred, UWPD may issue a citation setting forth the date, approximate time, locality, nature of violation, identifiable characteristics of the vehicle if applicable, and amount of the fine(s).

(3) The following information shall accompany and/or be printed on the ~~((parking))~~ citation:

- (a) The violation fine and instructions for payment; and
- (b) Instruction for contesting the citation, including where to obtain and submit petitions ~~((and~~
- ~~((c) Notice that))~~.

(4) The citation shall be served on the person responsible for the violation by:

(a) Attaching a copy of the citation to the vehicle allegedly involved in the violation;

(b) Mailing a copy of the citation to the registered owner;  
or

(c) Serving a copy of the citation personally to the person responsible.

(5) Failure to pay fines or contest the citation within the time specified in these rules can result in ~~((the sanctions))~~ a late payment fee as set forth in WAC ~~((478-116-561))~~ 478-116-335.

NEW SECTION

**WAC 478-116-305 Immobilization or impoundment of motor vehicles.** Any motor vehicle may be subject to immobilization or impoundment for cause as specified under WAC 478-116-351. The university and its officers, employees, and agents shall not be liable for loss or damage of any kind resulting from such immobilization or impoundment. The permit holder and/or registered owner of a vehicle that has been immobilized shall be fully liable for any loss or damage to immobilization equipment.

NEW SECTION

**WAC 478-116-315 Parking product revocations.** Parking products issued by the university are the property of the university, and may be recalled or revoked by the university for any of the following reasons:

- (1) When the purposes for which the parking product was issued changes or no longer exists;
- (2) When an unauthorized individual uses the parking product;
- (3) Falsification on a parking product application;
- (4) Nonpayment of fees and/or fines;
- (5) Receiving over eight citations within a calendar year;
- (6) Counterfeiting or altering of parking products; or
- (7) Failure to comply with a final adjudicated decision of transportation services.

NEW SECTION

**WAC 478-116-321 Use of recalled, revoked, lost, stolen, or forged/altered permits prohibited.** (1) Vehicles displaying parking products that have been recalled, revoked, forged, altered, or reported lost or stolen will be subject to a citation and immobilization or impoundment on sight. Parking products that have been revoked, recalled, or reported lost or stolen must be returned to transportation services or an authorized agent of transportation services before the vehicle will be released.

(2) Purchasing a parking product from a party other than transportation services or a lawful designee, shall not constitute an excuse or defense for violating this section.

(3) Parties using parking products that have been recalled, revoked, forged, altered, or reported lost or stolen shall be subject to a serious violation per WAC 478-116-325 and, in addition, will be responsible for paying the cost of an equivalent permit fee from the date the permit was revoked, recalled, or reported lost or stolen to the date the permit expired or was returned to transportation services.

(4) Any unpaid fines for a violation of the rules in chapter 478-116 WAC will be deducted from any refunds resulting from the revocation of parking products.

NEW SECTION

**WAC 478-116-325 Motor vehicle fine schedule.** The following schedule of fines for violations of the rules listed below is hereby established.

Offense Category	Maximum Citation Fine	Fine if Citation is Paid Within 20 Calendar Days	Applicable Violations
Minor	\$20.00	\$15.00	<ul style="list-style-type: none"> <li>Permit not registered to vehicle, see WAC 478-116-114;</li> <li>Parking outside of area assigned by permit, see WAC 478-116-114;</li> <li>Improper display of permit, see WAC 478-116-122.</li> </ul>
General	\$40.00	\$35.00	<ul style="list-style-type: none"> <li>No valid permit displayed, no valid permit for space or parking without making payment, see WAC 478-116-111, 478-116-112, and 478-116-155;</li> <li>Occupying more than one space, see WAC 478-116-135;</li> <li>Parking at expired meter, see WAC 478-116-155;</li> <li>Overtime parking, see WAC 478-116-175;</li> <li>All other violations of this chapter.</li> </ul>
Major	\$60.00	\$50.00	<ul style="list-style-type: none"> <li>Obstructing traffic or pedestrian movements, see WAC 478-116-135;</li> <li>Parking in restricted, prohibited, or nonparking areas, see WAC 478-116-135, 478-116-191, and 478-116-193.</li> </ul>
Serious	\$300.00	\$250.00	<ul style="list-style-type: none"> <li>Disability/wheelchair space violations, see WAC 478-116-195;</li> <li>Use of revoked, stolen, forged, or altered parking products, see WAC 478-116-315.</li> </ul>
Late Payment Fee	Maximum Citation Fine + \$25.00	N/A	Penalty for failure to pay fine, respond, or comply with final decision of the citation hearing office within time limits, see WAC 478-116-301.

**NEW SECTION**

**WAC 478-116-331 Nonmotorized vehicle fine schedule.** The following schedule of fines for violations of the rules listed below is hereby established.

Offense Category	Maximum Citation Fine	Applicable Violations
General	\$10.00	Failure to yield to pedestrians, riding in restricted/prohibited areas, violation of state bicycle codes, see WAC 478-116-232.
Major	\$25.00	Negligent riding, see WAC 478-116-232.
Impoundment Fee	\$10.00	Bicycle impoundment, skateboard impoundment, see WAC 478-116-365 and 478-116-371.
Skateboard Violations	\$10.00 - \$30.00	Fines based on number of violations within a set time period, see WAC 478-116-371.
Late Payment Fee	Maximum Citation Fine + \$25.00	Penalty for failure to pay fine, respond, or comply with the final decision of the citation hearing office within time limits, see WAC 478-116-301.

**NEW SECTION**

**WAC 478-116-335 Payment of citation fines.** (1) All fines must be paid as designated on the citation within twenty calendar days from the date of the citation. If a parking citation is paid within twenty calendar days, the citation fine shall be discounted according to the amounts listed in WAC 478-116-325.

(2) Fines for parking citations must be delivered in person to the transportation services' office, paid on-line, or mailed and postmarked on or before the due date specified in these rules to avoid additional penalties.

(3) Fines for traffic citations associated with violations of this chapter must be delivered in person to the UWPD office, or mailed and postmarked on or before the due date specified in these rules to avoid additional penalties.

(4) If any citation has neither been paid nor appealed after twenty calendar days from the date of the citation, the university shall impose an additional fine as specified in WAC 478-116-325 or 478-116-331 and may:

- (a) Withhold the violator's degrees, transcripts, grades, refunds, or credits until all fines are paid;
- (b) Delay registration for the following quarter;
- (c) Impound or immobilize the violator's vehicle after providing notice of nonpayment to the permit holder and/or registered owner;
- (d) Deny future parking privileges to the violator; or
- (e) Refer outstanding balances associated with unpaid fines for collection in accordance with applicable statutes and university procedure.

(5) An accumulation of traffic and parking violations by a student may be cause for discipline under the student conduct code of the university (see chapter 478-120 WAC).

(6) In addition to any other penalty which may be imposed as a result of actions described in this chapter, campus parking privileges shall be suspended until all such debts are paid.

#### NEW SECTION

**WAC 478-116-341 Motorized vehicles—Responsible parties for illegal parking.** (1) For any motor vehicle citation involving a violation of this chapter where the motor vehicle is registered to a permit holder, there shall be a prima facie presumption that the permit holder was the person who operated the motor vehicle in violation of these rules. Such responsibility does not afford a defense to another person who violated these rules.

(2) For any motor vehicle citation involving a violation of this chapter where the motor vehicle is not registered to a permit holder, there shall be a prima facie presumption that the registered owner of the motor vehicle was the person who operated the motor vehicle in violation of these rules. Such responsibility does not afford a defense to another person who violated these rules.

(3) This section shall not apply to university operated motor vehicles. The operator of a university motor vehicle is personally liable for any citation issued to the motor vehicle.

(4) A third party other than the permit holder or registered owner can assume responsibility for a citation by either paying the citation within twenty calendar days of the date of the citation or submitting a petition where the third party agrees to take responsibility.

#### NEW SECTION

**WAC 478-116-351 Motorized vehicles—Immobilization and impoundment.** (1) In addition to issuing citations for violations of these rules, authorized agents of transportation services and UWPDP may immobilize or impound any motorized vehicle parked on campus in violation of these rules. The expenses of immobilization, impoundment, and storage shall be charged to the owner or operator of the motor vehicle, or both, and must be paid before the motor vehicle's release. Grounds for immobilizing or impounding motor vehicles shall include, but not be limited to, the following:

- (a) Blocking a roadway so as to impede the flow of traffic;
- (b) Blocking a walkway, trail, sidewalk, or crosswalk so as to impede the flow of pedestrian traffic;
- (c) Blocking a fire hydrant or fire lane;
- (d) Creating a public safety hazard;
- (e) Blocking another legally parked vehicle;
- (f) Parking in a marked "tow-away" zone;
- (g) Failing to pay a fine imposed under this chapter following notice of nonpayment to the registered permit holder and/or registered owner of the motor vehicle;
- (h) UWPDP has probable cause to believe the motor vehicle is stolen;
- (i) UWPDP has probable cause to believe the motor vehicle contains or constitutes evidence of a crime and impoundment is necessary to obtain or preserve such evidence; or
- (j) When a driver is arrested and/or deprived of the right to leave with the driver's motor vehicle and UWPDP is responsible for safekeeping of the vehicle.

(2) Not more than one business day after immobilization or impoundment of any motor vehicle, the university shall mail a notice of immobilization or impoundment to the permit holder and/or registered owner of the motor vehicle and to any other person who claims the right to possession of the motor vehicle, if those persons can be identified. Similar notice shall be given to each person who seeks to redeem an immobilized or impounded motor vehicle. If a motor vehicle is redeemed prior to the mailing of the notice, the notice may not be mailed. The notice shall contain the date of immobilization or impoundment, reason for the action, the location of the motor vehicle if impounded, redemption procedures, and an opportunity to contest the immobilization or impoundment as provided in WAC 478-116-415.

(3) A sticker will be attached to a motor vehicle that is immobilized which shall include, but is not limited to, the following information:

- (a) Date and time of immobilization;
- (b) Reason for immobilization;
- (c) Instruction for motor vehicle release; and
- (d) Notification that the motor vehicle will be towed within seventy-two hours of the date/time indicated on the sticker if the motor vehicle remains immobilized.

Motor vehicles that remain immobilized seventy-two hours after the immobilization device was placed on the motor vehicle will be impounded. Impoundment of these motor vehicles will follow the procedures outlined in WAC 478-116-361.

(4) Impounding or immobilizing a motor vehicle does not remove the obligation for any fines associated with the violation or other outstanding citations. All fines, fees, and the cost of the immobilization and impoundment (e.g., booting, towing, storage fees) must be paid prior to the removal of an immobilization device or the release of an impounded motor vehicle.

(5) Impounded motor vehicles shall only be redeemed by the registered owner who has a valid driver's license or a person authorized by the registered owner who has a valid driver's license and who produces proof of authorization and signs a receipt for the motor vehicle.



(6) Any person seeking to redeem a motor vehicle impounded or immobilized under this chapter has the right to contest the validity of the impoundment or immobilization, the amount of applicable booting, towing, and storage fees and shall have the motor vehicle released upon requesting a review provided in WAC 478-116-415, and paying any outstanding fines, towing, and storage charges.

#### NEW SECTION

**WAC 478-116-361 Motorized vehicles—Impoundment of abandoned motor vehicles.** Authorized agents of transportation services discovering an apparently abandoned motor vehicle shall attach to the motor vehicle a readily visible notification sticker warning of impoundment if the motor vehicle is not removed within seventy-two hours from the time the sticker is attached. The sticker shall contain the following information:

- (1) The date and time sticker was attached;
- (2) A statement that if the motor vehicle is not removed within seventy-two hours from the time the sticker is attached, the motor vehicle will be impounded; and
- (3) The address and telephone number where additional information may be obtained.

If, the motor vehicle is not removed within seventy-two hours, the motor vehicle shall be impounded as described in WAC 478-116-351.

#### NEW SECTION

**WAC 478-116-365 Nonmotorized vehicles—Impoundment of bicycles.** (1) Bicycles parked in violation of WAC 478-116-199 will be subject to seizure and impoundment by the university.

(2) Except as provided by WAC 478-116-199(2), a bicycle abandoned or parked on campus, other than at residential halls, for fourteen consecutive days or longer is presumed abandoned and is subject to seizure and impoundment by the university. Bicycles remaining at resident halls once the school year ends will be presumed abandoned and are subject to seizure and impoundment by the university. A bicycle will not be considered abandoned when the owner/operator is unable to remove it and so notifies UWPD. A bicycle that has been obviously stripped or vandalized may be immediately impounded.

(3) Owners of impounded bicycles, if identifiable, will be notified as soon as reasonably possible after impoundment and must reclaim their bicycle within fifteen consecutive days. All fines, fees, and the impoundment fee must be paid prior to the release of the bicycle. Bicycles unclaimed after sixty consecutive days will be subject to sale through the university surplus property department.

(4) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impoundment, storage, or sale of any item under this section.

(5) Impoundment or sale of any bicycle under this section shall neither substitute for, or release, any person from liability for damage to persons or property caused by the use of a bicycle, nor does it remove the obligation for any fines associated with the violation or other outstanding citations.

Any proceeds resulting from the sale of a bicycle though the university surplus department will be credited toward the outstanding fee associated with the impoundment of that bicycle.

(6) Any person seeking to redeem a bicycle impounded under this chapter has the right to contest the validity of the impoundment and the amount of applicable fees and shall have the bicycle released upon establishing ownership, requesting a review provided in WAC 478-116-415, and paying any outstanding fines or storage charges.

#### NEW SECTION

**WAC 478-116-371 Nonmotorized vehicles—Skateboard violations.** (1) Skateboard use in violation of WAC 478-116-242 shall result in the following:

(a) For the first offense, UWPD will record the name of the individual and provide a written warning against further skateboard use in violation of WAC 478-116-242. Individuals who cannot produce satisfactory identification will be given a receipt for their skateboard, which will be impounded at the UWPD station until they are able to return with the receipt and identification. There will be no impoundment fee.

(b) For a second offense, within twenty-four months of any previous offense or warning, the skateboard will be impounded for not less than forty-eight hours and the offender shall be subject to a fine of ten dollars plus applicable impoundment fee.

(c) For a third or subsequent offense, within twenty-four months of any previous two offenses, warnings, or combination thereof, the skateboard will be impounded for not less than thirty calendar days and the offender shall be subject to a fine of thirty dollars plus the applicable impoundment fee.

(d) Impounded skateboards will be held by UWPD and released only during regular business hours to individuals with satisfactory identification. Payment of a ten-dollar storage fee will also be required for release, except as provided in (a) of this subsection.

(2) Skateboards impounded under this section which are unclaimed sixty consecutive days after the applicable minimum impoundment time period has elapsed will be presumed abandoned and be subject to sale at a public auction conducted by the university surplus property department.

(3) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impounding, storage, or sale of any item under this section.

(4) Impoundment or sale of any skateboard under this section shall neither substitute for, nor release any person from liability for damage to persons or property caused by use of a skateboard at the university, nor does it remove the obligation for any fines associated with the violation or other outstanding citations. Any proceeds resulting from the sale of a skateboard though the university surplus department will be credited toward the outstanding fee associated with the impoundment of that skateboard.

(5) Any person seeking to redeem a skateboard impounded under this chapter has the right to contest the validity of the impoundment, the amount of applicable fees, and shall have the skateboard released upon requesting a

review provided in WAC 478-116-415, and paying any outstanding fines or impoundment fees.

**PART V**  
**~~((IMPOUNDED MOTOR VEHICLES)) CITATION,~~**  
**IMMOBILIZATION, AND IMPOUNDMENT**  
**APPEALS**

NEW SECTION

**WAC 478-116-405 Election to pay fine or contest citations.** (1) **Election to pay fine.** A person who receives a citation, shall, within twenty calendar days from the date of the citation either pay the applicable fine or contest the issuance of the citation in the manner prescribed in subsection (2) of this section. If paid within twenty calendar days of citation issuance, motorized parking citation fines shall be discounted per WAC 478-116-325. Once the applicable fine is paid, the citation can no longer be appealed. Failure to either pay the fine or timely appeal the citation shall automatically result in the citation being final, the full amount of the fine shall stand, and an additional late payment fee per offense shall be imposed for each citation which is not responded to within the time limits set forth in this section.

(2) **Election to contest a citation.** A person wishing to contest a citation (hereinafter "petitioner") may do so by completing and submitting a citation petition (hereinafter "petition") to the citation hearing office within twenty calendar days of the date of the citation. Petitions for motorized and nonmotorized parking citations must be delivered to transportation services within the allotted time limit. Petitions for traffic and all other nonmotorized citations must be delivered to UWPD within the allotted time limit.

Petition forms are available at transportation services and UWPD or on the transportation services and UWPD web sites. The petitioner must complete each section of the petition form and provide a brief statement regarding circumstances associated with the citation. A citation hearing officer shall review the petition and provide written notification of his or her initial decision with information about the opportunity for further review within ten calendar days of taking action on the initial decision. The amount of any reduction to the fine assessed in the initial decision is at the discretion of the citation hearing officer. Any fines owed on an initial decision not contested as provided in subsection (3) of this section shall be paid within twenty-one calendar days after service of the initial decision. If payment is not received within twenty-one calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(3) **Review of initial decision.** If a petitioner chooses to contest the initial decision issued by the citation hearing officer, the petitioner shall forfeit any reduction in the assessed fines offered in the initial decision. The petitioner must contact the department processing the petition (transportation services or UWPD) orally or in writing within twenty-one calendar days after service of the decision. The request for review shall contain an explanation of the petitioner's position and a statement of reasons why the initial decision on the

petition was incorrect. The reviewing officer shall, within twenty calendar days of the date of the request to review the initial decision, render a final written decision which shall include a brief statement of the reasons for the decision, offer of settlement if applicable, and provide information about the opportunity to appeal the decision to district court. The amount of fine or settlement assessed in the final decision is at the discretion of the citation hearing officer. Any final decision of the reviewing officer not appealed as provided in subsection (4) or (5) of this section shall be paid within ten calendar days after service of the decision. If payment is not received within ten calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(4) **Discretionary review of initial decision.** If the petitioner has not requested a review of the initial decision, the citation hearing officer may, within twenty calendar days after service of the initial decision, conduct a review and issue a final decision on its own motion and without notice to the parties, but it may not take any action on review less favorable to the petitioner than the initial decision without giving the petitioner notice and opportunity to explain his or her view of the matter.

(5) **Appeal to district court.** The application for appeal to district court shall be in writing and must be filed with the department processing the petition (transportation services or UWPD) within ten calendar days of service of the final decision. The written notice must be submitted on the "Notice of Appeal" form provided by transportation services or UWPD. The Notice of Appeal form will be available at transportation services or UWPD during regular hours of operation. The department processing the citation will forward the documents relating to the appeal to district court. No appeal to the district court may be taken unless the citation has been contested as provided in subsections (2) and (3) of this section, in addition to this subsection. If a petitioner chooses to contest the decision issued by the citation hearing officer via appeal to the district court, the petitioner shall forfeit any reduction in the assessed fines offered in the hearing officer's decision.

(6) **Providing an oral statement.** A petitioner who requests a review of the initial decision under subsection (3) of this section may request the opportunity to provide an oral statement before the citation hearing officer. A request to make an oral statement must be included in the request for review of the initial decision and must be submitted within ten calendar days of the initial decision. If the request for an oral statement is made, the citation hearing officer shall provide reasonable notice of the time and place for receiving the oral statement, which must occur no later than twenty calendar days after the request for review was submitted. If an oral statement cannot be scheduled within this time frame, the citation hearing officer will review the request as outlined in subsection (3) of this section.

NEW SECTION

**WAC 478-116-415 Election to contest immobilization or impoundment.** (1) **Submission of petition.** A person wishing to contest immobilization or impoundment of his

or her motor vehicle or bicycle (hereinafter "petitioner") may do so by completing and submitting an immobilization or impoundment petition (hereinafter "petition") to transportation services within twenty calendar days of the date of the immobilization or impoundment. A person wishing to contest impoundment of his or her skateboard (hereinafter "petitioner") may do so by completing and submitting a petition to UWPD within twenty calendar days of the date of impoundment.

The petitioner must complete each section of the petition form and provide a brief statement regarding circumstances associated with immobilization or impoundment. The citation hearing officer shall review the petition and provide written notification of his or her decision with information about further review within ten calendar days of taking action on the petition. The amount of fine or fees assessed in the initial decision is at the discretion of the citation hearing officer. Any fines or fees owed on an initial decision not contested as provided in subsection (2) of this section shall be paid within twenty-one calendar days after service of the initial decision. If payment is not received within twenty-one calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine and fees shall stand, an additional late fee shall be imposed, and the immobilization or impoundment shall be deemed final.

(2) **Review of initial decision.** If a petitioner chooses to contest the initial decision issued by the citation hearing officer, the petitioner shall forfeit any reduction to the assessed fines offered in the initial decision. The petitioner must contact the department processing the petition (transportation services or UWPD) orally or in writing within twenty-one calendar days after service of the decision. The request for review shall contain an explanation of the petitioner's position and a statement of reasons why the initial decision on the petition was incorrect. The reviewing officer shall, within twenty calendar days of the date of the request to review the initial decision, render a final written decision which shall include a brief statement of the reasons for the decision, offer of settlement if applicable, and provide information about the opportunity to appeal the decision to district court. The amount of fine or settlement assessed in the final decision is at the discretion of the citation hearing officer. Any final decision of the reviewing officer not appealed as provided in subsection (3) or (4) of this section shall be paid within ten calendar days after service of the decision. If payment is not received within ten calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine or fee shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(3) **Discretionary review of initial decision.** If the petitioner has not requested a review of the initial decision, the citation hearing officer may, within twenty days after service of the initial decision, conduct a review and issue a final decision on its own motion and without notice to the parties, but it may not take any action on review less favorable to the petitioner than the initial decision without giving the petitioner notice and opportunity to explain his or her view of the matter.

(4) **Appeal to district court.** The application for appeal to district court shall be in writing and must be filed with the

department processing the petition (transportation services or UWPD) within ten calendar days of service of the final decision. The written notice must be submitted on the "Notice of Appeal" form provided by transportation services or UWPD. The Notice of Appeal form will be available at transportation services or UWPD during regular hours of operation. The department processing the petition will forward the documents relating to the appeal to district court. No appeal to the district court may be taken unless the immobilization or impoundment has been contested as provided in subsections (2) and (3) of this section, in addition to this subsection.

(5) **Providing an oral statement.** A petitioner who requests a review of the initial decision under subsection (2) of this section may request the opportunity to provide an oral statement before the citation hearing officer. A request to make an oral statement must be included in the request for review of the initial decision and must be submitted within ten calendar days of the initial decision. If the request for an oral statement is made, the citation hearing officer shall provide reasonable notice of the time and place for receiving the oral statement, which must occur no later than twenty calendar days after the request for review was submitted. If an oral statement cannot be scheduled within this time frame, the citation hearing officer will review the request as outlined in subsection (2) of this section. If a petitioner chooses to contest the decision issued by the citation hearing officer via appeal to the district court, the petitioner shall forfeit any reduction in the assessed fines offered in the hearing officer's decision.

#### NEW SECTION

**WAC 478-116-425 Presiding and reviewing citation hearing officer.** The presiding and reviewing citation hearing officers shall be appointed in accordance with WAC 478-108-030 and shall have authority to hear and decide matters involving violation of these rules including, but not limited to, the ability to issue warnings, dismiss citations, and reduce, suspend, or impose the fines set forth in this chapter.

~~((PART VI  
APPEALS AND PAYMENT OF MOTOR VEHICLE  
FINES))~~

~~((PART VII  
BICYCLES AND NONMOTORIZED VEHICLES))~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-116-044	Authorized use of streets and parking facilities.
WAC 478-116-051	Definitions.
WAC 478-116-101	Numbering of parking areas, parking allocation and issuance of permits.

WAC 478-116-116	Alternate and replacement permits.	WAC 478-116-271	Parking within a designated parking space.
WAC 478-116-121	Visitor parking.	WAC 478-116-281	Parking—Safekeeping of unattended motor vehicles.
WAC 478-116-125	Other types of permits.	WAC 478-116-291	Impoundment of motor vehicles.
WAC 478-116-141	Annual and quarterly permit periods.	WAC 478-116-311	Motor vehicle fines and penalties.
WAC 478-116-145	Night and swing permits.	WAC 478-116-401	Impoundment for failure to pay fines.
WAC 478-116-147	Carpool permits.	WAC 478-116-411	Impoundment without prior notice.
WAC 478-116-151	Parking of state of Washington-owned university-operated motor vehicles.	WAC 478-116-421	Impoundment of abandoned vehicles.
WAC 478-116-161	Parking fee payment.	WAC 478-116-431	Notice and redemption of impounded vehicles.
WAC 478-116-163	Fee schedule.	WAC 478-116-501	Registered owner responsible for illegal parking.
WAC 478-116-165	Vehicle and driver's licenses required.	WAC 478-116-520	Motor vehicles—Payment of fines and penalties.
WAC 478-116-167	Right to refuse to issue a permit.	WAC 478-116-531	Motor vehicles—Election to pay fine or contest citation.
WAC 478-116-171	Responsibility of person to whom the permit is issued.	WAC 478-116-541	Motor vehicles—Election to contest impoundment.
WAC 478-116-181	Refund conditions for parking permits.	WAC 478-116-551	Motor vehicles—Presiding and reviewing officer.
WAC 478-116-184	Recall of permits.	WAC 478-116-561	Motor vehicles—Enforcement of decisions of citation hearing office.
WAC 478-116-186	Recall of carpool permits.	WAC 478-116-605	Bicycle parking and traffic rules.
WAC 478-116-201	Permits required for motor vehicles parked during hours of operation—Assigned parking areas.	WAC 478-116-611	Nonmotorized vehicles—Citation for violations.
WAC 478-116-211	Metered parking.	WAC 478-116-620	Nonmotorized vehicles—Fines and penalties.
WAC 478-116-223	Display of permits.	WAC 478-116-630	Nonmotorized vehicles—Schedule of fines and penalties.
WAC 478-116-225	Permits and vehicle license plates.	WAC 478-116-640	Nonmotorized vehicles—Election to pay fine or contest citation.
WAC 478-116-227	Permit transfer.	WAC 478-116-650	Nonmotorized vehicles—Presiding and reviewing officer.
WAC 478-116-231	Use of revoked permits prohibited.	WAC 478-116-660	Nonmotorized vehicles—Enforcement of decisions of citation hearing office.
WAC 478-116-241	Overtime parking violations—Repeated.	WAC 478-116-670	Use of skateboards.
WAC 478-116-245	Obstructing traffic and pedestrian movement prohibited.		
WAC 478-116-251	Obeying regulatory signs and instructions.		
WAC 478-116-253	Prohibited parking area(s).		
WAC 478-116-255	Prohibited parking—Space designated as disability or wheelchair.		
WAC 478-116-261	Designated parking areas.		

**WSR 11-05-022**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed February 7, 2011, 8:54 a.m.]

The Washington department of fish and wildlife is withdrawing the CR-102 filed as WSR 10-21-120 on October 20, 2010. The department anticipates filing a new CR-102 in 2012 or whenever the governor's rule-making moratorium is over.

Lori Preuss  
 Rules Coordinator

**WSR 11-05-035**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Podiatric Medical Board)  
 [Filed February 8, 2011, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-103.

Title of Rule and Other Identifying Information: Chapter 246-922 WAC, new sections for management of chronic noncancer pain for podiatrists. The proposed rules also repeal WAC 246-922-510, 246-922-520, 246-922-530, and 246-922-540.

Hearing Location(s): Highline Hospital and Medical Center, 16251 Sylvester Road S.E., Room 3, Cendar [Cedar] 3 and 4, Burien, WA 98166, on April 14, 2011, at 9:00 a.m.

Date of Intended Adoption: April 14, 2011.

Submit Written Comments to: Erin Obenland, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by March 31, 2011.

Assistance for Persons with Disabilities: Contact Erin Obenland by March 31, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 2876 (chapter 209, Laws of 2010) directs the podiatric medical board to repeal existing pain management rules and adopt new rules for the management of chronic noncancer pain. The proposed rules include the mandatory elements for dosing criteria, guidance on specialty consultations, guidance on tracking clinical progress, and guidance on tracking opioid use. In addition to the required elements, the proposed rules also define the criteria to be considered a pain management specialist, describe elements for a patient evaluation and written treatment plan, describe when periodic reviews are required, and provide for practitioner exemptions from the consultation requirement.

Reasons Supporting Proposal: ESHB 2876 requires the five boards and commissions to adopt rules on the management of chronic noncancer pain. These include the medical quality assurance commission, board of osteopathic medicine and surgery, nursing care quality assurance commission, dental quality assurance commission, and the podiatric medical board. The proposed rules will provide practitioners who

treat patients with chronic noncancer pain with guidance and tools to reduce the risks associated with opioid use.

Statutory Authority for Adoption: RCW 18.22.240, 18.22.015.

Statute Being Implemented: RCW 18.22.240.

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

Name of Proponent: Washington state department of health, podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Erin Obenland, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4945.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Erin Obenland [Obenland], P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4945, fax (360) 236-2901, e-mail [erin.obenland@doh.wa.gov](mailto:erin.obenland@doh.wa.gov).

February 8, 2011

Blake T. Maresh

Executive Director

NEW SECTION

**WAC 246-922-660 Pain management—Intent.** These rules govern the use of opioids in the treatment of patients for chronic noncancer pain.

NEW SECTION

**WAC 246-922-661 Exclusions.** The rules adopted under this section do not apply:

- (1) To the provision of palliative, hospice, or other end-of-life care; or
- (2) To the management of acute pain caused by an injury or surgical procedure.

NEW SECTION

**WAC 246-922-662 Definitions.** The definitions in this section apply throughout the section unless the context clearly requires otherwise.

(1) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. It is generally time-limited, often less than three months in duration, and usually less than six months.

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

- (a) Impaired control over drug use;
- (b) Craving;
- (c) Compulsive use; or
- (d) Continued use despite harm.

(3) "Chronic noncancer pain" means a state in which noncancer pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

(4) "Comorbidity" means a preexisting or coexisting physical or psychiatric disease or condition.

(5) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as free-standing hospice facilities, hospitals, nursing homes, or other long-term care facilities.

(6) "Palliative" means care that improves the quality of life of patients and their families facing life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

(7) "Physical dependence" means a physiologic state of adaptation to a specific psychoactive substance characterized by the emergence of a withdrawal syndrome during abstinence that may be relieved in total or in part by readministration of the substance.

(8) "Psychological dependence" means a subjective sense of need for a specific substance, either for its positive effects or to avoid negative effects associated with its abstinence.

(9) "Tolerance" means a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

#### NEW SECTION

**WAC 246-922-663 Patient evaluation.** The podiatric physician shall obtain, evaluate, and document the patient's health history and physical examination in the health record prior to treating for chronic noncancer pain.

(1) The patient's health history shall include:

- (a) Current and past treatments for pain;
- (b) Comorbidities; and
- (c) Any substance abuse.

(2) The patient's health history should include:

(a) A review of any available prescription monitoring program or emergency department-based information exchange; and

(b) Any relevant information from a pharmacist provided to the podiatric physician.

(3) The initial patient evaluation shall include:

- (a) Physical examination;
- (b) The nature and intensity of the pain;
- (c) The effect of the pain on physical and psychological function;

(d) Medications including indication(s), date, type, dosage, and quantity prescribed;

(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:

- (i) History of addiction;
- (ii) Abuse or aberrant behavior regarding opioid use;
- (iii) Psychiatric conditions;
- (iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;
- (v) Poorly controlled depression or anxiety;
- (vi) Evidence or risk of significant adverse events, including falls or fractures;
- (vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;
- (viii) Repeated visits to emergency departments seeking opioids;
- (ix) History of sleep apnea or other respiratory risk factors;
- (x) Possible or current pregnancy; and
- (xi) History of allergies or intolerances.

(4) The initial patient evaluation should include:

(a) Any available diagnostic, therapeutic, and laboratory results; and

(b) Any available consultations.

(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:

(a) The diagnosis, treatment plan, and objectives;

(b) Documentation of the presence of one or more recognized indications for the use of pain medication;

(c) Documentation of any medication prescribed;

(d) Results of periodic reviews;

(e) Any written agreements for treatment between the patient and the podiatric physician; and

(f) The podiatric physician's instructions to the patient.

#### NEW SECTION

**WAC 246-922-664 Treatment plan.** (1) The written treatment plan shall state the objectives that will be used to determine treatment success and shall include, at a minimum:

(a) Any change in pain relief;

(b) Any change in physical and psychosocial function; and

(c) Additional diagnostic evaluations or other planned treatments.

(2) After treatment begins the podiatric physician should adjust drug therapy to the individual health needs of the patient. The podiatric physician shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. The podiatric physician shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.

(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

NEW SECTION

**WAC 246-922-665 Informed consent.** The podiatric physician shall discuss the risks and benefits of treatment options with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without health care decision-making capacity.

NEW SECTION

**WAC 246-922-666 Written agreement for treatment.** Chronic noncancer pain patients should receive all chronic pain management prescriptions from one podiatric physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing podiatric physician shall use a written agreement for treatment with the patient outlining patient responsibilities. This written agreement for treatment shall include:

- (1) The patient's agreement to provide biological samples for urine/serum medical level screening when requested by the podiatric physician;
- (2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;
- (3) Reasons for which drug therapy may be discontinued (e.g., violation of agreement);
- (4) The requirement that all chronic pain management prescriptions are provided by a single prescriber and dispensed by a single pharmacy;
- (5) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;
- (6) A written authorization for:
  - (a) The podiatric physician to release the agreement for treatment to local emergency departments, urgent care facilities, and pharmacies; and
  - (b) Other practitioners to report violations of the agreement back to the podiatric physician;
- (7) A written authorization that the podiatric physician may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;
- (8) Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;
- (9) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and
- (10) Acknowledgment that if the patient violates the terms of the agreement, the violation and the podiatric physician's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

NEW SECTION

**WAC 246-922-667 Periodic review.** The podiatric physician shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving nonescalating daily dos-

ages of 40 milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.

(1) During the periodic review, the podiatric physician shall determine:

- (a) Patient's compliance with any medication treatment plan;
- (b) If pain, function, or quality of life have improved or diminished using objective evidence, considering any available information from family members or other caregivers; and
- (c) If continuation or modification of medications for pain management treatment is necessary based on the podiatric physician's evaluation of progress towards treatment objectives.

(2) The podiatric physician shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The podiatric physician shall consider tapering, changing, or discontinuing treatment when:

- (a) Function or pain does not improve after a trial period;
  - (b) There is evidence of significant adverse effects;
  - (c) Other treatment modalities are indicated; or
  - (d) There is evidence of misuse, addiction, or diversion.
- (3) The podiatric physician should periodically review information from any available prescription monitoring program or emergency department-based information exchange.
- (4) The podiatric physician should periodically review any relevant information from a pharmacist provided to the podiatric physician.

NEW SECTION

**WAC 246-922-668 Long-acting opioids, including methadone.** Long-acting opioids, including methadone, should only be prescribed by a podiatric physician who is familiar with its risks and use, and who is prepared to conduct the necessary careful monitoring. Special attention should be given to patients who are initiating such treatment. The podiatric physician prescribing long-acting opioids or methadone should have a one-time completion of at least four hours of continuing education relating to this topic.

NEW SECTION

**WAC 246-922-669 Episodic care.** (1) When evaluating patients for episodic care, such as emergency or urgent care, the podiatric physician should review any available prescription monitoring program, emergency department-based information exchange, or other tracking system.

(2) Episodic care practitioners should avoid providing opioids for chronic pain management. However, if opioids are provided, the podiatric physician should limit the use of opioids for a chronic noncancer pain patient to the minimum amount necessary to control the pain until the patient can receive care from a primary care practitioner.

(3) Prescriptions for opioids written by an episodic care practitioner shall include indications for use or the International Classification of Diseases (ICD) code and shall be written to require photo identification of the person picking up the prescription in order to fill.

(4) If a patient has signed a written agreement for treatment and has provided a written authorization to release the agreement under WAC 246-922-666(6) to episodic care practitioners, then the episodic care practitioner should report known violations of the agreement back to the patient's treatment practitioner who provided the agreement for treatment.

#### NEW SECTION

**WAC 246-922-670 Consultation.** (1) Consultation. The podiatric physician shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic noncancer pain patients who are under eighteen years of age, or who are at risk for medication misuse, abuse, or diversion. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) Mandatory consultation at 120 milligrams morphine equivalent dose (MED). In the event a podiatric physician prescribes a dosage amount that meets or exceeds the consultation threshold of 120 milligrams MED per day, a consultation with a pain management specialist is required, unless the consultation is exempted under WAC 246-922-671 (exigent) or 246-922-672 (exempt practitioner).

(a) The mandatory consultation shall consist of at least one of the following:

(i) An office visit with the patient and the pain management specialist;

(ii) A telephone consultation between the pain management specialist and the podiatric physician;

(iii) An electronic consultation between the pain management specialist and the podiatric physician; or

(iv) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the podiatric physician or a licensed health care practitioner designated by the podiatric physician or the pain management specialist.

(b) A podiatric physician shall document each mandatory consultation with the pain management specialist. Any written record of the consultation by the pain management specialist shall be maintained as a patient record by the specialist. If the specialist provides a written record of the consultation to the podiatric physician, the podiatric physician shall maintain it as part of the patient record.

(3) Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist at any time. For the purposes of this section, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

#### NEW SECTION

**WAC 246-922-671 Exigent and special circumstances under which the 120 milligrams MED may be exceeded without consultation with a pain management**

**specialist.** A podiatric physician is not required to consult with a pain management specialist when he or she has documented adherence to all standards of practice as defined in WAC 246-922-660 through 246-922-673 of this chapter and when any one or more of the following conditions apply:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain which may or may not include hospitalization, requiring a temporary escalation in opioid dosage, with expected return to or below their baseline dosage level;

(3) The podiatric physician documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above 120 milligrams MED per day without first obtaining a consultation; or

(4) The podiatric physician documents the patient's pain and function is stable and the patient is on a nonescalating dosage of opioids.

#### NEW SECTION

**WAC 246-922-672 Podiatric physician exempt from consultation requirement.** The podiatric physician is exempt from the consultation requirement in WAC 246-922-670 if one or more of the following qualifications are met:

(1) The podiatric physician is a pain management specialist under WAC 246-922-673;

(2) The podiatric physician has successfully completed, within the last two years, a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization, with at least two of these hours dedicated to long acting opioids, to include methadone.

(3) The podiatric physician is a pain management practitioner working in a multidisciplinary chronic pain treatment center, or a multidisciplinary academic research facility; or

(4) The podiatric physician has a minimum three years of clinical experience in a chronic pain management setting, and at least thirty percent of his or her current practice is the direct provision of pain management care.

#### NEW SECTION

**WAC 246-922-673 Pain management specialist.** A pain management specialist shall meet one or more of the following qualifications:

(1) If a physician or osteopathic physician:

(a) Board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology; or

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board; or

(c) Has a certification of added qualification in pain management by the AOA; or

(2) If a dentist: Board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(3) If an advanced registered nurse practitioner (ARNP):



(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in a specialty that includes a focus on chronic noncancer pain management by a Nursing Care Quality Assurance Commission-approved national professional association, pain association, or other credentialing entity;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the ARNP's current practice is the direct provision of pain management.

(4) If a podiatric physician:

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in a specialty that includes a focus on chronic noncancer pain management by a Podiatric Medical Board-approved national professional association, pain association, or other credentialing entity; and

(c) Successful completion of a minimum of at least eighteen hours of continuing education in pain management during the past two years, and at least thirty percent of the podiatric physician's current practice is the direct provision of pain management care; or

(d) Board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board.

#### WSR 11-05-042

#### PROPOSED RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Filed February 9, 2011, 9:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-22-005 on October 20, 2010.

Title of Rule and Other Identifying Information: WAC 220-52-035 Commercial shellfish pot gear—Escape mechanism required.

Hearing Location(s): Natural Resources Building, Director's Conference Room, 5th Floor, 1111 Washington Street S.E., Olympia, WA 98504, on April 15, 2011, at 8:30 a.m.

Date of Intended Adoption: On or after April 15, 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 March 31, 2011.

Assistance for Persons with Disabilities: Contact Susan Galloway by March 31, 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: The department seeks more stringent rules for shellfish pot escape mecha-

nisms so that the rules are easier to enforce and the mechanisms can work as intended. This will save shellfish that are trapped in lost and abandoned pots.

Reasons Supporting Proposal: This proposal will allow the Washington department of fish and wildlife to protect the state's shellfish resources and enhance commercial and recreational shellfish harvesting opportunities.

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: 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.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The costs for commercial shellfishers to comply with this rule are negligible. These fishermen already use the required materials to provide for shellfish escapement. This rule simply directs the fishermen to use only one single strand of cotton when lacing or sewing wire mesh of shellfish pots closed. The rule prohibits fishermen from wrapping the single strand of cotton multiple times or doubling it.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

February 9, 2011

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 06-38, filed 3/9/06, effective 4/9/06)

**WAC 220-52-035 Commercial shellfish pot gear—Escape mechanism required.** It is unlawful to fish for or possess crab, shrimp, or crawfish taken for commercial purposes with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:

(1) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated cotton twine or other natural fiber no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken. It is permissible to use a single strand of cotton twine or other natural fiber tied together at the ends so that it can be looped between the tie down straps and the lid hook to connect them together.

(2) Providing an opening in the pot mesh no less than three inches by five inches (~~which is~~) and laced or sewn closed with one single strand of untreated cotton twine or other natural fiber no larger than thread size 120. The single strand of cotton may not be wrapped multiple times or doubled in any way when lacing or sewing the wire mesh closed. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

**WSR 11-05-062**  
**PROPOSED RULES**  
**FOREST PRACTICES BOARD**

[Filed February 11, 2011, 12:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-046, 09-18-031, and 10-18-044.

Title of Rule and Other Identifying Information: Amend Title 222 WAC as it relates to forest biomass harvest, watershed analysis reviews, and the addition of threatened or endangered species habitat in the riparian open space program.

Hearing Location(s): Department of Natural Resources (DNR), 713 East Bowers, Ellensburg, (509) 925-8510, on March 24, 2011, at 6 p.m.; at the Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, (360) 902-1400, on March 30, 2011, at 6 p.m.; and at the DNR, 919 North Township, Sedro Wolley [Woolley], (360) 856-3500, on March 31, 2011, at 6 p.m.

Date of Intended Adoption: May 10, 2011.

Submit Written Comments to: Patricia Anderson, DNR, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by 5 p.m. on April 1, 2011.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, by March 14, 2011, TTY (360) 902-1125.

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

- Add forest biomass harvest to the definition of "forest practice."
- Amend rules relating to the riparian open space program to implement SSB 5401 (2009 session).
- Amend rules to better ensure that watershed analysis prescriptions continue over time to be protective enough to warrant an exemption from Class IV-special classification.

Reasons Supporting Proposal: Forest biomass, there is an emerging industry in Washington state to convert biomass to energy and energy products. Adding forest biomass harvest to the definition of "forest practice" in WAC 222-16-010 is intended to ensure the public understands that forest biomass harvest is a forest practice and subject to the resource protection measures required in Title 222 WAC and chapter 76.09 RCW.

Riparian open space program, in 2009, the legislature amended RCW 76.09.040 to allow for the purchase of conservation easements on forest lands designated as habitat for threatened or endangered species; this is in addition to conservation easements on forest lands in migrating stream channels. The forest practices board (board) is proposing rule changes to incorporate the provisions of the legislation into the forest practices rules.

Watershed analysis reviews, after recent intense storm events that caused extensive landslides in some areas of the state, the board became concerned about whether the rules related to mass wasting watershed analysis prescriptions are adequate for protecting public resources. The proposed rules

specify a process for the review ("reanalysis") of watershed analysis prescriptions, and clearly give DNR authority to withdraw prescriptions if required reviews are not completed. The proposal is consistent with recommendations from the forest practices adaptive management program presented to the board on November 9, 2010.

Statutory Authority for Adoption: RCW 76.09.010, 76.09.040.

Statute Being Implemented: RCW 76.09.040.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Gretchen Robinson, Dan Pomerenk, Sherri Felix, 1111 Washington Street S.E., Olympia, (360) 902-1400; Implementation: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; and Enforcement: Darin Cramer, 1111 Washington Street S.E., Olympia, (360) 902-1088.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**SMALL BUSINESS IMPACTS:** A small business economic impact statement is required by the Regulatory Fairness Act (chapter 19.85 RCW) to consider the impacts on small businesses of administrative rules adopted by state agencies. The statute defines small businesses as those with fifty or fewer employees. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement compares the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

#### WATERSHED ANALYSIS RULE MAKING

**OBJECTIVES:** The board is considering changes to Title 222 WAC related to watershed analysis. The rule proposal implements RCW 76.09.040 which states, "Where necessary to accomplish the purposes and policies stated in RCW 76.09.010 ...the board shall adopt forest practices rules ... that ...establish minimum standards for forest practices ... (and) ...allow for the development of watershed analyses." Among the purposes and policies stated in chapter 76.09 RCW is "... that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection ...."

The intent of the proposed rule change is to ensure that timber harvest and road construction<sup>1</sup> within watershed administrative units (WAUs) with approved watershed analyses is conducted with all the public resource protections (i.e., water, fish, wildlife, and capital improvements) afforded in chapter 76.09 RCW and Title 222 WAC, and to ensure that forest practice activities do not increase the risk, frequency, and severity of landslides. The proposal is the result of the board's reconsideration of the continued use of watershed analysis mass wasting prescriptions as a Class IV-special exemption.

**CONTEXT:** The board adopted the watershed analysis rules, chapter 222-22 WAC, in 1992. The required steps and

technical requirements for watershed analysis resource assessments and developing prescriptions and management strategies are found in WAC 222-22-050 through 220-22-070 and board manual section 11, "Standard Methodology for Conducting Watershed Analysis." WAC 222-22-080 and 222-22-090 describe the approval process and the use and review of watershed analysis, respectively.

Watershed analysis uses "modules" to examine mass wasting (landslides), surface erosion, hydrologic change, riparian function, stream channel, fish habitat, water quality, water supply, public works, and cultural resources. The individual module assessments are used to identify the cause-and-effect relationships between potential hazards and vulnerable resources to locate areas of resource sensitivity. Prescriptions are written for each of the areas of resource sensitivity to address the types of forest practices that have a potential to impact vulnerable resources. Landowners' forest practices applications that implement the prescriptions are SEPA-exempt for the issue covered by the prescription.

**PROPOSED RULE:** The proposed rule language modifies the review process to ensure that reviews and updates occur and are paid for by those who elect to continue to use this process to protect resources. The adaptive management program recommended rule changes to the board at its November 2010 meeting. The changes are concentrated in WAC 222-22-090 Use and review of watershed analysis. Those pertinent to this economic analysis are as follows:

- The department is required to review the prescriptions from approved watershed analyses every five years, determine whether a reanalysis is necessary, and determine which modules and prescriptions are required to be included in the reanalysis. *WAC 222-22-090 (4) and (6)*. The term "reanalysis" is introduced; it is the process that takes place to evaluate the effectiveness of WSA prescriptions.
- If the department determines reanalysis is necessary, the landowner(s) interested in maintaining those prescriptions are responsible for committing sufficient resources to complete the reanalysis for the

WAU, including hiring the professionals required to conduct the assessments. *WAC 222-22-090(5)*.

- Reanalysis of mass wasting prescriptions requires a "qualified expert" as defined in current rule. *WAC 222-10-030(5)*.
- If no landowners choose to participate in the reanalysis, or if the timeline set for completion of the reanalysis is not met, the department may rescind the prescriptions. *WAC 222-22-090 (7)(d)(ii)*.

**IMPACT OF PROPOSED RULE CHANGE ON EXISTING WATERSHED ANALYSES:** The main impact of the rule proposal is on private forest landowners in the fifty-two approved watershed analyses and is caused by the requirement that DNR conduct reviews of all approved watershed analyses to determine whether reanalysis is necessary. If DNR determines reanalysis is necessary, the eligible sponsors will need to decide whether they want to incur the costs of conducting a reanalysis to retain the mass wasting prescriptions or opt out of the WSA mass wasting prescriptions. The impact on other landowners in the WAU will depend on the sponsors' decisions. This is described and analyzed in more detail in the cost-benefit analysis.

It is important to note that the proposed rules were written to be broad enough to cover the need for reanalysis of all of the watershed analysis prescriptions (not just mass wasting). However, the impetus for the proposed rule change is to make sure that the mass wasting prescriptions are up-to-date and it is the board's intent that DNR's focus at this time should only be on determining the need for reanalysis on mass wasting modules, not any of the others. Also, DNR foresees a need to require reanalysis for only the mass wasting prescriptions in the near-term. This analysis, therefore, will consider the impact on landowners who currently use WSA mass wasting prescriptions and whose situation in that regard may change if the rule is adopted.

It is already known that nineteen of the fifty-two watershed analyses will not be undergoing reanalysis. DNR is the sponsor of those nineteen and has determined it will not sponsor reanalyses of mass wasting prescriptions. See **Figure 3**.

FIGURE 3 Summary of Reanalysis Intent on Approved Watershed Analyses						
	Maintain Mass Wasting Prescriptions			Relinquish Mass Wasting Prescriptions	To Be Determined	TOTAL
	Meets Reanalysis Requirement	Reanalysis Not Likely Required	Expected to Conduct Reanalysis	Expected to Opt Out of WSA—No Reanalysis		
DNR Regulatory (Forest Practices)				14		14
DNR State Lands				5		5
Timber Company w/HCP Requirement	7					7
Other Timber Companies		3		5	18	26
TOTAL	7	3	0	24	18	52

The sponsor of seven of the fifty-two watershed analyses is a timber company whose habitat conservation plan (HCP) with the federal services<sup>2</sup> requires that it perform five year reviews of the prescriptions in these seven watershed analyses. This company has been reviewing the prescriptions and has a schedule in place for five-year reviews. This sponsor is meeting the requirement for reanalysis by its ongoing efforts to meet its HCP obligations. The rule proposal, therefore, will have no direct impact on these seven watershed analyses.

The timber company sponsors of the remaining twenty-six watershed analyses may or may not decide to undertake reanalysis. However, DNR has projected that it will likely not require reanalysis for mass wasting prescriptions on three of these WSAs based on their relatively lower number of annual landslides per square mile as interpreted from historical aerial photo records.

We can project further that five of the twenty-three remaining watershed analyses are very unlikely to undergo reanalysis. DNR Forest Practices staff informally polled WSA sponsors about whether they would conduct reanalysis if DNR determined it was necessary. The sponsors of these five watershed analyses said they would not. The sponsors of the remaining eighteen watershed analyses did not respond, presumably because they are waiting to see the final rule before making a decision. None of the timber companies said that they were interested in conducting reanalysis in order to maintain the WSA mass wasting prescriptions.

In summary, of the fifty-two approved watershed analyses, it is assumed that the sponsors of twenty-four will not conduct a reanalysis (nineteen DNR and five no interest), the sponsor of seven would be considered to be already meeting the requirement for reanalysis by its ongoing HCP obligations, DNR will not require reanalysis on three, and the sponsors of the remaining eighteen have not indicated their intent.

**SMALL BUSINESS ANALYSIS:** Two data sets generated by DNR's GIS were used to analyze impacts to "small businesses." An analysis using both allows us to conclude that small businesses would not be disproportionately impacted by the rule proposal.

The first data set provided tax parcel and landowner information for thirty-seven of the fifty-two approved WSAs where such data was available (eight of the thirty-seven had only partial data coverage). A total of 904,000 acres of forest land is contained in the thirty-seven WSAs (represented in whole or in part). The tax parcels are classified into ten land use designations, the most common being "resource production and extraction," which contains ninety-two percent of the total acreage and is the land use most likely to be subject to timber harvest and road construction activities, and regulation under the Forest Practices Act.

In the data available representing land ownership in all the approved WSAs, there are 766,000 acres in the resource production and extraction category which are owned by one thousand three hundred thirty-nine different entities (landowners). Of these one thousand three hundred thirty-nine landowners, fifteen had over fifty employees and the remaining one thousand three hundred twenty-four are "small businesses" as that term is defined in chapter 19.85 RCW. Seventy percent of this land, 539,000 acres, is owned by "large businesses" which have an average holding of 36,000 acres.

The "small businesses" are further divided into one thousand three hundred two individuals and twenty-one land organizations (which include conservation organizations and real estate investment firms). The land organizations own 120,000 acres total, or sixteen percent, averaging five thousand seven hundred acres each, while the individuals own 106,000 acres total, or fourteen percent, averaging eighty-one acres each.

Not all forest lands within the approved WAUs will be impacted by this rule; only lands that are associated with potentially unstable slopes and landforms will be impacted. Such data was available in a second DNR GIS data set that listed each tax parcel that intersects with a mapped mass wasting mapping [map] units (MWMU) within each of the approved WSAs. This data set had information for eighteen WSAs which had both tax parcel data and MWMU data in GIS (except three of the eighteen had only partial coverage). The data for three WSAs where DNR is unlikely to require reanalysis was removed from the data set, leaving fifteen WSAs in our sample. These fifteen WSAs accounted for 444,000 acres of the total WSA acreage in the resource production and extraction category in the first data set. There are eleven "large businesses" owning 387,000 acres, or over eighty-seven percent of the total acres in these WSAs, and an average of 35,000 acres each. There are ten land organizations that own 30,000 acres, or seven percent, averaging three thousand acres each. There are three hundred fifty individual landowners that own the remaining 26,000 acres, or six percent, averaging seventy-five acres each.

In the second data set composed of a sample of fifteen WSAs, there are tax parcels totaling 222,500 acres that intersect with MWMUs, indicating that those lands include areas with potentially unstable slopes or landforms. Of the total parcel acreage, the portion in areas with potentially unstable slopes or landforms is substantially less. Eight large companies own 206,200 acres or 92.7 percent of the acres associated with unstable slopes, an average of 61,000 acres each. Three land organizations own eight thousand acres, or 3.6 percent, which is an average of two thousand six hundred acres each. Forty individuals own eight thousand three hundred acres, or 3.7 percent and averaging two hundred eight acres each. See **Figure 4** for a detailed breakdown of ownership by category in the fifteen WSAs in the sample data. The sample shows that "large businesses" own ninety-four percent or more of the acreage in tax parcels intersecting with MWMUs in thirteen of the fifteen WSAs, and eighty-seven and eighty-three percent in the other two. "Small businesses" (individuals and land organizations) owned one percent or less of the acreage in tax parcels intersecting with MWMUs in eleven of the fifteen WSAs.

FIGURE 4

Summary of Ownership of Lands With Potentially Unstable Slopes and Landforms in Selected WSAs

WSA	A	B	C (pt.)	D (pt.)	E	F	G	H	I	J	K	L (pt.)	M	N	O
Acres in Tax Parcels with MWMUs in WSA	1,297	4,611	5,488	13,226	16,413	7,890	12,094	7,556	8,636	26,251	13,330	12,103	26,379	41,930	25,320
Parcels with MWMUs in WSA	3	1	2	2	3	7	3	1	2	5	1	1	2	10	20
# of Tax Parcels with MWMUs in WSA	11	29	89	113	119	73	167	30	40	290	189	82	190	718	242
PERCENT-AGE OF UNSTABLE SLOPE AREA BY OWNER-SHIP															
Sponsor Timber Company Owner	94%	100%	76%	89%	94%	86%	85%	100%	100%	99%	100%	100%	100%	57%	74%
Other Timber Company Owner(s)			(1) 24%	(1) 11%	(1) 5%	(1) 1%	(2) 15%							(2) 40%	(1) 9%
Conservation and Holding Cos. (#)					(1) 0.5%	(2) 11%								(1) 3%	
Individual(s) (#)	(2) 6%					(3) 2%			(1) 0.1%	(4) 1%			(1) 0.3%	(6) 1%	(18) 17%

Another indicator of the impact on the large and small landowners is the number of intersections (as opposed to acres) of tax parcels and MWMUs. Large businesses had two thousand two hundred seventeen, or ninety-four percent, of the two thousand three hundred seventy tax parcels intersecting with MWMUs in the second data set. Small businesses had one hundred fifty-three parcels (thirty-seven for land organizations and one hundred sixteen for individuals) intersecting with MWMUs, or six percent of the total in the sample.

Based on the sample data available<sup>3</sup>, "small businesses" own only 7.3 percent of the acreage in tax parcels and only six percent of the number of tax parcels associated with unstable slopes or landforms in approved WSAs. This compares with thirteen percent of the total acreage in the resource production and extraction category in the second data set with fifteen WSAs, and thirty percent of the total acreage in that land use category in the first data set with thirty-seven WSAs.

Based on the sample data available, "large businesses" own a disproportionate share of the tax parcels associated with unstable slopes—92.7 percent by acreage of tax parcels and ninety-four percent by number of tax parcels. Therefore, we conclude it is highly likely that "small businesses" will not be disproportionately [disproportionately] impacted by the proposed rule.

**Reducing Costs for Small Businesses:** RCW 19.85-.030 and [19.85].040 address an agency's responsibility in rule

making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. As stated above, there is no disproportionate impact on small businesses.

**Estimated Number of Jobs Created or Lost:** RCW 19.85.040 (2)(d) requires that the economic analysis include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

In so far as WSA sponsors elect to opt out of the mass wasting prescriptions and not conduct and pay for reanalysis, there may be more work for "qualified experts" (engineering geologists and hydrogeologists) conducting geotechnical reports on potentially unstable slopes and landforms in the forested environment. If one out of one hundred FPAs in the 24-42 WSAs where the WSA sponsor elects to opt out of the mass wasting prescriptions will now require a qualified expert's geotechnical report, then there would be a demand for an average of 4.8 to 8.4 new reports per year, at a total cost of \$20,500-36,000 per year. This work would support less than a half time job for a geotechnical expert if that one person got all the new work. It is more likely that the additional work would be dispersed among several of the existing experts and would therefore not create any new jobs. Therefore, it is estimated that no jobs will be created or lost as a result of the new rule.

**SUMMARY:** The rule proposal affects fifty-two approved watershed analyses encompassing sixty-eight WAUs, or nine

percent of the seven hundred fifty-four forested WAUs in Washington.

Owners of all lands with potentially unstable slopes or landforms in 24-42 approved WSAs will potentially incur costs if the sponsor elects to opt out of reanalysis. If an FPA under standard rules is proposed on a "rule identified" potentially unstable slope or landform it would be Class IV-special and the landowner would need to pay for a qualified expert's geotechnical report and complete a SEPA checklist, together estimated to cost \$4275 on average. It is not possible to accurately characterize the potential total cost impact across all the approved WSAs.

It is highly likely that "small businesses" (fifty or more employees in the state) will not be disproportionately impacted by the proposed rule. Based on available sample data, large businesses (more than fifty employees) own a disproportionate share of forest lands associated with MWMUs—92.7 percent by acreage of tax parcels and ninety-four percent by number of tax parcels that intersect with MWMUs.

It is estimated that no jobs will be created or lost as a result of the new rule.

#### RIPIARIAN OPEN SPACE PROGRAM RULE MAKING

**OBJECTIVES:** The board is considering a rule change to implement amendments to the riparian open space program made by SSB 5401 in the 2009 legislative session. The riparian open space program is authorized in the forest practices statute, chapter 76.09 RCW, and covered under the forest practices rules in Title 222 WAC.

The board's objective is to make changes to chapter 222-23 WAC as required to bring it into conformance with the legislative changes made to the riparian open space program as codified in RCW 76.09.040.

**CONTEXT:** As part of legislation implementing the forests and fish report in 1999, the legislature added the riparian open space program to the Forest Practices Act. The program was established to provide landowners compensation for islands of forested lands within unconfined avulsing channel migration zones<sup>4</sup> that could no longer be legally harvested under the new changes to the forest practices laws. DNR was directed to purchase qualifying riparian lands isolated by river channels (in fee or in a conservation easement interest) in order to dedicate the use of that land for public ecological protection and fisheries enhancement.

To date, DNR has purchased twelve conservation easements under the riparian open space program on nine hundred twenty-three acres of qualifying lands for a total amount of approximately \$3,592,000. Funding for the program is subject to legislative appropriation specific to the program each biennium. Legislative appropriations to date have exceeded expenditures under the program because it has been difficult for landowner-applicants to meet the requirement that the timbered islands on their property were created by avulsion, an abrupt (sudden and perceptible) change in the course of a stream, rather than a gradual and imperceptible one. All the riparian open space acquisitions to date have been by conservation easement because none of the applicants under the program were willing to sell their qualifying land in fee.

SSB 5401 made four major changes to the existing law that established the riparian open space program:

1. Changed the type of channel migration zone lands eligible for acquisition from "unconfined avulsing channel migration zones" to "unconfined channel migration zones," removing the requirement to provide evidence of avulsion;

2. Expanded the lands eligible for acquisition to include private forest lands that contain critical habitat for threatened or endangered species as designated by the board, greatly increasing the amount of lands potentially eligible and taking them beyond riparian areas into the larger forested lands of the state;

3. Removed the authority for DNR to purchase fee title interest in eligible lands, allowing acquisition of permanent conservation easements only; and

4. Gave the landowner a choice to convey an interest either in the land (with the trees) or in the trees only (this option was previously authorized by the board in rule in 2001).

SSB 5401 was introduced on behalf of the northern spotted owl working group which was established as a part of the settlement of litigation that concerned habitat for the owl. The group worked to develop incentives for private landowners to support and protect endangered and threatened species on their lands. This bill significantly expands the original riparian open space program by providing a mechanism to compensate landowners for forested lands which cannot be harvested under forest practices rules because they contain critical habitat for a threatened or endangered species.

The amount of compensation to be paid to the landowner for a conservation easement on qualifying lands is determined by applying a cookbook formula multiplying the timber cruise volume on the qualifying land by timber stumpage values established elsewhere in RCW for timber harvest excise tax purposes. If an interest in the land is being conveyed in addition to the trees, compensation includes an additional amount equal to the acreage of the qualifying land multiplied by forest land value tables established elsewhere in RCW and revised annually by the department of revenue.

**PROPOSED RULE:** The changes made in the riparian open space statute by SSB 5401 require several changes to rule language for the program in chapter 222-23 WAC (the four major changes are described above). The first change noted above (dropping "avulsing") will also require a change to a definition in WAC 222-16-010. Forest Practices staff recommends changing the title of chapter 222-23 WAC from riparian open space program to rivers and habitat open space program, which would require changes in WAC 222-10-125, 222-12-010, and 222-12-090 where the title of the program is referenced.

**SMALL BUSINESS ANALYSIS:** There are no new or additional requirements or costs imposed on any members of the regulated community by the proposed rule change since conveying a conservation easement and receiving compensation is voluntary on the part of the business (landowner), whether it is a large business, a small business, or an individual. Therefore there is no disproportionate cost impact on small businesses.

**Reducing Costs for Small Businesses:** RCW 19.85.-030 and [19.85].040 address an agency's responsibility in rule

making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. As stated above, there is therefore no disproportionate impact on small businesses.

**Estimated Number of Jobs Created or Lost:** RCW 19.85.040 (2)(d) requires that the small business economic impact statement include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

Processing and completing a conservation easement transaction under the program may require work by timber cruisers, surveyors, and title insurance officers in private businesses. The program's impact on jobs is proportional to the amount of the appropriation and the number of transactions. To date, there have been twelve transactions completed under the riparian open space program in the eight years from 2001 to 2009. At this level of activity, there is no significant impact on the number of jobs created or lost.

Even though the proposed rule change greatly expands the acreage of potentially qualifying lands, adopting the rule change itself does not have an impact on jobs because that is dependent upon the level of the related appropriations and the number of transactions. If larger appropriations are provided for the program in future biennia, there would be more work for timber cruisers, surveyors, and title companies, but the work would probably be absorbed by existing job positions unless the amount of appropriations for the program becomes exceedingly higher than it has been in the past.

**CONCLUSIONS:** Since participating in the program is voluntary, the rule proposal does not:

- Impose a burden on owners of qualifying land, whether or not they elect to convey a conservation easement on their property; or
- Have a disproportionate cost impact on small businesses.

The rule change itself does not have an impact on jobs. Any additional work created for timber cruisers, surveyors, and title companies by the program would be absorbed by existing job positions unless the amount of appropriations for the program becomes exceedingly higher than it has been in the past.

#### FOREST BIOMASS RULE MAKING

**OBJECTIVES:** The board is considering a rule change to make clear and reinforce that harvest of forest biomass is considered to be a forest practice under the Washington forest practices statute, chapter 76.09 RCW, and the forest practices rules in Title 222 WAC.

The board and DNR already consider that forest biomass harvest is a forest practice that falls under the authority of the state's forest practices law and regulation. The proposed rule change will ensure that other affected parties will have the same understanding.

The proposed rule change explicitly clarifies that forest biomass harvests are forest practices. It implements RCW 76.09.040 which states, "Where necessary to accomplish the purposes and policies stated in RCW 76.09.010 ... the board shall adopt forest practices rules ... that ... establish minimum standards for forest practices." Among the purposes

and policies stated in chapter 76.09 RCW is "... that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection ...." The intent of the proposed rule change is to ensure that forest biomass harvest is conducted with all the public resource protections (i.e., for soils, water, fish, wildlife, and capital improvements) afforded in chapter 76.09 RCW and Title 222 WAC.

The board's objective in adding "or forest biomass" to the definition of "forest practice" is to ensure the public's understanding that activities related to forest biomass harvesting and on-site processing are forest practices activities and therefore subject to all of the protections and standards provided through Title 222 WAC.

**CONTEXT:** The board is considering this rule change because of the greatly increased interest over the last several years in the use of forest biomass as an alternative energy source. The slash composed of residual branches, needles, and treetops left over from timber harvest operations, once regarded as a waste product, is now being considered a renewable resource for energy production and a new economic opportunity. There has been an increase in the removal of biomass from Washington's forests for energy generating projects as well as for precommercial thinning, forest health, and wildfire fuel reduction purposes. There are new players in the emerging forest biomass field who are not part of the forestry industry and who may not be well informed on forestry issues and forest practices laws and regulations. There may also be parties in the forest industry, including landowners, who are not aware that forest biomass removal is considered to be a forest practice like timber harvest and related forest management activities and as such is subject to the same public resource protections.

DNR forest practices staff members have observed an increase in forest biomass removed from Washington's forests. Most landowners and operators are identifying and documenting these activities in their forest practices applications (FPAs), mostly in conjunction with other timber harvest activities. However, DNR field staff members are noting that some forest biomass removal activities are going on unreported and without FPA regulatory review and approval, especially stand-alone operations not conducted along with other forest practices activities.

This could be due to the rules not being clear that activities related to forest biomass harvest and removal are forest practices the same as activities related to timber harvest. The risk under the status quo is that forest landowners and operators will not be aware that the same permitting requirements and natural resource protections apply to these activities as they do [to] activities related to timber harvest.

When a landowner or operator proposes forest practices activities, including forest biomass removal, all of the associated activities must be noted on the FPA. This gives DNR the opportunity to condition applications prior to the activities taking place, and ensure that public resources are protected during and after operations.

**PROPOSED RULE:** The proposal is to add the words "or forest biomass" to the definition of "forest practice" in WAC 222-16-010 as shown below.

*WAC 222-16-010 \*General definitions*

...

**"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber or forest biomass, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

**"Forest practice"** shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

...

The proposed rule clarifies that activities associated with forest biomass harvest are forest practices activities and as such are required to be included on FPAs.

**ASSUMPTIONS:** The following assumptions are made in the small business impact analysis:

1. There is some level of forest biomass harvest occurring in Washington's forests that is not being reported on FPAs and is therefore being done without FPA review and approval by DNR.

2. There is an increased likelihood and degree of negative impact on public resources resulting from forest biomass harvest activities that occur without DNR forest practices review and approval.

3. Forest biomass harvest is already subject to forest practices regulation, although some forest landowners and operators may not be aware that it is.

4. To the extent the proposed rule change increases awareness, it will increase the amount of information required in FPAs for timber harvest that also include activities associated with forest biomass harvest, and it is likely to increase the number of FPAs for stand-alone forest biomass harvest projects.

**SMALL BUSINESS ANALYSIS:** Since there are no new or additional requirements or costs imposed on any members of the regulated community by the proposed rule change, there is no disproportionate cost impact on small businesses.

**Reducing Costs for Small Businesses:** RCW 19.85-.030 and [19.85].040 address an agency's responsibility in rule making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. Since there is no impact on costs for any businesses, large or small, there is no disproportionate impact on small businesses.

**Estimated Number of Jobs Created or Lost:** RCW 19.85.040 (2)(d) requires that the economic analysis include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

There is no change in the number of jobs resulting from adopting the proposed rule change because it doesn't affect the level of forest biomass harvest activity.

**CONCLUSIONS:** A comparison of the estimated potential impact to small businesses and the ten percent of the largest businesses that are required to comply with the rule shows that there is no impact on any businesses and therefore the rule would not disproportionately [disproportionately] impact small businesses.

The analysis concludes that the rule will have no impact on overall employment.

<sup>1</sup>The term "timber harvest and road construction" is used throughout this document as a shortened reference to the forest practices listed in WAC 222-16-050 (1)(d): "... timber harvest or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas."

<sup>2</sup>"Federal services" means the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA), which review and approve habitat conservation plans (HCPs) under the federal Endangered Species Act.

<sup>3</sup>The data used in this analysis was not based on a sampling technique, but rather was determined by the available data across the fifty-two approved WSAs. The WSAs (in their entirety or in part) do not appear to be geographically unrepresentative of the fifty-two WSAs.

<sup>4</sup>The original riparian open space legislation contained the following definitions:

"Unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes.

A copy of the statement may be obtained by contacting Patricia Anderson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1413, fax (360) 902-1428, e-mail patricia.anderson@dnr.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Patricia Anderson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1413, fax (360) 902-1428, e-mail patricia.anderson@dnr.wa.gov.

February 11, 2011

Peter Goldmark

Chair

**AMENDATORY SECTION** (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-10-030 \*SEPA policies for potentially unstable slopes and landforms.** In addition to SEPA policies established elsewhere in this chapter, the following policies apply to forest practices described in WAC 222-16-050 (1)(d) relating to construction or harvest on potentially unstable slopes or landforms.

(1) In order to determine whether such forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the applicant must submit the following additional information,



prepared by a qualified expert as defined in subsection (5) of this section. The qualified expert must describe the potentially unstable landforms in and around the application site and analyze:

(a) The likelihood that the proposed forest practices will cause movement on the potentially unstable slopes or landforms, or contribute to further movement of a potentially unstable slope or landform;

(b) The likelihood of delivery of sediment or debris to any public resources, or in a manner that would threaten public safety; and

(c) Any possible mitigation for the identified hazards and risks.

(2) The department's threshold determination will include an evaluation of whether the proposed forest practices:

(a) Are likely to increase the probability of a mass movement on or near the site;

(b) Would deliver sediment or debris to a public resource or would deliver sediment or debris in a manner that would threaten public safety; and

(c) Such movement and delivery are likely to cause significant adverse impacts.

If the department determines that (a), (b) and (c) of this subsection are likely to occur, then the forest practice is likely to have a probable significant adverse impact.

(3) The department will evaluate the proposal, using appropriate expertise and in consultation with other affected agencies and Indian tribes.

(4) Specific mitigation measures or conditions must be designed to avoid accelerating rates and magnitudes of mass wasting that could deliver sediment or debris to a public resource or could deliver sediment or debris in a manner that would threaten public safety.

(5) Qualified expert for the purposes of this section and for reanalysis of watershed analysis mass wasting prescriptions under WAC 222-22-030 means a person licensed under chapter 18.220 RCW as either an engineering geologist or as a hydrogeologist (if the site warrants hydrologist expertise), with ((3)) at least three years of field experience in the evaluation of relevant problems in forested lands.

**AMENDATORY SECTION** (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

**WAC 222-10-035 \*Watershed analysis SEPA policies.** When the department considers a watershed analysis for approval ((as in)) under WAC 222-22-080 or 222-22-090, the department will perform a review under SEPA as a nonproject proposal. When making the SEPA threshold determination ((for a watershed analysis)), the department shall only make a determination of significance if, when compared to rules or prescriptions in place at the time of the analysis or the ((5-year review)) reanalysis, the prescriptions will cause a probable significant adverse impact on elements of the environment other than those addressed in the watershed analysis process.

**AMENDATORY SECTION** (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

**WAC 222-10-125 Exemption from RCW 43.21C.030 (2)(c).** Decisions pertaining to the following are not subject to any procedural requirements implementing RCW 43.21C.-030 (2)(c): Approval of forest road maintenance and abandonment plans, approval of future timber harvest schedules involving east-side clear cuts, acquisitions of conservation easements pertaining to forest lands in the ((riparian)) rivers and habitat open space program; and acquisitions of conservation easements pertaining to forest lands in riparian zones under the forest riparian easement program.

**AMENDATORY SECTION** (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

**WAC 222-12-010 Authority.** These forest practices rules are adopted pursuant to chapter 76.09 RCW, RCW 76.13.100 through 76.13.130, and RCW 77.85.180 through 77.85.190. Where necessary to accomplish the purposes and policies stated in the act, the board is authorized to promulgate forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in the act. These rules establish minimum standards for forest practices, provide procedures for the voluntary development of resource management plans, set forth necessary administrative provisions, establish procedures for the collection and administration of forest practices fees, allow for the development of watershed analyses, foster cooperative relationships and agreements with affected tribes, and establish the ((riparian)) rivers and habitat open space program. The board also establishes which forest practices will be included within each class and is authorized to adopt rules under RCW 76.09.055, 76.09.370, and 76.13.120(9).

Promulgation of all forest practices rules shall be accomplished so that compliance with such forest practices rules will achieve compliance with the water quality laws.

Those rules marked with an asterisk (\*) pertain to water quality protection; pursuant to RCW 76.09.040 they can be amended only by agreement between the board and the department of ecology.

Forest practices rules shall be administered and enforced by the department except as otherwise provided in the act. Such rules shall be administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

**AMENDATORY SECTION** (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-12-090 Forest practices board manual.** When approved by the board the manual serves as an advisory technical supplement to these forest practices rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.

(2) Standards for identifying channel migration zones and bankfull channel features.

(3) **Guidelines** for forest roads.

(4) **Guidelines** for clearing slash and debris from Type Np and Ns Waters.

(5) **Guidelines** for landing location and construction.

(6) **Guidelines** for determining acceptable stocking levels.

(7) **Guidelines** for riparian management zones.

(8) **Guidelines** for wetland delineation.

(9) **Guidelines** for wetland replacement or substitution.

(10) A list of nonnative wetland plant species.

(11) The standard methodology for conducting watershed analysis shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The methodology shall also include a cultural resource module that shall specify the quantitative and qualitative methods, indices of resource conditions, and guidelines for developing voluntary management strategies for cultural resources. Except for cultural resources, the department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) **Guidelines** for forest chemicals.

(a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(b) Guidelines for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.

(13) **Guidelines** for determining fish use for the purpose of typing waters under WAC 222-16-031.

(14) **Survey protocol for marbled murrelets.** The Pacific Seabird (~~(Group)~~) **Group** survey protocol dated January 6, 2003, and formally (~~(titled) [filed on] on~~) **titled** *Methods for Surveying Marbled Murrelets in Forests: A Revised (~~(Protocol)~~) Protocol for Land Management and Research*, shall be used when surveying for marbled murrelets in a stand. Surveys are valid if they were conducted in compliance with the board(~~(+)~~)-recognized Pacific Seabird Group survey protocols in effect at the beginning of the season in which the surveys were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(a) A sampling method to determine platforms per acre in the field;

(b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and

(c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

(16) **Guidelines** for evaluating potentially unstable slopes and landforms.

(17) **Guidelines** for the small forest landowner forestry riparian easement program.

(18) **Guidelines** for (~~(riparian))~~ **rivers and habitat** open space program.

(19) **Guidelines** for hardwood conversion.

(20) **Guidelines** for financial assurances.

(21) **Guidelines** for alternate plans.

(22) **Guidelines** for adaptive management program.

(23) **Guidelines** for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) **Guidelines** for interim modification of bull trout habitat overlay.

(25) **Guidelines** for bull trout presence survey protocol.

(26) **Guidelines** for placement strategy for woody debris in streams.

**AMENDATORY SECTION** (Amending WSR 10-23-077, filed 11/15/10, effective 12/16/10)

**WAC 222-16-010 \*General definitions.** Unless otherwise required by context, as used in these rules:

"**Act**" means the Forest Practices Act, chapter 76.09 RCW.

"**Affected Indian tribe**" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"**Alluvial fan**" see "sensitive sites" definition.

"**Appeals board**" means the pollution control hearings board established in RCW 43.21B.010.

"**Aquatic resources**" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"**Area of resource sensitivity**" means areas identified in accordance with WAC 222-22-050 (2)(d) (~~(e)~~), 222-22-060(2), or 222-22-090.

"**Bankfull depth**" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"**Bankfull width**" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

**"Basal area"** means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

**"Bedrock hollows"** (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

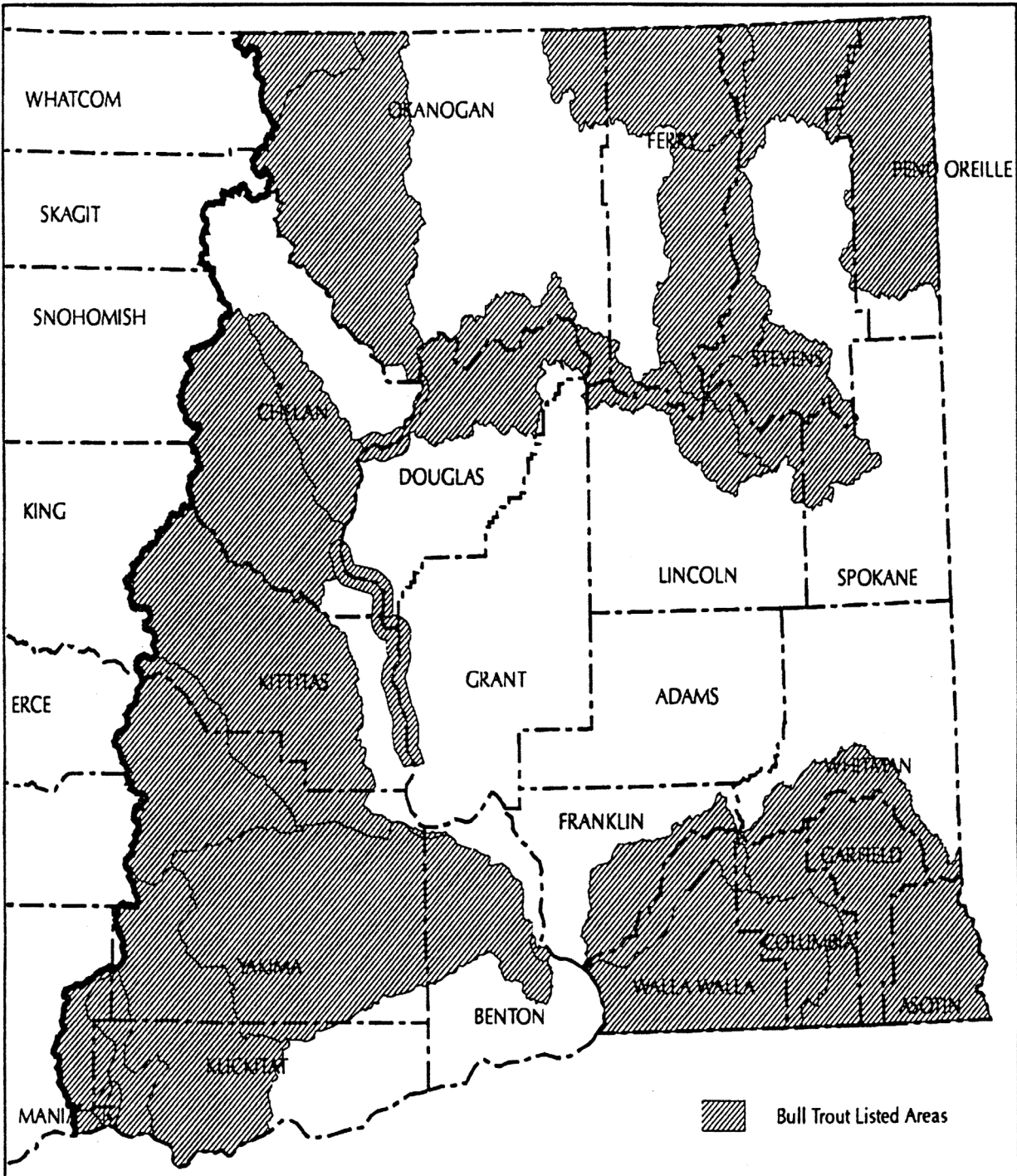
**"Board"** means the forest practices board established by the act.

**"Bog"** means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

**"Borrow pit"** means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

**"Bull trout habitat overlay"** means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Columbia River Gorge National Scenic Area or CRGNSA"** means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

**"CRGNSA special management area"** means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

**"CRGNSA special management area guidelines"** means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

**"Commercial tree species"** means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

**"Completion of harvest"** means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

**"Constructed wetlands"** means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

**"Contamination"** means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

**"Convergent headwalls"** (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

**"Conversion activities"** means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).

- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.

- Preparation for, or construction of, any structure requiring local government approval.

- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.

- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

**"Conversion option harvest plan"** means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

**"Conversion to a use other than commercial timber operation"** means a bona fide conversion to an active use which is incompatible with timber growing.

**"Cooperative habitat enhancement agreement (CHEA)"** see WAC 222-16-105.

**"Critical habitat (federal)"** means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

**"Critical habitat (state)"** means those habitats designated by the board in accordance with WAC 222-16-080.

**"Critical nesting season"** means for marbled murrelets - April 1 to August 31.

**"Cultural resources"** means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

**"Cumulative effects"** means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

**"Daily peak activity"** means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

**"Date of receipt,"** as that term is defined in RCW 43.21B.001, means:

- (a) Five business days after the date of mailing; or

- (b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

**"Debris"** means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities

which would reasonably be expected to cause significant damage to a public resource.

**"Deep-seated landslides"** means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

**"Demographic support"** means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

**"Department"** means the department of natural resources.

**"Desired future condition (DFC)"** is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

**"Diameter at breast height (dbh)"** means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

**"Dispersal habitat"** see WAC 222-16-085(2).

**"Dispersal support"** means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

**"Drainage structure"** means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

**"Eastern Washington"** means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



**"Eastern Washington timber habitat types"** means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

**"Edge"** of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

**"End hauling"** means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

**"Equipment limitation zone"** means a 30-foot wide zone measured horizontally from the outer edge of the bank-

full width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

**"Erodible soils"** means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

**"Even-aged harvest methods"** means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Fen"** means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

**"Fertilizers"** means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

**"Fill"** means the placement of earth material or aggregate for road or landing construction or other similar activities.

**"Fish"** means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

**"Fish habitat"** means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

**"Fish passage barrier"** means any artificial in-stream structure that impedes the free passage of fish.

**"Flood level - 100 year"** means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given

year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

**"Forest land"** means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

**"Forest landowner"** means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

**"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber or forest biomass, including but not limited to:

- Road and trail construction;
- Harvesting, final and intermediate;
- Precommercial thinning;
- Reforestation;
- Fertilization;
- Prevention and suppression of diseases and insects;
- Salvage of trees; and
- Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

**"Forest road"** means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

**"Forest trees"** does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

**"Full bench road"** means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

**"Green recruitment trees"** means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

**"Ground water recharge areas for glacial deep-seated slides"** means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

**"Headwater spring"** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

**"Herbicide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

**"Horizontal distance"** means the distance between two points measured at a zero percent slope.

**"Hyporheic"** means an area adjacent to and below channels where interstitial water is exchanged with channel

water and water movement is mainly in the downstream direction.

**"Identified watershed processes"** means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

**"Inner gorges"** means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

**"Insecticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

**"Interdisciplinary team"** (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

**"Islands"** means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

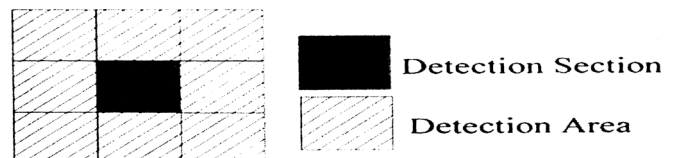
**"Limits of construction"** means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

**"Load bearing portion"** means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

**"Local governmental entity"** means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

**"Low impact harvest"** means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

**"Marbled murrelet detection area"** means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.





**"Marbled murrelet nesting platform"** means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

**"Median home range circle"** means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

**"Merchantable stand of timber"** means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

**"Multiyear permit"** means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

**"Northern spotted owl site center"** means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

- Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.
- Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.
- Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Notice of a conversion to a nonforestry use"** means a notice issued by the department pursuant to RCW 76.09.060 (3)(b). A landowner who receives such notice is subject to the actions and requirements described in RCW 76.09.460 and 76.09.470.

**"Notice to comply"** means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

**"Occupied marbled murrelet site"** means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

- (a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or
- (b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

- (a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or
- (b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or
- (c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

- (a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or
- (b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or
- (c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed

behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Old forest habitat"** see WAC 222-16-085 (1)(a).

**"Operator"** means any person engaging in forest practices except an employee with wages as his/her sole compensation.

**"Ordinary high-water mark"** means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

**"Other forest chemicals"** means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

**"Park"** means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

**"Partial cutting"** means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

**"Pesticide"** means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

**"Plantable area"** is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

**"Power equipment"** means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

**"Preferred tree species"** means the following species listed in descending order of priority for each timber habitat type:

<b>Ponderosa pine habitat type</b>	<b>Mixed conifer habitat type</b>
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine

**Ponderosa pine habitat type**

- Douglas-fir
- western red cedar

**Mixed conifer habitat type**

- western red cedar
- western white pine
- Douglas-fir
- lodgepole pine

**"Public resources"** means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

**"Qualified surveyor"** means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

**"Rehabilitation"** means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

**"Resource characteristics"** means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

- Physical fish habitat, including temperature and turbidity;
- Turbidity in hatchery water supplies; and
- Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

**"Riparian function"** includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

**"Riparian management zone (RMZ)"** means:

**(1) For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

**(2) For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bank-

full width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

\* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

**"RMZ core zone"** means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

**"RMZ inner zone"** means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

**"RMZ outer zone"** means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

**"Road construction"** means either of the following:

- Establishing any new forest road;
- Road work located outside an existing forest road prism, except for road maintenance.

**"Road maintenance"** means either of the following:

- All road work located within an existing forest road prism;
- Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

**"Rodenticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

**"Salvage"** means the removal of snags, down logs, windthrow, or dead and dying material.

**"Scarification"** means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

**"Sensitive sites"** are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

**"Shorelines of the state"** shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

**"Side casting"** means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

**"Site class"** means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this defini-

tion, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

**"Site preparation"** means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

**"Skid trail"** means a route used by tracked or wheeled skidders to move logs to a landing or road.

**"Slash"** means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

**"Small forest landowner long-term application"** means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years.

Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

**"SOSEA goals"** means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

**"Spoil"** means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

**"Spotted owl conservation advisory group"** means a three-person advisory group designated by the board as follows: One person shall be a representative of Washington's forest products industry, one person shall be a representative of a Washington-based conservation organization actively involved with spotted owl conservation, and one person shall be a representative of the department's forest practices program. Members of the group shall have a detailed working knowledge of spotted owl habitat relationships and factors affecting northern spotted owl conservation. On an annual basis, beginning November 2010, the board will determine whether this group's function continues to be needed for spotted owl conservation.

**"Spotted owl dispersal habitat"** see WAC 222-16-085(2).

**"Spotted owl special emphasis areas (SOSEA)"** means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

**"Stop work order"** means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

**"Stream-adjacent parallel roads"** means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

**"Sub-mature habitat"** see WAC 222-16-085 (1)(b).

**"Suitable marbled murrelet habitat"** means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

- (a) Within 50 miles of marine waters;
- (b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;
- (c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

**"Suitable spotted owl habitat"** see WAC 222-16-085(1).

**"Temporary road"** means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

**"Threaten public safety"** means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

**"Threatened or endangered species"** means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

**"Timber"** means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33-.035.

**"Unconfined (~~avalusing~~) stream"** (~~means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement~~) see WAC 222-23-010(2).

**"Validation,"** as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

**"Water bar"** means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

**"Watershed administrative unit (WAU)"** means an area shown on the map specified in WAC 222-22-020(1).

**"Watershed analysis"** means, for a given WAU, the resource assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include resource assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity and the ongoing reviews and reanalyses completed under WAC 222-22-090.

**"Weed"** is any plant which tends to overgrow or choke out more desirable vegetation.

**"Western Washington"** means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

**"Wetland"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

**"Wetland functions"** include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

**"Wetland management zone"** means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

**"Wildlife"** means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

**"Wildlife reserve trees"** means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

**"Windthrow"** means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

**"Yarding corridor"** means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or sus-

pended or partially suspended logs to be transported through these areas by cable logging methods.

"**Young forest marginal habitat**" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 08-17-092, filed 8/19/08, effective 9/19/08)

**WAC 222-16-050 \*Classes of forest practices.** There are ~~((4))~~ four classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices rules.

(1) "**Class IV - special.**" Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

\*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than five MBF within any developed park recreation area and park managed salvage of merchantable forest products.

\*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (i) below that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potential unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than thirty-five degrees (seventy percent);

(B) Toes of deep-seated landslides, with slopes steeper than thirty-three degrees (sixty-five percent);

(C) Groundwater recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation

maps and reports, review of approved watershed analysis mass wasting prescriptions pursuant to WAC 222-22-090(6) or other information provided by the applicant.

(iii) An application would not be classified as Class IV-Special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a WAU that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with ~~((an))~~ approved prescriptions from the watershed analysis ~~((or as modified through the five year review process)); ((and))~~

(C) The applicable prescriptions ~~((is))~~ are specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

\*(e) Timber harvest, in a watershed administrative unit not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest or construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on the following except in (f)(iv) of this subsection:

(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030; or

(ii) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation; or

(iii) Sites containing evidence of Native American cairns, graves, or glyptic records as provided for in chapters 27.44 and 27.53 RCW. The department of archaeology and historic preservation shall consult with affected Indian tribes in identifying such sites.

(iv) A forest practice would not be classified as Class IV-special under this subsection if:

(A) Cultural resources management strategies from an approved watershed analysis conducted under chapter 222-22 WAC are part of the proposed forest practices, and the landowner states this in the application; or

(B) A management plan agreed to by the landowner, the affected Indian tribe, and the department of archaeology and historic preservation is part of the proposed application, and the landowner states this in the application.

\*(g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) ~~((in the watershed analysis)).~~

\*(h) Filling or draining of more than 0.5 acre of a wetland.

(2) **"Class IV - general."** Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special."

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(b) Forest practices (other than those in Class I) on lands that have been or are being converted to another use;

(c) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(d) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest products operations for ten years accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with the SEPA.

(3) **"Class I."** Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

\* (b) Road maintenance except: Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

\* (c) Construction of landings less than one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\* (d) Construction of less than six hundred feet of road on a sideslope of forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width

of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\* (e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

\* (f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

\* (n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding forty percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\* (o) Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

\* (p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within one hundred feet of lands used for farming, or within two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

\* (r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 77.55.100) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or on lands that have been or are being converted to another use. No forest practice enumerated below involving timber harvest or road construction may be conducted as a "Class II" if it takes place within urban growth areas designated pursuant to chapter 37.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; ~~(and)~~

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal~~(-); and~~

(iv) ~~((Renewal of a previously approved multiyear permit for forest practices within a WAU with an approved watershed analysis requires completion of a necessary five-year review of the watershed analysis.))~~ If the renewal is for a multiyear permit and the area of that permit is not located within an area subject to watershed reanalysis under WAC 222-22-090(6).

\* (c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than one acre.

\* (d) Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent.

\* (e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty

percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of forty percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of five thousand board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than forty percent of the total timber volume is removed in any twelve-month period.

(iv) Any harvest on less than forty acres.

(v) Construction of six hundred or more feet of road, provided that the department shall be notified at least two business days before commencement of the construction.

(5) **"Class III."** Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 77.55.100).

\* (b) Those within the shorelines of the state other than those in a Class I forest practice.

\* (c) Aerial application of insecticides, except where classified as a Class IV forest practice.

\* (d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

\* (e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

\* (f) All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over ~~((+))~~ one acre.

\* (h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

\* (n) Any filling of wetlands, except where classified as Class IV forest practices.

\* (o) Multiyear permits.

\* (p) Small forest landowner long-term applications that are not classified Class IV-special or Class IV-general, or renewals of previously approved Class III or IV long-term applications.



AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-20-080 Application and notification expiration.** (1) The approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval, with the following exceptions:

(a) Multiyear permits are effective for three to five years. A multiyear permit for lands included in a watershed analysis pursuant to chapter 222-22 WAC is not renewable if a ~~((five-year)) watershed ((analysis review))~~ reanalysis is found necessary by the department and has not been completed and approved, or the department has rescinded the prescriptions that would have applied to the permit.

(b) Small forest landowner long-term applications are effective for terms of three to fifteen years.

(2) A notification is effective for a term of two years beginning five days from the date it is officially received.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

**WAC 222-22-020 Watershed administrative units.**

\* (1) For purposes of this chapter, the state is divided into areas known as watershed administrative units (WAUs). The department shall, in cooperation with the departments of ecology, fish and wildlife, affected Indian tribes, local ~~((government))~~ governmental entities, forest ~~((land owners))~~ landowners, and the public, define WAUs throughout the state. The department shall identify WAUs on a map.

\* (2) WAUs should generally be between ~~((40,000))~~ ten thousand to ((50,000)) fifty thousand acres in size and should be discrete hydrologic units. The board recognizes, however, that identified watershed processes and potential effects on resource characteristics differ, and require different spatial scales of analysis, and the department's determination of the WAUs should recognize these differences. The board further recognizes that mixed land uses will affect the ability of a watershed analysis to predict probabilities and identify causation as required under this chapter, and the department's conduct and approval of a watershed analysis under this chapter shall take this effect into account.

\* (3) The department is directed to conduct periodic reviews of the WAUs adopted under this chapter to determine whether revisions are needed to more efficiently assess potential cumulative effects. The department shall consult with the departments of ecology~~((;))~~ and fish and wildlife, affected Indian tribes, forest ~~((land owners))~~ landowners, local ~~((government))~~ governmental entities, and the public. From time to time and as appropriate, the department shall make recommendations to the board regarding revision of watershed administrative units.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

**WAC 222-22-030 Qualification of watershed resource analysts, specialists, ~~((and))~~ field managers, and qualified experts.** \* (1) The department shall set the minimum qualifications for analysts participating in level 1

assessments conducted under WAC 222-22-050, for specialists participating in level 2 assessments conducted under WAC 222-22-060, ~~((and))~~ for field managers participating in recommendation of prescriptions under WAC 222-22-070, and for analysts, specialists, and field managers participating in reanalysis under WAC 222-22-090. The minimum qualifications shall be specific for the disciplines needed to participate in level 1 and level 2 assessments and in the recommendations of prescriptions, and shall include, at a minimum, formal education in the relevant discipline and field experience. Minimum qualifications for analysts participating in level 2 assessments should typically include a graduate degree in the relevant discipline. A reanalysis of mass wasting prescriptions under WAC 222-22-090 requires a qualified expert as defined in WAC 222-10-030.

\* (2) The department shall coordinate with relevant state and federal agencies, affected Indian tribes, forest ~~((land owners))~~ landowners, local ~~((government))~~ governmental entities, and the public to seek and utilize available qualified expertise to participate in watershed analysis or reanalysis.

\* (3) Qualified analysts, specialists, ~~((and))~~ field managers, and qualified experts shall, while and only for the purpose of conducting a watershed analysis or monitoring in a WAU, be duly authorized representatives of the department for the purposes of RCW 76.09.150.

\* (4) An individual may qualify in more than one science or management skill. Qualification under subsection (1) of this section shall be effective for ~~((5))~~ five years. When a qualification expires, a person requesting requalification shall meet the criteria in effect at the time of requalification.

\* (5) The department shall provide and coordinate training for, maintain a register of, and monitor the performance of qualified analysts, specialists, ~~((and))~~ field managers, and qualified experts by region. The department shall disqualify analysts, specialists, ~~((and))~~ field managers, and qualified experts who fail to meet the levels of performance required by the qualification standards.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

**WAC 222-22-040 Watershed prioritization.** (1) The department shall ~~((determine, by region, the order in which it will analyze))~~ prioritize WAUs ~~((The department shall cooperate))~~ for the purposes of this section and for reviews under WAC 222-22-090 in cooperation with the departments of ecology~~((;))~~ and fish and wildlife, affected Indian tribes, forest ~~((land owners))~~ landowners, and the public ~~((in setting priorities))~~. ~~((In setting priorities or reprioritizing WAUs, the department))~~ The prioritization shall consider the availability of landowner participation and assistance and the availability and assistance that may be provided by affected Indian tribes and local ((government)) governmental entities.

\* (2) ~~((Except as set forth in subsection (3) of this section,))~~ The department ((shall)) may undertake a watershed analysis on ~~((each))~~ any WAU ~~((, in the order established under subsection (1) of this section)).~~ When conducting a watershed analysis, the department shall include available, qualified expertise from state agencies, affected Indian tribes,

forest landowners, local governmental entities, and the public.

\*(3) The owner or owners of ten percent or more of the nonfederal forest land acreage in a WAU may notify the department in writing that the owner or owners intend to conduct a level 1 assessment, level 2 assessment, or both, and the prescription recommendation process on the WAU under this chapter, or conduct a reanalysis under WAC 222-22-090, at their own expense. The notice shall identify the teams proposed to conduct the watershed analysis or reanalysis, which shall be comprised of individuals qualified by the department pursuant to WAC 222-22-030. The department shall promptly notify any owner or owners sending notice under this subsection if any member of the designated teams is not so qualified. Within ~~((30))~~ thirty days of delivering a notice to the department under this subsection, the forest ~~((land owner))~~ landowner or owners shall begin the level 1 assessment under WAC 222-22-050 or, at its option, the level 2 assessment under WAC 222-22-060, or the reanalysis under WAC 222-22-090. An approved forest ~~((land owner))~~ landowner team shall, while and only for the purposes of conducting a watershed analysis or reanalysis in a WAU, be a duly authorized representative of the department for the purposes of RCW 76.09.150. The board encourages forest ~~((land owners))~~ landowners conducting assessments under this chapter to include available, qualified expertise from state and federal agencies, affected Indian tribes, forest ~~((land owners))~~ landowners, local ~~((government))~~ governmental entities, and the public.

\*(4) Before beginning ~~((an))~~ a watershed analysis in a WAU, the department or the forest ~~((land owner))~~ landowner conducting the analysis shall provide reasonable notice, including notice by regular United States mail where names and addresses have been provided to the department, to all forest ~~((land owners))~~ landowners in the WAU, and to affected Indian tribes. The department or the forest ~~((land owner))~~ landowner conducting the analysis shall provide reasonable notice to the public and to state, federal, and local ~~((government))~~ governmental entities, by, among other things, posting the notice conspicuously in the department's office ~~((of the departmental))~~ in the region containing the WAU. The notice shall be in a form designated by the department and give notice that an analysis or reanalysis is being conducted, by whose team, the time period of the analysis or reanalysis, and the dates and locations in which the draft analysis or reanalysis will be available for review and comment.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-22-045 Cultural resources.** (1) Any watershed analysis initiated after July 1, 2005, is not complete unless the analysis includes a completed cultural resource module. Cultural resources module completeness is detailed in Appendix II of the module and includes affected tribe(s) participation, appropriate team qualification, required maps and forms, assessment of tribal and nontribal cultural resources, peer review of assessment, management strategies based on causal mechanism reports from synthesis, and

agreement on the management strategies by affected tribes, landowners and land managers on the field managers team and, where applicable, the department of archaeology and historic preservation.

(2) When conducting a watershed ~~((analysis revisions))~~ reanalysis pursuant to WAC 222-22-090~~((4))~~, the cultural resources module is not required if the watershed analysis was approved by the department prior to the date in subsection (1) of this section. However, the board encourages use of the cultural resources module upon such review.

(3) The department does not review or approve cultural resources management strategies because their implementation is voluntary. The department of archaeology and historic preservation must be consulted and agree on all management strategies involving sites registered on the department of archaeology and historic preservation's archaeological and historic sites data base and all resources that require mandatory protection under chapters 27.44 and 27.53 RCW.

(4) The cultural resources module may be conducted as a stand-alone method separate from a watershed analysis to identify, protect, and manage cultural resources. When used as a stand-alone methodology:

(a) Selected components of the methodology may be used as the participants deem necessary or the module may be used in its entirety.

(b) The methodology may be used at a variety of geographic scales and may be initiated by tribes, land managers or landowners. Landowner or land manager initiation is not limited by the minimum ownership threshold requirements in this chapter. Nothing in this rule grants any person or organization initiating the cultural resources module as a stand-alone method any right of entry onto private property.

(c) Watershed analysis notice requirements to the department do not apply.

(d) Participants are encouraged to engage people that meet the minimum qualifications to conduct the module as set by this chapter.

(e) In order for a stand-alone module to be incorporated into a watershed analysis, the module must have been conducted in accordance with the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

**WAC 222-22-050 Level 1 watershed resource assessment.** \*(1) To begin a watershed resource analysis on a WAU, the department shall assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1). A forest ~~((land owner))~~ landowner or owners acting under WAC 222-22-040(3) may assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1) or, at its option, may begin the analysis as a level 2 resource assessment under WAC 222-22-060. Each level 1 team shall include persons qualified in the disciplines indicated as necessary in the methodology, and should generally include a person or persons qualified in the following:

- (a) Forestry;
- (b) Forest hydrology;
- (c) Forest soil science or geology;
- (d) Fisheries science;

- (e) Geomorphology;
- (f) Cultural anthropology; and
- (g) Archaeology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense. The cultural resources module must include the participation of the affected Indian tribe(s). See board manual section 11, J. Cultural Resources Module, Introduction, 1) *Using this methodology in formal watershed analysis.*

\*(2) The level 1 team shall perform an inventory of the WAU utilizing the methodology, indices of resource condition, and checklists set forth in the manual in accordance with the following:

(a) The team shall survey the WAU for fish, water, and capital improvements of the state or its political subdivisions, and conduct an assessment for cultural resources.

(b) The team shall display the location of these resources on a map of the WAU, except mapping of tribal cultural resources sites must be approved by the affected tribe. The location of archaeological sites shall be on a separate map that will be exempt from public disclosure per RCW 42.56.300.

(c) For public resources (fish, water, and capital improvements of the state or its political subdivisions):

(i) The team shall determine the current condition of the resource characteristics of these resources, shall classify their condition as "good," "fair," or "poor," and shall display this information on the map of the WAU. The criteria used to determine current resource conditions shall include indices of resource condition, in addition to such other criteria as may be included in the manual. The indices will include two levels, which will distinguish between good, fair, and poor conditions.

(ii) The team shall assess the likelihood that identified watershed processes in a given physical location will be adversely changed by one forest practice or by cumulative effects and that, as a result, a material amount of water, wood, sediment, or energy (e.g., affecting temperature) will be delivered to fish, water, or capital improvements of the state or its political subdivisions. (This process is referred to in this chapter as "adverse change and deliverability.") (For example, the team will address the likelihood that road construction will result in mass wasting and a slide that will in turn reach a stream.) The team shall rate this likelihood of adverse change and deliverability as "high," "medium," "low," or "indeterminate." Those likelihoods rated high, medium, or indeterminate shall be displayed on the map of the WAU.

(iii) For each instance of high, medium, or indeterminate likelihood of adverse change and deliverability identified under (c)(ii) of this subsection, the team shall assess the vulnerability of potentially affected resource characteristics. Criteria for resource vulnerability shall include indices of resource condition as described in (c)(i) of this subsection and quantitative means to assess the likelihood of material adverse effects to resource characteristics caused by forest practices. (For example, the team will assess the potential damage that increased sediment caused by a slide reaching a stream will cause to salmon spawning habitat that is already

in fair or poor condition.) The team shall rate this vulnerability "high," "medium," "low," or "indeterminate" and shall display those vulnerabilities on the map of the WAU. If there are no other criteria in the manual to assess vulnerability at the time of the assessment, current resource condition shall be used, with good condition equivalent to low vulnerability, fair condition equivalent to medium vulnerability, and poor condition equivalent to high vulnerability.

(iv) The team shall identify as areas of resource sensitivity, as provided in table 1 of this section, the locations in which a management response is required under WAC 222-22-070(3) because, as a result of one forest practice or of cumulative effects, there is a combination of a high, medium, or indeterminate likelihood of adverse change and deliverability under (c)(ii) of this subsection and a low, medium, high, or indeterminate vulnerability of resource characteristics under (c)(iii) of this subsection:

**Table 1**  
**Areas of Resource Sensitivity and Management Response**

		<i>Likelihood of Adverse Change and Deliverability</i>		
		<b>Low</b>	<b>Medium</b>	<b>High</b>
<i>Vulnerability</i>	<b>Low</b>	Standard rules	Standard rules	Response: Prevent or avoid
	<b>Medium</b>	Standard rules	Response: Minimize	Response: Prevent or avoid
	<b>High</b>	Standard rules	Response: Prevent or avoid	Response: Prevent or avoid

The team shall display the areas of resource sensitivity on the map of the WAU.

(v) The decision criteria used to determine low, medium, and high likelihood of adverse change and deliverability shall be as set forth in the manual. A low designation generally means there is minimal likelihood that there will be adverse change and deliverability. A medium designation generally means there is a significant likelihood that there will be adverse change and deliverability. A high designation generally means that adverse change and deliverability is more likely than not with a reasonable degree of confidence. Any areas identified as indeterminate in the level 1 assessment shall be classified for the purposes of the level 1 assessment as medium until a level 2 assessment is done on the WAU under WAC 222-22-060, during which the uncertainties shall be resolved.

(d) For cultural resources, the team shall follow the methodology outlined in the cultural resources module to determine the risk call for cultural resources based upon resource vulnerability and resource importance.

(e) The team shall prepare a causal mechanism report regarding the relationships of each process identified in (c) and (d) of this subsection. The report shall demonstrate that the team's determinations were made in accordance with the manual. If, in the course of conducting a level 1 assessment, the team identifies areas in which voluntary corrective action will significantly reduce the likelihood of material, adverse effects to the condition of a resource characteristic, the team

shall include this information in the report, and the department shall convey this information to the applicable (~~land owner~~) landowner.

\*~~(3)~~ (2) Within (~~(21)~~) twenty-one days of mailing notice under WAC 222-22-040(4), the level 1 team shall submit to the department its draft level 1 assessment, which shall consist of the map of the WAU marked as set forth in this section and the causal mechanism report proposed under subsection (2)(e) of this section. If the level 1 team is unable to agree as to one or more resource sensitivities or potential resource sensitivities, or the causal mechanism report, alternative designations and an explanation (~~(therefor)~~) therefore shall be included in the draft assessment. Where the draft level 1 assessment delivered to the department contains alternative designations, the department shall within (~~(21)~~) twenty-one days of the receipt of the draft level 1 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

\*~~(4)~~ If the level 1 assessment contains any areas in which the likelihood of adverse change and deliverability or resource vulnerability are identified as indeterminate under this section or if the level 1 methodology recommends it, the department shall assemble a level 2 assessment team under WAC 222-22-060 to resolve the uncertainties in the assessment, unless a forest (~~land owner~~) landowner acting under WAC 222-22-040(3) has conducted a level 2 assessment on the WAU.

\*~~(5)~~ Pending the completion of the level 2 assessment, if any, on the WAU, the department shall select interim prescriptions using the process and standards described in WAC 222-22-070 (1), (2), and (3) and 222-22-080(3) and shall apply them to applications and notifications as provided in WAC 222-22-090 (1) and (2). Before submitting recommended interim prescriptions to the department, the field managers' team under WAC 222-22-070(1) shall review the recommended prescriptions with available representatives of the jurisdictional management authorities of the fish, water, capital improvements of the state or its political subdivisions, and cultural resources in the WAU, including, but not limited to, the departments of fish and wildlife, ecology, and affected Indian tribes.

**AMENDATORY SECTION** (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-22-060 Level 2 watershed resource assessment.** \*~~(1)~~ The department, or forest (~~land owner~~) landowner acting under WAC 222-22-040(3), may assemble a level 2 assessment team either(~~, in the case of a forest land owner~~), to begin a level 2 watershed (~~(analysis)~~) assessment or to review the level 1 assessment on a WAU. The level 2 team shall consist of specialists qualified under WAC 222-22-030(1). Each level 2 team shall include persons qualified in the disciplines indicated as necessary in the methodology, and should generally include a person or persons qualified in the following:

- (a) Forestry;
- (b) Forest hydrology;

- (c) Forest soil science or geology;
- (d) Fisheries science;
- (e) Geomorphology;
- (f) Cultural anthropology; and
- (g) Archaeology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to designate one qualified member of the team at its own expense. The cultural resources module must include the participation of the affected Indian tribe(s). See board manual section 11, J. Cultural Resources Module, Introduction, 1) *Using this methodology in formal watershed analysis*.

\*~~(2)~~ The level 2 team shall perform an assessment of the WAU utilizing the methodology, indices of resource condition, and checklist set forth in the manual in accordance with the following:

(a) If a level 1 assessment has not been conducted under WAC 222-22-050, the assessment team shall complete the tasks required under WAC 222-22-050(2), except that the level 2 team shall not rate any likelihood of adverse change and deliverability or resource vulnerability as indeterminate.

(b) If the level 2 team has been assembled to review a level 1 assessment, the level 2 team shall, notwithstanding its optional review of all or part of the level 1 assessment, review each likelihood of adverse change and deliverability and resource vulnerability rated as indeterminate and shall revise each indeterminate rating to low, medium, or high and shall revise the map of the WAU accordingly.

\*~~(3)~~ Within (~~(60)~~) sixty days of mailing notice under WAC 222-22-040(4) where a watershed analysis begins with a level 2 assessment or within (~~(60)~~) sixty days of beginning a level 2 assessment after completion of a level 1 assessment, the level 2 team shall submit to the department its draft level 2 assessment, which shall consist of the map of the WAU and the causal mechanism report.

\*~~(4)~~ The level 2 team shall endeavor to produce a consensus report. If the level 2 team is unable to agree as to one or more areas of resource sensitivity or the causal mechanism report, alternative designations and an explanation (~~(therefor)~~) shall be included in the draft assessment. Where the draft level 2 assessment delivered to the department contains alternative designations or reports, the department shall within (~~(30)~~) thirty days of the receipt of the draft level 2 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

**AMENDATORY SECTION** (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-22-070 Prescriptions and management strategies.** \*~~(1)~~ For each WAU for which a watershed analysis is undertaken, the department, or forest (~~land owner~~) landowner acting under WAC 222-22-040(3), shall assemble a team of field managers qualified under WAC 222-22-030(1). The team shall include persons qualified in the disciplines indicated as necessary in watershed analysis methods,

and shall generally include a person or persons qualified in the following:

- (a) Forest resource management;
- (b) Forest harvest and road systems engineering;
- (c) Forest hydrology;
- (d) Fisheries science or management;
- (e) Cultural anthropology and/or archaeology, depending on the cultural resources identified in the assessment.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense. The cultural resources module must include the participation of the affected Indian tribe(s). See board manual section 11, J. Cultural Resources Module, Introduction, 1) *Using this methodology in formal watershed analysis.*

\* (2) Each forest (~~(land owner)~~) landowner in a WAU shall have the right to submit prescriptions to the department or the forest (~~(land owner)~~) landowner conducting the watershed analysis (~~(prescriptions)~~) for areas of resource sensitivity on (~~(its)~~) their land. If these prescriptions are received within the time period described in subsection (4) of this section, they shall be considered for inclusion in the watershed analysis.

\* (3) For each identified area of resource sensitivity, the field managers team shall, in consultation with the level 1 and level 2 teams, if any, select and recommend prescriptions to the department (~~(prescriptions)~~). These prescriptions shall be reasonably designed to minimize, or to prevent or avoid, as set forth in table 1 in WAC 222-22-050 (2)(c)(iv), the likelihood of adverse change and deliverability that has the potential to cause a material, adverse effect to resource characteristics in accordance with the following:

(a) The prescriptions shall be designed to provide forest (~~(land owners)~~) landowners and operators with as much flexibility as is reasonably possible while addressing the area of resource sensitivity. The prescriptions should, where appropriate, include, but not be limited to, plans for road abandonment, orphaned roads, and road maintenance and plans for applying prescriptions to recognized land features identified in the WAU as areas of resource sensitivity but not fully mapped;

(b) Restoration opportunities may be included as voluntary prescriptions where appropriate;

(c) Each set of prescriptions shall provide for an option for an alternate plan under WAC 222-12-040, which the applicant shows meets or exceeds the protection provided by the other prescriptions approved for a given area of resource sensitivity;

(d) The rules of forest practices and cumulative effects under this chapter shall not require mitigation for activities or events not regulated under chapter 76.09 RCW. Any hazardous condition subject to forest practices identified in a watershed analysis requiring corrective action shall be referred to the department for consideration under RCW 76.09.300 et seq.; and

(e) The forests and fish riparian permanent rules (~~(-when effective,))~~ supersede all existing watershed analysis riparian prescriptions with the exception of riparian management zones for exempt 20-acre parcels, when watershed analysis

prescriptions were in effect before January 1, 1999. (See WAC 222-30-021, 222-30-022, and 222-30-023.) No new riparian prescriptions will be written after completion of the riparian (~~(management zone))~~ function assessment report during a watershed analysis.

\* (4) For each identified cultural resource area of resource sensitivity, the field managers team shall develop cultural resources management strategies in consultation with the assessment team and affected tribe(s).

(a) If a management strategy involves a site registered on the department of archaeology and historic preservation's archaeological and historic sites data base, data recovery at an archaeological site, or any resource that requires mandatory protection under chapters 27.44 and 27.53 RCW, the field managers team shall submit the management strategy to the department of archaeology and historic preservation for agreement.

(b) The management strategies should be reasonably designed to protect or allow the recovery of resources by measures that minimize or prevent or avoid risks identified in the assessment.

(c) Management strategies resulting from conducting a cultural resources module are voluntary, not mandatory prescriptions, whether the module is conducted as part of a watershed analysis or as a stand-alone method separate from watershed analysis. However, the mandatory protections of resources under chapters 27.44 and 27.53 RCW still apply.

(5) The field managers team shall submit the recommended prescriptions, monitoring recommendations and cultural resources management strategies to the department within (~~(30))~~ thirty days of the submission to the department of the level 2 assessment under WAC 222-22-060 or within (~~(24))~~ twenty-one days of the submission to the department of the level 1 assessment under WAC 222-22-050.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

**WAC 222-22-075 Monitoring.** \*In connection with any watershed analysis that is not a (~~(revision-))~~ reanalysis under WAC 222-22-090(~~((4)))~~), the monitoring module will be required to be completed but implementation of monitoring recommendations would be voluntary unless otherwise required by existing laws and rules, or required by an HCP implementation agreement. Implementation of the monitoring recommendations will be encouraged when needed as part of the statewide effectiveness monitoring program.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-22-080 \*Approval of watershed analysis.** (1) Upon receipt of the recommended prescriptions and management strategies resulting from a level 1 assessment under WAC 222-22-050, a level 2 assessment under WAC 222-22-060, or a (~~(level 1 assessment under WAC 222-22-050 where a level 2 assessment will not be conducted))~~ reanalysis under WAC 222-22-090, the department shall select prescriptions. The department shall circulate the draft watershed analysis to the departments of ecology(~~(-))~~ and fish and wildlife, affected Indian tribes, local (~~(government))~~ governmental entities,

forest (~~(land owners)~~) landowners in the WAU, and the public for review and comment. The prescriptions recommended by the field managers' team shall be given substantial weight. Within thirty days of receipt of the recommended prescriptions and management strategies, the department shall review comments, revise the watershed analysis as appropriate, and approve or disapprove the watershed analysis for the WAU.

\* (2) The department should notify any governmental agency or Indian tribe having jurisdiction over activities which are not regulated under chapter 76.09 RCW but which are identified in the draft analysis as having a potential for an adverse impact on identified fish, water, capital improvements of the state or its political subdivisions, (~~(and)~~) or cultural resources.

\* (3) The department shall approve the draft watershed analysis unless it finds:

(a) For any level 1 assessment or level 2 assessment, that:

(i) The team failed in a material respect to apply the methodology, indices of resource condition, or checklists set forth in the manual; or

(ii) A team meeting the criteria promulgated by the department and using the defined methodologies, indices of resource conditions, and checklists set forth in the manual could not reasonably have come to the conclusions identified in the draft level 1 or level 2 assessment; and

(b) (~~For~~) The prescriptions, (~~that they~~) will not accomplish the purposes and policies of this chapter and (~~of the Forest Practices Act,~~) chapter 76.09 RCW.

(c) In making its findings under this subsection, the department shall take into account its ability to revise assessments under WAC 222-22-090(~~(3)~~).

\* (4) If the department does not approve the draft watershed analysis, it shall set forth in writing a detailed explanation of the reasons for its disapproval.

(5) To become final, all watershed analyses must be reviewed under SEPA on a nonproject basis. SEPA review may take place concurrently with the public review in subsection (1) of this section. (~~(f)~~) See WAC 222-10-035. (~~(h)~~) SEPA must be completed within two years from the date the department approves the watershed analysis under subsection (1) of this section or the watershed analysis will expire. This expiration does not require SEPA review and sunsets the watershed analysis for the WAU. The department shall notify the landowners in the WAU that the watershed analysis has expired.

(6) The department will not review or approve cultural resource management strategies because their implementation is voluntary.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-22-090 Use (~~and~~), review, and reanalysis of a watershed analysis.** \* (1) Where a watershed analysis has been completed and approved for a WAU under this chapter:

(a) Any landowner within the WAU may apply for a multiyear permit to conduct forest practices according to the watershed analysis prescriptions. This permit is not renew-

able if a (~~five-year review~~) reanalysis is found necessary by the department under subsection (6) of this section and either the reanalysis has not been completed and approved or the department has rescinded the prescriptions.

(b) Nonmultiyear forest practices applications and notifications submitted to the department shall indicate whether an area of resource sensitivity will be affected and, if so, which prescription the operator, timber owner, or forest (~~(land owner)~~) landowners shall use in conducting the forest practice in the area of resource sensitivity;

(c) The department shall assist operators, timber owners, and forest (~~(land owners)~~) landowners in obtaining governmental permits required for the prescription (~~(f)~~). See WAC 222-50-020 and 222-50-030(~~(g)~~);

(d) The department shall confirm that the prescription selected under (a) and (b) of this subsection was one of the prescriptions approved for the area of resource sensitivity under WAC 222-22-080 and shall require the use of the prescription; and

(e) The department shall not further condition forest practices applications and notifications in an area of resource sensitivity in a WAU where the applicant will use a prescription contained in the watershed analysis nor shall the department further condition forest practices applications and notifications outside an area of resource sensitivity in a WAU, except:

(i) For reasons other than the watershed processes and fish, water, and capital improvements of the state or its political subdivisions analyzed in the watershed analysis in the WAU (~~(and except)~~); or

(ii) To correct mapping errors, misidentification of soils, landforms, vegetation, or stream features, or other similar factual errors.

\* (2) Pending completion of a watershed analysis for a WAU, the department shall process forest practices notifications and applications in accordance with the other chapters of this title, except that applications and notifications received for forest practices (~~(on)~~) in a WAU after the date the notice is mailed under WAC 222-22-040(4) commencing a watershed analysis on the WAU shall be conditioned to require compliance with interim, draft, and final prescriptions, as available.

Processing and approval of applications and notifications shall not be delayed by reason of review, approval, or appeal of a watershed analysis.

\* (3) The board encourages cooperative and voluntary monitoring. Evaluation of resource conditions may be conducted by qualified specialists, analysts, (~~(and)~~) field managers, and qualified experts as determined under WAC 222-22-030. Subsequent watershed analysis and monitoring recommendations in response to areas where recovery is not occurring shall be conducted in accordance with this chapter.

\* (4) (~~Where the condition of resource characteristics in a WAU are fair or poor~~) To keep watershed analyses current, the department shall determine if and when a reanalysis of a watershed analysis is necessary to evaluate the effectiveness of the prescriptions applied under this chapter to the WAU in providing for the protection and recovery of the resource (~~(characteristic. If the department finds that the prescriptions are not providing for such protection and recovery over a~~

period of 3 years, the department shall repeat the watershed analysis in the WAU). The department shall determine which watershed analysis modules and prescriptions need to be included in the reanalysis. Review and reanalysis of a watershed analysis shall be conducted in accordance with this chapter and board manual section 11, standard methodology for conducting watershed analysis, except that:

(a) The reanalysis may be conducted on areas smaller than the entire WAU in the case of subsection (6)(a) of this section; and

(b) The reanalysis shall be conducted only on the areas affected in the case of subsection (6)(b) or (c) of this section.

(5) Entities with an interest in maintaining prescriptions the department has identified for reanalysis are responsible for committing sufficient resources to complete a reanalysis in addition to the available resources provided by the department to administer the reanalysis process.

(Aside from the foregoing,) (6) Once a watershed analysis is completed and approved on a WAU, ((#) the department shall ((be revised in whole or in part)) conduct a review to determine if a reanalysis is necessary, upon the earliest of the following to occur:

(a) Five years after the date the watershed analysis is final, ((if necessary)) and every five years thereafter; or

(b) The occurrence of a natural disaster having a material adverse effect on the resource characteristics of the WAU; or

(c) Deterioration in the condition of a resource characteristic in the WAU measured over a ((+2)) twelve-month period or no improvement in a resource characteristic in fair or poor condition in the WAU measured over a ((+2)) twelve-month period unless the department determines, in cooperation with the departments of ecology, fish and wildlife, affected Indian tribes, forest ((land owners)) landowners, and the public, that a longer period is reasonably necessary to allow the prescriptions selected to produce improvement((; or

(d) The request of an owner of forest land in the WAU, which wishes to conduct a watershed analysis at its own expense.

Revision of an approved watershed analysis shall be conducted in accordance with the processes, methods, and standards set forth in this chapter, except that the revised watershed analysis shall be conducted only on the areas affected in the case of revisions under (b) or (c) of this subsection, and may be conducted on areas smaller than the entire WAU in the case of revisions under (a) and (d) of this subsection. The areas on which the watershed analysis revision is to be conducted shall be determined by the department and clearly delineated on a map before beginning the assessment revision. Forest practices shall be conditioned under the current watershed analysis pending the completion of any revisions).

(7) Once the department has determined that a watershed reanalysis is necessary under subsection (6) of this section:

(a) The department shall notify the forest landowners in the WAU, the departments of ecology and fish and wildlife, affected Indian tribes, relevant federal agencies and local governmental entities, and the public.

(b) Prior to the start of the reanalysis, the department shall determine and clearly delineate on a map the areas on which the reanalysis is to be conducted.

(c) The department, in its review of forest practices applications within the mapped reanalysis area, will classify proposed forest practices undergoing reanalysis, if necessary per WAC 222-16-050.

(d) The department shall determine if the forest landowners in the WAU want to participate in the reanalysis and commit sufficient resources to complete the reanalysis process in accordance with subsection (5) of this section:

(i) If no forest landowners in the WAU wish to participate and commit resources, then the department may rescind the watershed analysis prescriptions after conducting SEPA review. If the department rescinds prescriptions, it shall notify the landowners in the WAU.

(ii) If a landowner wishes to participate and commit resources, then the department in consultation with the departments of ecology and fish and wildlife, affected Indian tribes, forest landowners, and the public shall establish a timeline for the reanalysis. If the timeline for completion is not being met, the department may adjust the timeline or, after conducting SEPA review, rescind the watershed analysis prescriptions. If the department rescinds prescriptions, it shall notify the landowners in the WAU.

(e) Upon receiving recommendations from the reanalysis, the department shall select prescriptions in accordance with WAC 222-10-035 and 222-22-080(1).

(f) Reanalyses must be reviewed under SEPA on a non-project basis.

(8) Regardless of subsection (7) of this section, the owner or owners of ten percent or more of the nonfederal forest land in the WAU may conduct a watershed reanalysis at any time at their own expense and the reanalysis may be conducted on areas smaller than the entire WAU.

## Chapter 222-23 WAC

### ~~((RIPARIAN))~~ RIVERS AND HABITAT OPEN SPACE PROGRAM

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

**WAC 222-23-010 Policy and definitions.** (1) **Policy.** The legislature determined that it is in the public interest to acquire (by purchase or donation) ~~((an interest in))~~ conservation easements on forest lands within unconfined ((avulsing)) channel migration zones ((that are offered for acquisition by the landowner, and therefore established a riparian open space program in RCW 76.09.040 to be administered by the department. The purpose of the acquisition is to provide for ecological protection and fisheries enhancement)) and forest lands containing a critical habitat for threatened or endangered species as designated by the board. The rivers and habitat open space program (formerly known as the riparian open space program), established in RCW 76.09.040, is for these forest lands voluntarily enrolled by the landowner. The department may acquire ((either the fee interest in or)) a permanent conservation easement over such lands. The purpose of this program, which will be administered by the department, is to provide for ecological protection and fisheries and wildlife enhancement. This chapter implements the ((ripar-

~~ian))~~ rivers and habitat open space program (hereinafter referred to in this chapter as "program"). In any circumstance where qualifying channel migration zone lands or qualifying critical habitat lands are not acquired by the department through a conservation easement, the landowner may elect to develop a management option for the lands in cooperation with the department, other agencies and affected Indian tribes.

(2) **Definitions.** ~~((As used in this chapter,))~~ The following ((terms shall have the following meanings)) definitions apply to this chapter:

(a) "Qualifying channel migration zone (CMZ) land(~~((s)(-)" See))~~" means those forest lands located within an unconfined channel migration zone. Qualifying CMZ lands are eligible for easement acquisition if they meet the standards in WAC 222-23-020(~~((+))~~) (5).

(i) An "unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. A merchantable stand of timber may exist within the zone and is considered a part of the channel migration zone. The unconfined channel migration zone does not include areas that are permanently restricted from channel movement by a dike or levee.

(ii) An "unconfined stream" is generally:

(A) A fifth order or larger water;

(B) Less than two percent gradient; and

(C) Found in a valley more than four times wider than the bankfull width of the channel.

(b) ((An "unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone and are considered a part of the channel migration zone. The unconfined avulsing channel migration zone does not include areas that are permanently restricted from channel movement by a dike or levee.)) "Qualifying critical habitat lands" means those forest lands that qualify as one or more of the critical habitats (state) defined in WAC 222-16-080 including forest lands that have existing plans or evaluations described in WAC 222-16-080(6). Qualifying critical habitat lands are eligible for easement acquisition if they meet the standards in WAC 222-23-020(5).

(c) ((An "unconfined avulsing stream" is defined in WAC 222-16-010.)) "Unacceptable liabilities" means exposure to undesirable responsibilities or problems as determined by the department. This includes, but is not limited to, the presence of hazardous substances on the lands or by other conditions that may create a liability to the department, or that may jeopardize the department's ability to maintain ecological protection, and fisheries and wildlife enhancement of the qualifying lands. Unacceptable liabilities may exist when the applicant is unwilling or unable to provide reasonable indemnification to the department.

(d) "Hazardous substances" includes, but is not limited to, hazardous substances as defined in RCW 70.102.010(5),

and 70.105D.020(10), and solid waste as defined in RCW 70.95.030(23).

(e) "Conservation easement" means a voluntary, legally enforceable land preservation agreement between the landowner and easement holder to permanently limit the type and amount of alteration of identified habitat or CMZ on the subject property while the landowner retains ownership.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-23-020 Submitting and processing of applications for the ~~((riparian))~~ rivers and habitat open space program.** (1) ~~((Qualifying CMZ land(s). Lands that qualify for the riparian open space program are those lands located within an unconfined avulsing channel migration zone and are, as of the date an application is submitted to the department under this section, identified in records of the applicable county assessor as being classified or designated as forest land under chapter 84.33 RCW or as being subject to current use taxation as forest land under chapter 84.34 RCW. Qualifying CMZ lands may be placed in the riparian open space program whether they represent all or just a portion of the lands within the channel migration zone along a particular stream segment. That is, the lands to be placed in the program may include all of a landowner's lands located within the channel migration zone up to the boundary between that zone and the RMZ core area, or lands to be included may include only a portion of a landowner's lands within an unconfined avulsing channel migration zone of a given stream segment. Likewise, where more than one landowner owns land within the channel migration zone of a given stream segment, any landowner may elect to participate in the riparian open space program without regard to participation of neighboring landowners.~~

~~Land does not qualify for the riparian open space program where the department has determined that:~~

~~(a) The lack of legal access to the land is likely to materially impair the department's ability to administer the riparian open space program with respect to the land;~~

~~(b) All persons having an interest of any description in the land, including, but not limited to, joint tenancy, tenancy in common, holder of easement, or holder of lien or security interest, have not agreed to convey or subordinate such interests to the state to the extent deemed necessary by the state to transfer the fee or easement free of or superior to any such interest;~~

~~(c) The land is subject to unacceptable liabilities as defined in WAC 222-23-020(4); or~~

~~(d) There is any other circumstance making the land unsuitable for fisheries enhancement or ecological protection.~~

~~(2))~~ **Rivers and habitat open space application.** An owner or owners of qualifying ~~((CMZ))~~ lands may apply to the department to place the qualifying CMZ lands or qualifying critical habitat lands within the ~~((riparian open space))~~ program. ~~((Applications for the riparian open space program may, at the landowners' option, be submitted at the same time as a forest practices application for adjoining or nearby forestlands, or may be submitted separately (and without refer-~~



ence to or the requirement of a current forest practices application.) The department will accept or reject the program application based on eligibility for an easement acquisition. The application for the (riparian open space) program shall be in writing on a form provided by the department (and). The application shall contain (the following) information the department determines is necessary to assess whether the land qualifies for the program, as well as the following information (see board manual section 18 for details):

(a) (Name, address, and telephone number of applicant(s);

(b) Contact name and telephone number for questions concerning the application;

(c) Location and description of the land proposed for inclusion in the program, including estimated acreage.) A description of the methods (used by) the landowner used to (determine) propose that the land (is qualifying CMZ land and a map showing the approximate boundary between the channel migration zone and the adjoining RMZ core area (and in situations where the latter is not applicable, a description of the process the landowner used to determine that the qualifying CMZ land is within an unconfined avulsing stream channel migration zone);

(d) Tax parcel identification number(s) that contain the qualifying CMZ land;

(e) List of all persons having any right or interest in the land covered by the application for the riparian open space program and a description of such right or interest;

(f) The stumpage value area and hauling zone in which the qualifying lands lie (see map at WAC 458-40-640).

(g) A map of the qualifying CMZ land) meets the eligibility for easement acquisition criteria;

((h)) (b) A statement indicating the landowner's desire to place the land covered by the application within the (riparian open space) program and whether the landowner wishes to (convey the qualifying land in fee or convey only) grant a conservation easement to the state on both land and trees or in trees only;

((i)) (c) Whether the landowner wishes to receive the statutory compensation for the conveyance or wishes to donate the qualifying ((CMZ)) lands;

((j)) (d) Whether the landowner ((representative submitting the application)) is aware of the presence of any hazardous substances on the lands;

((k) Description and documentation of the legal and physical access to the land being acquired;

(l) The type of boundary description proposed by landowner (survey or other description); and

(m) Any other information DNR determines is necessary to assess whether the land qualifies for the riparian open space program.

(3)) (e) A statement affirming that the person or persons submitting the application stating they are the landowner and believes that the information contained in the application and its supporting materials is true and complete.

(2) **Review and processing of application.** (Within ninety days of receipt of) The application process will follow the program funding cycle process described in board manual section 18. After the department receives a complete and accurate application for the (riparian open space) pro-

gram, the department ((shall preliminarily determine (and advise the applicant) whether lands proposed for the riparian open space program appear to meet the requirements of this chapter and of RCW 76.09.040 (3) and (4), and, if so, whether there is funding available for the purchase)) will make a preliminary determination whether the application is eligible for the easement acquisition. This determination is subject to the department's complete review, and subsequent confirmation of all information required for the program and ((eligibility of the land as)) identification of qualifying ((for the program)) lands. ((H) After the preliminary determination ((is that the land qualifies for the program and if funding is available for the proposed purchase)) of eligibility, ((then)) the following shall occur ((within the ninety days following notice to the landowner of the preliminary determination)):

(a) The landowner, in cooperation with the department, shall delineate on the ground the boundary line ((between)) of the ((CMZ and the RMZ core area; following which,)) qualifying lands as indicated in the application.

(b) The department shall verify the appropriateness of ((that)) the delineation ((, determine the standards for the boundary description (i.e., a survey or other)) of qualifying lands using the procedure outlined in board manual section 18, make a final determination whether there are any unacceptable liabilities on the lands proposed for inclusion in the program, and communicate the foregoing to the landowner.

(c) The department will rate, rank, and fund, as described in WAC 222-23-025(1), the eligible applications for each category of qualifying CMZ lands or critical habitat lands and for each funding cycle using a standardized scoring system.

(d) The department will prepare a combined preliminary project priority list, after evaluation and scoring of all applications.

(e) The department will submit the preliminary project priority list to the state legislature for budget consideration.

(f) The department will notify the applicant in writing of the funding decision for their application, subject to available funding from the legislature.

(g) For those applications determined to be funded, and if the department determines there are no unacceptable liabilities on the lands, the department shall follow the guidelines in WAC 222-23-030(2) and the landowner shall ((mark)) enhance the boundary (as verified) using ((tree tags or other long-term)) boundary marking methods specified by the department.

((4) Unacceptable liabilities. As used in this section, unacceptable liabilities are created by the presence of hazardous substances on the qualifying CMZ lands or by other condition that creates such a liability to the department that may jeopardize the department's ability to maintain fisheries enhancement or the ecological protection of the qualifying CMZ lands, and with respect to which liability the applicant is unwilling or unable to provide reasonable indemnification to the department. If the department finds unacceptable liabilities with respect to qualifying CMZ lands, the department may reject the landowner's application.

(5) Preparation of conveyance documents. Within ninety days following placement in the field of the long-term boundary between the CMZ and the RMZ core area as provided for in subsection (3) of this section, the following shall occur:

(a) The landowner shall:

(i) Traverse the boundary to determine the acreage of the qualifying lands;

(ii) Either perform a legal land survey or otherwise document the boundaries consistent with the requirements of WAC 222-23-030(3), as applicable; and

(iii) Prepare a map of the qualifying CMZ lands suitable for recording.

(b) The department shall:

(i) Conduct and finalize a cruise of the timber on the qualifying CMZ lands;

(ii) Determine the statutory compensation to be paid to the landowner;

(iii) Prepare conveyance documents consistent with this chapter; and

(iv) Prepare any other documents necessary for closing and recording the conveyance, including without limitation a real estate excise tax affidavit.

~~(6))~~ (h) For those applications determined to be eligible but not funded, the application will be returned to the applicant. At any time thereafter, the applicant may resubmit the application with or without revision. This resubmitted application will be placed on the next available funding cycle and will be reprioritized under the process described in (c) through (g) of this subsection.

(i) For those applications determined to be ineligible for reasons other than funding, the department must notify the landowner of the reason(s) and the application will be rejected.

(j) Once the landowner completes the boundary enhancement required in (g) of this subsection, the department shall:

(i) Perform a traverse of the boundary of the qualifying lands;

(ii) Conduct and finalize a cruise of the timber on the qualifying lands;

(iii) Determine the statutory compensation to be paid to the landowner;

(iv) Prepare conveyance documents consistent with this chapter; and

(v) Prepare any other documents necessary for closing and recording the conveyance, including without limitation a real estate excise tax affidavit.

(3) Timber cruise. ~~((The))~~ For the purpose of determining the compensation, a timber cruise will be conducted by the department using a cruiser acceptable to the department and the landowner ((and)), using ((generally accepted)) a cruise methodology determined by the department and sampling intensity acceptable to both parties. ((The timber cruise shall measure all trees within the lands to be conveyed that contain measurable log volume and develop all information (species and grade) with respect to those trees necessary to apply the stumpage tables developed by the department of revenue pursuant to RCW 84.33.091; this includes volume by species and grade sufficient to apply the department of revenue stumpage tables in WAC 458-40-640, 458-40-650 and 458-40-660 (1) and (2).)) The department will provide the cruise data to the landowner~~((s))~~. Within thirty days thereafter, the landowner shall advise the department whether the

cruise results are acceptable. The landowner or the department may, at their option, perform a check cruise.

~~((7))~~ (4) Compensation for conveyances. RCW 76.09.040(3) specifies the compensation the department shall pay for ~~((purchases))~~ the conveyance of ((qualifying CMZ lands)) a conservation easement under this chapter, unless the landowner chooses to donate the ~~((property in fee or donate a))~~ conservation easement. The department will calculate compensation based on stumpage and land use value tables described in (a) and (b) of this subsection. The tables applied will be those in effect as of the date the complete timber cruise is received by the department for new or resubmitted applications.

~~((a))~~ (a) ((Fee interests. For conveyances of fee interests, the department shall pay for both the land value and the timber value, as determined in this subsection. The land value component shall be the acreage of qualifying CMZ lands to be conveyed multiplied by the average per acre value of all commercial forest land in Western Washington or the average for Eastern Washington, whichever average is applicable to the qualifying CMZ lands. The department shall determine the Western and Eastern Washington averages based on the land value tables established by RCW 84.33.120 and revised annually by the department of revenue (see WAC 458-40-540). The timber value component of the compensation shall be based on the cruise volume multiplied by the appropriate department of revenue stumpage values from the stumpage value table for the applicable stumpage value area and hauling distance zone. The stumpage value tables to be applied are those found in WAC 458-40-660(2). Except as provided in (e) of this subsection, the tables applied shall be those in effect as of the date the application under this section is submitted to the department by the landowner.

~~((b))~~ (b) Conservation easements. ~~Conservation easements shall be perpetual and not for a term of years.)~~ For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation shall only include the timber value component, as determined ((as set forth in subsection (7)(a) of this section)) by the cruise volume multiplied by the appropriate stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091.

(b) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation shall include the timber value component plus such portion of the land value component as determined just and equitable by the department. The timber value component will be as set forth in (a) of this subsection. The land value component must be the acreage of qualifying lands to be conveyed, multiplied by the average per acre value. The department shall determine the averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue with separate values for western and eastern Washington.

~~((c))~~ (c) Adjustment in compensation. ~~Where the department does not complete its duties as required in subsections (3) through (5) of this section within the required time period or the department is unable to complete the acquisition because of a lack of funds or other reason, the landowner has the option to require that the department recompute the com-~~

compensation based on the most recently published land value and stumpage value tables.

(8) Management options. In any circumstance where qualifying CMZ lands are not acquired by the department in fee or through a conservation easement, the landowner may elect to develop a management option for the lands in cooperation with the department, other agencies and affected Indian tribes.)

(5) Qualifying lands. The lands proposed in an application must include qualifying CMZ lands or qualifying critical habitat lands that are eligible for easement acquisition as follows:

(a) Qualifying lands are lands that, once a complete application is received, are identified in records of the applicable county assessor as being assessed and taxed either under chapter 84.33 RCW as designated forest land or under chapter 84.34 RCW as current use classification timber land or open space.

(b) Qualifying lands are lands owned by an individual, partnership, corporation or other nongovernmental entity.

(c) Lands do not qualify for the program where the department has determined that:

(i) The lack of access to the land is likely to materially impair the department's ability to administer the program with respect to the land;

(ii) The land is subject to unacceptable liabilities. See WAC 222-23-010 (2)(c).

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

**WAC 222-23-025 Priorities for conveyances and funding—Use of lands conveyed.** (1) Priorities for conveyances and funding. ((The legislature recognized, in RCW 77.85.180(4), that the adoption of forest practices rules consistent with the forests and fish report will impose substantial burdens on forest landowners. The purpose of this program, which will be administered by the department, is to compensate landowners and provide for ecological protection and fisheries enhancement.)) The department shall ((prioritize)) rate, rank, and fund eligible CMZ applications ((under this section)) separately from eligible critical habitat applications based on ((the following criteria (not in priority order): Order of receipt, ecological value (including importance to salmonids, water quality benefits, quality of habitat, site significance, etc.), and immediacy of need. If funding is or becomes unavailable to consummate a conveyance with respect to otherwise qualifying CMZ lands, the application may (at the landowner's option) be kept on file at the department pending the future availability of funding)) conservation benefits and landowner management options. See board manual section 18 for the rating, ranking and funding details for qualifying lands. The department will consult with representatives of affected Indian tribes, department of fish and wildlife, and department of ecology as necessary for technical expertise. ((The board will include, in its reports to the legislature required in RCW 76.09.380, a review of this program with recommended amendments, as necessary, to accomplish the goals of this program.))

(2) Use and management of lands and easement interests acquired under ((riparian)) rivers and habitat open space program. Subject to the exceptions set forth in this subsection (or as otherwise provided in the ((conveyance or)) easement documents), the lands ((conveyed or)) subject to the conservation easements under this chapter shall be managed by the department only in a manner necessary for ecological protection ((or)), and fisheries and wildlife enhancement. The ((conveyance of lands)) easements under the ((riparian open space)) program shall not create a right of public access to ((the conveyed lands)) or across adjoining or other lands owned by the landowner ((conveying property or)) granting an easement ((under the riparian open space program)).

(3) Transfer of ((fee or)) easement interest or management responsibility. After acquisition of ((a fee or)) an easement interest in qualifying ((CMZ)) lands, the department may transfer its interest in such lands by a recorded instrument to another state agency, a local governmental entity within which the lands lie, or a private nonprofit nature conservancy corporation (as defined in RCW 64.04.130). Alternatively, the department may contract with one or more of the foregoing entities to exercise the department's management authority over the qualifying ((CMZ)) lands. Any such contract will include provisions fully advising the contracting party of the rights of the landowner under this chapter and the conveyance instrument. The department shall notify the landowner of any transfer of its interest in the qualifying ((CMZ)) lands or any transfer of management responsibilities over those lands, provided that failure to so notify the landowner shall not affect the validity of the transfer.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

**WAC 222-23-030 Conveyance forms and procedure.** (1) ~~((Fee interest.~~ Conveyance of a fee interest in qualifying lands shall be by deed with limited warranties. Deeds will include terms reasonably necessary and appropriate to the circumstances of the particular lands involved and shall be in a form acceptable to the department and the landowner. Prior to closing, the landowner shall procure a title report or title history for the lands being conveyed, provided that in the case of qualifying CMZ land being donated to the department, the department shall pay the cost of the report.

(2) Conservation easement. Conveyances of a conservation easement shall be through execution by the landowner and the department of a conservation easement in a form acceptable to the department and the landowner. The easement shall be perpetual and not for a term of years. The easement will include terms reasonably necessary and appropriate to the circumstances of the particular lands involved. Prior to closing, the landowner shall procure a ((litigation guarantee or)) preliminary title ((history)) insurance report from a title company, provided that in the case of an easement being donated to the department, the department shall pay the cost of the ((guarantee or other)) report.

((3)) (2) Description standards. The description of the qualifying lands being conveyed shall be a legal land survey description ((or, if)) unless the cost of securing the survey

would be unreasonable in relation to the value of the lands conveyed. When the department determines a survey ((is)) need not ((being)) be performed, the description shall ((include the township, range, section, and legal subdivision, and utilize a map at a scale of 1:400 indexed either to one legal land survey point or two geopositional system points plus a GPS traverse of the boundary between the CMZ and the RMZ core area, tied to one legal land survey point or two geopositional system points, or other description)) be in the form that can depict the location of the lands conveyed without relying on verbal evidence, or another form acceptable to the department.

((4)) (3) **Closing and recording.** Upon execution of the conveyance documents and other documents required for closing, the department shall pay any compensation owed to the landowner and record the conveyance documents. The department shall pay the recording fees. No compensating taxes under chapters 84.33 and 84.34 RCW shall be owed. Title insurance premiums and any real estate excise tax owed shall be paid by the landowner conveying the ((property or) easement.

**(4) Internal department of natural resources procedure for review of decisions.** Certain decisions of the department pursuant to this chapter may be appealed to the supervisor of the department or his or her designee. Any person that wishes to appeal final written decisions of the department pertaining to the following procedural determinations: Application eligibility, application prioritization, easement valuation, and related decisions made may submit a request for review within thirty days after the date of the department's final written notice of procedural determination. The request for review must identify the issue being raised and provide any supporting documentation. The supervisor will issue a written response within thirty days. The supervisor's written response shall constitute the department's final decision.

**WSR 11-05-063  
PROPOSED RULES  
DEPARTMENT OF LICENSING**

[Filed February 11, 2011, 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: WAC 308-15-150 Geologist fees.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on March 24, 2011, at 9 a.m.

Date of Intended Adoption: March 31, 2011.

Submit Written Comments to: Kezia Prater, P.O. Box 9045, Olympia, WA 98507, e-mail kprater@dol.wa.gov, fax (360) 570-7098, by March 24, 2011.

Assistance for Persons with Disabilities: Contact Erica Hansen by March 23, 2011, TTY (360) 664-0116 or (360) 664-1597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will extend suspension of partial renewal fees in an

effort to maintain a balanced budget for the geologist licensing program. The current temporary suspension expires on July 1, 2011.

Reasons Supporting Proposal: The proposed rule change will allow the program to collect renewal fees that are appropriate to the program's budget needs. Collecting full renewal fees would result in over collection of revenue and cause the fund balance to increase at an unreasonable rate.

Statutory Authority for Adoption: RCW 18.220.040.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: Department of licensing (DOL), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lorin Doyle, Olympia, (360) 664-1387; and Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DOL is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. DOL is not one of the named agencies to which this rule applies. Agencies that are not named can apply this rule to themselves voluntarily. DOL has chosen not to do this.

February 11, 2011  
Walt Fahrner  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 08-12-039, filed 5/30/08, effective 7/1/08)

**WAC 308-15-150 Fees.** (1) **Suspension of fees.** Effective July 1, ((2008)) 2011, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

**Renewal Fees**

Annual renewal fee for geologist	\$((70.00)) <u>40.00</u>
Annual renewal for each specialty	\$((70.00)) <u>50.00</u>
Annual renewal for geologist, with late fee (if paid ninety days or more after due date)	\$((140.00)) <u>80.00</u>
Annual renewal fee for each specialty, with late fee (if paid ninety days or more after due date)	\$((140.00)) <u>100.00</u>

The fees set forth in this section shall revert back to the fee amounts shown in WAC 308-15-150 on July 1, ((2011)) 2014.

**(2) Fees.**

<b>Type of Fee</b>	<b>Amount</b>
<b>Application fees - includes initial license</b>	
Application fee for geologist (applying by examination)	\$100.00

<b>Type of Fee</b>	<b>Amount</b>
Application fee for each specialty (applying by examination)	\$100.00
Application fee for geologist (applying by reciprocity)	\$200.00
Application fee for each specialty (applying by reciprocity)	\$150.00
<b>Examination fees</b>	
Fees for the fundamentals of geology and practice of geology examinations are submitted directly to ASBOG	
Administration fee for reexamination	\$65.00
Specialty examination (hydrogeologist or engineering geologist exam)	\$300.00
<b>Renewal fees</b>	
Annual renewal fee for geologist	\$100.00
Annual renewal fee for each specialty	\$85.00
Annual renewal for geologist, with late fee ( <i>if paid ninety days or more after due date</i> )	\$200.00
Annual renewal for each specialty, with late fee ( <i>if paid ninety days or more after due date</i> )	\$170.00
<b>Miscellaneous fees</b>	
Duplicate license or wall certificate . . .	\$25.00
Certification of license records to other jurisdictions . . . . .	\$45.00
Proctor examination for another jurisdiction . . . . .	\$100.00

**WSR 11-05-065**  
**PROPOSED RULES**  
**YAKIMA VALLEY**  
**COMMUNITY COLLEGE**  
 [Filed February 14, 2011, 9:12 a.m.]

Original Notice.  
 Preproposal statement of inquiry was filed as WSR 09-18-083.  
 Title of Rule and Other Identifying Information: Use of Yakima Valley Community College (YVCC) District 16 facilities for other than first amendment activities.  
 Hearing Location(s): YVCC, M. L. King Room, Hopf Union Building (HUB), Yakima Campus, South 16th Avenue and Nob Hill Boulevard, Yakima, Washington 98902, on March 29, 2011, at 3:00 p.m.  
 Date of Intended Adoption: April 14, 2011.  
 Submit Written Comments to: Niki Hopkins, YVCC, P.O. Box 22520, Yakima, WA 98908-2520, e-mail nhopkins@yvcc.edu, fax (509) 574-6870, by March 28, 2011.  
 Assistance for Persons with Disabilities: Contact disabilities support services, YVCC, by March 22, 2011, TTY (509) 574-4677 or (509) 574-4961.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this chapter is to establish procedures and reasonable controls for the use of college facilities for noncollege groups and for college groups where applicable. The current rule was last amended in 1993 and changes in the college's organizational structure, technical capability, equipment and staffing necessitate updating the policy.

The proposed changes are to repeal the existing chapter in its entirety and establish new sections that will better explain the purpose of the rule, scheduling and reservation practices, limitations of use, denial of use and other related issues.

Statutory Authority for Adoption: RCW 28B.50.140.  
 Statute Being Implemented: RCW 28B.50.140(7).

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

Name of Proponent: YVCC, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nicole Hopkins, Community Relations Office, YVCC, South 16th Avenue and Nob Hill Boulevard, Yakima, Washington, (509) 574-6870.

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

A cost-benefit analysis is not required under RCW 34.05.328. We anticipate no costs generated by this rule.

February 14, 2011  
 Suzanne West  
 Rules Coordinator

**Chapter 132P-136 WAC**

**((USE OF COLLEGE FACILITIES)) FACILITY USE FOR OTHER THAN FIRST AMENDMENT ACTIVITIES**

NEW SECTION

**WAC 132P-136-100 Title.** WAC 132P-136-100 through 132P-136-200 will be known as facility use for other than first amendment activities for Community College District 16.

NEW SECTION

**WAC 132P-136-105 Statement of purpose.** Yakima Valley Community College District 16 is an educational institution provided and maintained by the people of the state of Washington. The college reserves its facilities, buildings and grounds for those activities that are related to its broad educational mission. At other times, the college facilities may be made available to other individuals and organizations.

The purpose of these regulations is to establish procedures and reasonable controls for the use of college facilities for noncollege groups and for college groups where applicable.

In keeping with this general purpose, and consistent with RCW 28B.50.140(7) and 28B.50.140(9), facilities should be

available for a variety of uses which are of benefit to the general public if such general uses substantially relate to and do not interfere with the mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching or public service programs.

Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Such arrangements by both organizations and individuals must be made through the designated reservation clerk.

The designated reservation clerk shall be the office within the organization of the college which has responsibility for scheduling a particular district facility. The designation of the reservation clerk shall be made by the college president or his/her designee(s).

#### NEW SECTION

**WAC 132P-136-110 Facilities use for first amendment activities.** This chapter does not apply to those individuals or groups using the college facilities for first amendment activities. Use of the campus for first amendment activities, as defined by law, is governed by the rules set forth in WAC 132P-142-010 through 132P-142-080.

#### NEW SECTION

**WAC 132P-136-120 Request for use of facilities.** Requests to use college facilities shall be made to the designated reservation clerk, who shall be the agent of the college in consummating use agreements.

#### NEW SECTION

**WAC 132P-136-130 Facility use board policy.** The board of trustees of Yakima Valley Community College District 16 provides college personnel, students, college organizations and the general public the opportunity to use the college grounds and buildings subject to WAC 132P-136-100 through 132P-136-200 and in compliance with local, state and federal laws.

#### NEW SECTION

**WAC 132P-136-140 Scheduling and reservation practices.** The primary purpose of college facilities is to serve the instructional programs of the college. However, the facilities, when not required for scheduled college use, may be available for use in accordance with current fee schedules and other relevant terms and conditions for such use.

College facilities may not be used by individuals or groups from outside the college unless the facilities including buildings, equipment and land have been reserved.

In determining whether to accept a request for the use of college facilities, the designated reservation clerk shall use as guidelines the mission of the college and the following items, listed in priority order:

- (1) Yakima Valley Community College instruction, scheduled programs and activities.
- (2) Major college events.
- (3) Noncollege (outside individual or organization) events.

Arrangements for use of college facilities must be made through the designated reservation clerk. Application for the use of facilities and grounds shall be made no later than ten working days prior to the date the event is scheduled to occur.

#### NEW SECTION

**WAC 132P-136-150 Limitations of use.** (1) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service-related activities), groups must obey or comply with directions of an authorized representative of the college.

(2) If at any time actual use of college facilities by an individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate, all persons engaged in such use shall immediately vacate the premises, and leave the college property upon command of the appropriate college official.

(3) Any individual or group granted permission to use college facilities shall agree in advance to abide by all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group whose past conduct indicates a likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization which has used the facilities in the past and has damaged college property, left college buildings and grounds in excessive disorder, or failed to cooperate with college staff concerning use of the facilities.

(4) No person may enter onto college grounds or facilities possessing a visible firearm or other dangerous weapon, except specifically as allowed by law.

(5) College facilities may be used for purposes of political campaigning by or for candidates who have filed for public office, directed to members of the public, only when the full rental cost of the facility is paid. Use of state funds to pay for facility rental costs for political campaigns is prohibited.

(6) Promotional materials or posting for any event being held in a college facility must follow the same procedure as applies to students outlined in WAC 132P-33-130.

(7) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs.

(8) YVCC facilities may not be used for private or commercial purposes unless such activities clearly serve the educational mission of the college, are either sponsored by an appropriate college unit or conducted by contractual agreement with the college.

(9) Alcoholic beverages will not be served without the approval of the president or his/her designee(s). It shall be

the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor control board and adhere to their regulations including all state and local regulations and laws, and those of Yakima Valley Community College.

(10) The use of tobacco products is prohibited at Yakima Valley Community College except in designated areas.

(11) Authorization for use of college facilities shall not be considered as endorsement of or approval of any group or organization nor the purposes they represent. The name of the college shall not be associated with any program or activity for which the college facilities are used without specific written approval from the president or his/her designee(s).

(12) Rental of college facilities carries no right of advertising on college premises other than the right to post a sign for the purpose of directing people to the place of assembly.

(13) Unless otherwise provided by contractual agreement, an authorized member of the college staff shall be required to be available at times when college facilities are in use by a group. If service beyond normal business hours is required as a result of any meeting, such time shall be paid by the using organization at the currently established rate. The college may require and charge users for security services at the college's discretion.

(14) Audio-visual equipment and materials are intended to support and supplement the college's curriculum. Equipment shall not be rented to external users, unless official prior approval has been granted and currently established rates are charged. The existence of equipment in a rented space does not mean the user has the right to use it.

#### NEW SECTION

**WAC 132P-136-160 Denial of use.** Yakima Valley Community College is a state agency and exists to serve the public. However, the college may deny use of its facilities to any individual, group or organization if the requested use would:

- (1) Interfere or conflict with the college's instructional, student services or support programs;
- (2) Interfere with the free flow of pedestrian or vehicular traffic on campus;
- (3) Involve illegal activity;
- (4) Create a hazard or result in damage to college facilities; or
- (5) Create undue stress on college resources

The board of trustees hereby delegates to the president or his/her designee(s) the right to cancel the facilities rental agreement at any time and to refund any payment to the college for the use of college facilities. If imminent danger exists or unlawful activity is practiced by the using organization, or if there is any violation of any term, condition or provision of the use arrangement, the college may terminate an agreement immediately and without notice.

#### NEW SECTION

**WAC 132P-136-170 Other requirements.** When using college facilities, an individual or organization may be required to make an advance deposit, post a bond and/or

obtain insurance to protect the college against cost or other liability.

When the college grants permission to an individual or organization to use its facilities, it is with the expressed understanding and condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and indemnify the college against any loss or damage claim arising out of such use.

#### NEW SECTION

**WAC 132P-136-180 Facility rental/use fees.** Fees will be charged in accordance with the rates available from the designated reservation clerk. The college reserves the right to make pricing changes without prior written notice, except that such price changes shall not apply to facility use agreements already approved by the administration.

The college reserves the right to have trained college staff operate any and all technical equipment at the user's expense. Rates and fees for use of facilities are available from the reservation clerk.

#### NEW SECTION

**WAC 132P-136-190 Animals on campus.** Animals are prohibited from events on college grounds and from entering college buildings, with the following exceptions:

- (1) Service animals;
- (2) Events at which animals are participants;
- (3) When animals are part of an academic program.

Owners shall have immediate physical control of their animals (for example: Leashed, caged or carried) while on the grounds of Yakima Valley Community College.

Exceptions to this section may be authorized by the college president or his/her designee(s).

#### NEW SECTION

**WAC 132P-136-200 Trespass.** Individuals who are not students or members of the faculty or staff and who violate the rules set forth in this chapter will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president, or his/her designee(s), to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW. Individuals requested to leave college property may appeal that decision by submitting to the college president by certified mail, return receipt requested, a letter stating the reasons the person should not be barred from college facilities. The college president or his/her designee(s) shall respond in writing within fifteen calendar days with a final decision of the college. Persons shall continue to be barred from college property while an appeal is pending.

Students, faculty, and staff of the college who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with

this chapter or with other applicable rules, regulations, or policies.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132P-136-010	General.
WAC 132P-136-020	Applications—Permits.
WAC 132P-136-030	Rental fees.
WAC 132P-136-040	Regulations.
WAC 132P-136-050	Restrictions—Exceptions.
WAC 132P-136-060	Use of equipment.

**WSR 11-05-069**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed February 14, 2011, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-10-081.

Title of Rule and Other Identifying Information: Chapter 308-12 WAC, Architects.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on March 22, 2011, at 1:00 p.m.

Date of Intended Adoption: May 6, 2011.

Submit Written Comments to: Kezia Prater, P.O. Box 9045, Olympia, WA 98507, e-mail kprater@dol.wa.gov, fax (360) 570-7098, by March 22, 2011.

Assistance for Persons with Disabilities: Contact Erica Hansen by March 21, 2011, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are necessary to implement ESSB 5529, which changes the requirements for initial licensure for architects by increasing the number of years of experience necessary for some candidates. It also expands the definition of business entities needing licensure. ESSB 5529 adds a new professional development as a requirement for maintaining an individual license.

Reasons Supporting Proposal: The proposed rules will implement changes as a result of the passage of ESSB 5529.

Statutory Authority for Adoption: RCW 18.08.340.

Statute Being Implemented: Chapter 18.08 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lorin Doyle, Olympia, (360) 664-1387; and Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies to which this rule applies. Agencies not named can apply this rule to themselves voluntarily. The department of licensing has chosen not to do this.

February 14, 2011

Walt Fahrer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-05-040, filed 2/15/07, effective 3/18/07)

**WAC 308-12-010 How does the state board (~~for architects~~) function?** (~~((1) Meetings~~;) The Washington state board for architects, hereafter called the board, shall hold (~~its~~) quarterly regular public meetings (~~(annually during the second quarter of the calendar)~~) each year. Additional public meetings may be held at such times and places as the board may deem necessary. (~~Notice of all public meetings will be issued as required by the Open Public Meetings Act, chapter 42.30 RCW.~~

~~(2) Rules of order. The latest edition of *Robert's Rules of Order* will govern the conduct of business at meetings and sessions of the board.~~

~~(3) Officers~~;) At (~~the~~) its regular (~~(annual public)~~) meeting during the second quarter of the calendar year, the board will elect a chair, a vice-chair and a secretary for the (~~(ensuing)~~) upcoming year.

~~((4) Quorum. A quorum at any regular or additional meeting or session will consist of four members of the board.~~

~~(5) Rule changes. Prior to and during any adoption, amendments, or repeal of any rule, the board of registration will conduct its business in accordance with chapter 34.04 RCW the Administrative Procedure Act.)~~

### NEW SECTION

**WAC 308-12-023 How do I become a licensed architect?** You need to fulfill three general requirements before getting your license: Education, examination, and experience. If you are already licensed in another NCARB-recognized jurisdiction, you will need to verify you have met these requirements before being licensed in Washington. The board may request additional information or an oral interview, if necessary. You must also satisfactorily complete a review of laws related to the practice of architecture as determined by the board.

AMENDATORY SECTION (Amending WSR 07-05-040, filed 2/15/07, effective 3/18/07)

**WAC 308-12-025 (Application for examination.) What qualifications do I need to meet if I am not already licensed?** (~~((1) The application to begin the examination process must be submitted on forms approved by the board, accompanied by academic and/or practical experience verification to document eligibility under the provisions of RCW~~



18.08.350. As determined by the board and consistent with National Council of Architectural Registration Boards (NCARB) recommendations, applicants with an accredited professional architectural degree may take portions of the examination concurrently with practical work experience.

(2) The board has adopted the National Council of Architectural Registration Boards (NCARB) intern development training program (IDP training requirement) as the board approved structured intern training program. Completion of the training requirements of the intern development program must be validated by the NCARB in a council train-

ing record sent to the board office. Completion of the training requirements of the IDP is the equivalent of three years of practical work experience.

(3) Applications for the examination must be accompanied by the application fee for the examination as established by the director and published in chapter 308-12 WAC, architect fees. The application fee to begin the examination process will not be refunded.) If you are not licensed in another jurisdiction, your combination of education and experience will determine what you need to do to get your license (see the chart below).

<u>Education type</u>	<u>Accredited professional degree</u> (typically five-year bachelor of architecture or six-year master of architecture)	<u>An equivalent degree, awarded by EESA</u> (education evaluation services for architects) for candidates from a nonaccredited U.S. architectural school or a foreign architectural school	<u>A preprofessional degree in architecture</u> (typically four-years) from a program offering an accredited degree	<u>Postsecondary study in architecture or related fields</u> , with passing grades, in increments of one year, will receive up to three years credit	<u>A degree in architectural technology</u> (typically a two-year community college or trade school degree)	<u>High school diploma</u> or equivalent
<u>Practical architectural work experience</u>	Gained during IDP		Two years under the direct supervision of an architect	Three or more years depending on your education credit  Three of these years must be under the direct supervision of an architect	Four years	Six years
<u>IDP</u>	Contact NCARB to find out when you can enroll in IDP		You can't enroll in IDP until you complete the practical architectural work experience			
<u>When to apply to take the ARE</u>	You can start taking the ARE through NCARB while enrolled in IDP	Apply to the board after you have completed the practical architectural work experience and IDP				
<u>When can you get your license</u>	Apply to the board after you have completed your IDP and ARE	Apply to the board after you have completed the ARE				
<u>Additional materials</u>	All candidates must complete the Washington law review					

If you have an accredited architectural degree, you need to complete IDP and the ARE. If you choose, you can take the exams while you are completing IDP. NCARB will register and guide you through both IDP and the ARE. The board also requires a review of Washington's laws and rules relating to the practice of architecture.

If you do not have an accredited architectural degree, you must have a high school diploma or equivalent and at least nine years' practical architectural work experience.

(1) You must have at least six years of practical architectural work experience before enrolling in IDP.

(a) At least three of these years must be under the direct supervision of a licensed architect.

(b) The remaining three years can be any combination of the following as approved by the board:

(i) Postsecondary education courses in architecture, architectural technology or a related field.

(A) Related fields may include the following:

(I) Environmental design;

(II) Urban planning;

(III) Landscape architecture;

(IV) Construction management;

(V) Civil engineering;

(VI) Naval architecture;

(VII) Interior architecture;

(VIII) Other fields as determined by the board.

(B) With a passing grade, thirty-two semester credit hours or forty-five quarter hours are considered to be one year. Any fraction, one-half year or greater, will be counted one-half year, and less than one-half year will not be counted.

(ii) Practical architectural work experience may be accrued simultaneously while educational credit is being accrued and will receive credit if it is as follows:

(A) At least thirty-five hours per week for at least ten consecutive weeks - one hundred percent.

(B) At least twenty hours per week for at least six continuous months - fifty percent.

(2) After you complete IDP, apply to the board to take the ARE. When your application is approved, board staff will register you to take the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(3) The board also requires a review of Washington's laws and rules relating to the practice of architecture.

NEW SECTION

**WAC 308-12-028 What is the application process if I am not already licensed?** (1) If you have an accredited architectural degree:

(a) Contact NCARB to register for IDP and the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(b) When you have finished IDP and the ARE:

(i) Have NCARB transmit evidence of your qualifications, experience and successful completion of the ARE, as shown by your council record, directly to the Washington board office.

(ii) Complete the board's official application form with the application fee and initial license fee and submit it to the board office. The application fee is not refundable.

(iii) Complete a review of Washington's laws and rules relating to the practice of architecture.

(2) If you do not have an accredited architectural degree:

(a) Complete the board's official application form with the application fee and submit it to the board office. The application fee is not refundable.

(b) Using the board's application forms, have the licensed architects who have reviewed your practical work experience provide verification of your experience directly to the board office.

(c) Once your application is approved, contact NCARB to register for IDP.

(d) Complete IDP and have NCARB transmit your council record directly to the Washington board office. Board staff will register you for the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(e) Successfully complete the ARE.

(f) Submit the initial license fee to the board office.

(g) Complete a review of Washington's laws and rules relating to the practice of architecture.

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

**WAC 308-12-031 ((Registration examination-)) Who manages the required intern training program and examination?** The National Council of Architectural Registration Boards (NCARB) maintains and validates the continuing, comprehensive record of internship training and the board has adopted NCARB's Intern Development Program (IDP) as the board-approved structured intern training program. The board ((adopts)) has adopted the ((N.C.A.R.B.)) NCARB Architect Registration Examination ((A.R.E.)) ARE) and grading procedure prepared by NCARB as the state examination ((required of applicants)) for licensure. ((Where RCW 18.08.360 refers to the "entire examination," it means the NCARB A.R.E. together with the oral examination.

The board adopts the grading procedures prepared by the NCARB.

(1) The test vendor will publish an information guide concerning examination content, locations, schedules, and fees.

(2) An applicant must pass each division of the NCARB examination.

~~(3) The oral examination is given upon the applicant's completion of the NCARB examination.~~

~~The purpose of the oral examination is to test in those areas of knowledge and skill not covered in the NCARB examination.~~

~~The oral part of the examination must include a review of the applicant's practical experience, an understanding of the law and the responsibility to safeguard life, health, and property and to promote the public welfare.~~

~~The oral examination may be conducted by the full board or by an architect member of the board. The board may set aside the full board examination if the examining board member deems the applicant prepared for registration. If the full board examination is not set aside or if the examining board member fails the applicant, the applicant must then appear for a full board oral examination.~~

~~The board may set aside the entire oral examination based upon certification by the NCARB of successful completion of the intern development program. Such applicants shall submit the NCARB Council Record of IDP completion. However, candidates without a National Architectural Accrediting Board degree who have completed the IDP training requirements must have an oral examination. The decision to set aside the oral examination does not affect the requirement to summarize the law and rules pertaining to architecture.~~

~~An applicant must successfully complete the entire examination within a five-year period. The five-year period will begin with the month an applicant passes the first division of the examination. Passing scores for any division of the examination may be carried forward for a period of five years from the date the applicant passed that division of the examination. Applicants must retake any division of the examination which was passed more than five years previously, along with any division of the examination not yet passed. The oral examination is part of the entire examination and shall be completed within the five-year period.)) NCARB administers the entire examination for Washington candidates, and collects examination and reexamination fees accordingly. Candidates with an accredited architectural degree may take portions of the examination concurrently while enrolled in IDP. No review or appeal of failed examinations is accepted by the department or the board.~~

AMENDATORY SECTION (Amending WSR 07-05-040, filed 2/15/07, effective 3/18/07)

**WAC 308-12-050 ((Registration by reciprocity-)) What qualifications do I need to meet if I am already licensed?** ((Pursuant to RCW 18.08.400, the board will recommend to the director that the director grant a certificate of registration to a currently registered architect in any jurisdiction recognized by NCARB provided:

(1) That such applicant presents evidence that the applicant has satisfactorily completed an examination equivalent to the examination required of Washington state registrants.

(2) Documentation of NCARB certification may be accepted by the board as satisfactory evidence that the applicant's qualifications and experience are equivalent to the qualifications and experience required of a person registered

~~under RCW 18.08.350. Reciprocity candidates who cannot meet the IDP training requirement must have a minimum of two years of experience as a licensed architect.~~

~~(3) That the applicant provides a typed summary of chapter 18.08 RCW and chapter 308-12 WAC. The summary must be of sufficient detail to demonstrate a thorough understanding of the law and rules.~~

~~(4) That the board will require an oral interview of any candidate for registration by reciprocity, except that the oral interview may be set aside in cases where documentary or other evidence shows sufficient information for the board to reach judgment.~~

~~(5) That the architect's current state license is not delinquent or inactive. The current state license cannot be under suspension, disciplinary restrictions, or in process of disciplinary review. Reciprocity applicants are held to the same qualifications as initial applicants for registration.)) If you hold an active architect license in good standing in any jurisdiction recognized by NCARB, you can apply for a Washington license if your qualifications and experience meet one of the following:~~

~~(1) You have an NCARB certificate. The board recognizes NCARB certification to include certification through the broadly experienced architect and/or broadly experienced foreign architect programs;~~

~~(2) You do not have an NCARB certificate, but you have satisfactorily completed the ARE or an examination as approved by the board, including a test component or licensing requirement addressing seismic structure as determined by the board; and~~

~~(a) Have been licensed as an architect nine or more years; or~~

~~(b) Have an NAAB-degree and have completed IDP.~~

#### NEW SECTION

**WAC 308-12-055 What is the application process if I am already licensed?** (1) If you are currently licensed and have an NCARB certificate:

(a) Complete the board's official application form and submit it to the board office with the reciprocity application fee and the initial license fee. The application fee is not refundable.

(b) Have NCARB transmit evidence of your certification directly to the Washington board office.

(c) Complete a review of Washington's laws and rules relating to the practice of architecture.

(2) If you are licensed in an NCARB-recognized jurisdiction and don't have an NCARB certificate:

(a) Complete the board's official application form and submit it to the board office with the reciprocity application fee and the initial license fee. The application fee is not refundable.

(b) Request certification be sent directly from the issuing jurisdiction to the Washington board office, verifying you have successfully passed the ARE, and:

(i) Have held an active license for nine or more years; or

(ii) Have held an active license for less than nine years and have one or more of the following:

(A) An NAAB-degree and have completed IDP, as shown by your IDP record sent directly to the Washington board office from NCARB;

(B) A combination of education and experience, as shown by:

(I) An official sealed transcript showing any applicable courses you have taken from a community college, technical college, or university. The transcript must be sent directly from the college or university to the board office; and

(II) Verification of practical architectural work experience, on the board's application forms, completely by licensed architects who have reviewed your practical work experience and sent directly to the board office.

(3) Complete a review of Washington's laws and rules relating to the practice of architecture.

#### NEW SECTION

**WAC 308-12-065 What if I don't finish the licensing process?** If you fail to complete the licensing process and your records show no activity for five consecutive years, the board will consider your application abandoned. No activity includes, but is not limited to:

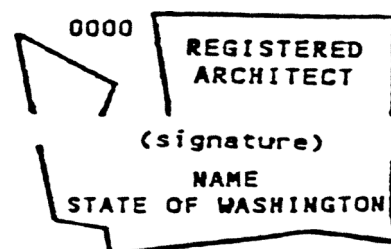
- Failure to submit the required documents and other information requested by the board within five consecutive years from the last date the board requested the documents or other information.

- Failure to provide the board with any written communication during five consecutive years indicating you are attempting to complete the licensing process.

If your application is considered abandoned, it may be archived or destroyed, and you will be required to reapply for licensure and comply with the licensing requirements in effect at the time of reapplication.

AMENDATORY SECTION (Amending WSR 07-05-040, filed 2/15/07, effective 3/18/07)

**WAC 308-12-081 ((The)) Do I need a stamp or seal((s))?** ((These rules govern the design and use of the architect stamp.)) Every architect licensed in the state of Washington ((shall)) must have a seal of design authorized by the board, bearing the registrant's name, license number and the legend "Registered architect, state of Washington." ((A facsimile)) An example of the board-authorized seal appears below. Deviations are not allowed.



((The following)) You must ((be signed)) sign and ((sealed by the architect.)) seal all technical submissions required for building permits or regulatory approvals that are filed with authorities having jurisdiction.

(1) Drawings prepared by ~~((the architect))~~ you must be signed and sealed on each sheet.

(2) Specifications and other technical submissions need only be sealed on the cover, title page, and all pages of the table of contents.

~~((No architect's stamp or countersignature will be affixed to))~~ You must not sign and seal any drawings not prepared by ~~((the architect))~~ you or ~~((his or her))~~ your regularly employed subordinates~~((, or))~~ and reviewed by ~~((the architect))~~ you.

~~((An architect who signs or seals))~~ By signing and sealing drawings or specifications ~~((that he or she has reviewed is))~~, you become the architect of record and are responsible to the same extent as if you prepared ~~((by that architect))~~ the drawings or specifications yourself.

Without exception, these stamping requirements ~~((for architects))~~ apply to all work ~~((prepared))~~ filed with public authorities you prepare or ~~((supervised by the architect))~~ review, or that is prepared under your personal supervision by persons under your direction and control, regardless ~~((of))~~ whether the work is exempt from the licensing requirements found in RCW 18.08.410.

(3) The term "signature" or "signed" as used in chapters 18.08 RCW and/or 308-12 WAC, means the following:

(a) A handwritten identification or a digital representation of your handwritten identification that represents the act of putting your name on a document to attest to its validity. The handwritten or digital identification must be:

(i) Original and written by hand, or a scanned image of an original, handwritten identification;

(ii) Permanently affixed to the document(s) being certified;

(iii) Applied to the document by the identified licensee;

(iv) Placed adjacent to the seal/stamp of the licensee.

(b) A digital identification that is an electronic authentication process attached to or logically associated with an electronic document. The digital identification may include a scanned or digitized signature. The digital identification must be:

(i) Unique to the licensee using it;

(ii) Capable of independent verification;

(iii) Under the exclusive control of the licensee using it.

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

**WAC 308-12-085** ~~((Corporations or joint stock associations))~~ **Does my business need to register with the board?** ~~((1) For an architect or architects to practice architecture through a corporation or joint stock association organized by any person under Title 23A RCW, the corporation or joint stock association shall file with the board a letter of application containing a statement of the experience of the corporation, if any, in furnishing architectural services during the preceding five-year period. The application must be signed and attested by a corporate officer.~~

~~((2) In addition to the application for certificate of authorization, the corporation or joint stock association will file with the board the documentation and information specified in RCW 18.08.420.~~

~~((3) The designated architect responsible for the practice of architecture by said corporation shall be regularly employed in that office having direct knowledge and supervisory control of such work. No individual will be the designated architect at more than one place of business or one company at any one time.))~~ If your business offers architectural services in Washington state, you must apply for and be granted a certificate of authorization from the board.

(1) To apply for a certificate of authorization, register your business with the department of licensing master license service by submitting:

(a) The certificate of authorization application and fee. The application fee is not refundable.

(b) A certified copy of a resolution, if a corporation, or a formal statement naming the designated architect(s) of your business. In lieu of a certified copy of the resolution, the board will accept a formal statement in a documented format provided by the board.

(2) The designated architect(s):

(a) Is responsible for the practice of architecture by your business and provides the full authority to make all final architectural decisions on behalf of your business with respect to work performed by your business in Washington.

(b) Is responsible for the practice of architecture by your business and must be regularly employed in the office having direct knowledge and supervisory control of such work.

(c) Must not be the designated architect at more than one business at any one time.

(3) If your business changes designated architects, you must notify the board on a form provided by the board of the new designated architect within thirty days of the effective date of the change.

(4) Your architect certificate of authorization renewal is due annually. The expiration date is the same as your renewal date for your business registration from Washington's secretary of state's office or department of licensing's master licensing service. The department will send a courtesy renewal notice.

(5) You must notify the board in writing of any address changes.

AMENDATORY SECTION (Amending WSR 07-05-040, filed 2/15/07, effective 3/18/07)

**WAC 308-12-111** What are the board member rules of conduct~~((Activities incompatible with public duties—Financial interests in transactions.))~~?

(1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee, or member of an entity; or individual which is engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not pro-

hibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) ~~((a))~~ "Transaction involving the board":

(a) Means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) ~~("Transaction involving the board")~~ Does not include the following:

Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(5) The following are examples of possible scenarios related to board member rules of conduct ~~((Activities incompatible with public duties—Financial interests in transactions))~~.

(a) **EXAMPLE 1:**

The state board for architects disciplines licensed architects in Washington. The board is conducting an investigation involving the services provided by a licensed architect. One of the members of the board is currently serving a subcontractor to that architect on a large project. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed architect services.

(b) **EXAMPLE 2:**

The state board for architects makes licensing decisions on applications for licensure. An applicant for licensure owns a school construction business which employs licensed architects, including one of the board members. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to his employer's application for licensure.

(c) **EXAMPLE 3:**

The state board for architects makes licensing decisions on applications from registered architects in another state or territory of the United States, the District of Columbia, or another country. The board can grant licensure if that individual's qualifications and experience are equivalent to the qualifications

and experience required of a person registered under Washington law. An out-of-state applicant is employed as an architect by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the architect for the project. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state architect's qualifications and experience.

(6) Recusal disclosure. If recusal occurs pursuant to this rule, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.

AMENDATORY SECTION (Amending WSR 07-05-040, filed 2/15/07, effective 3/18/07)

**WAC 308-12-115 Definitions.** ~~((1) Accredited architectural degree—A professional degree received from the current list of accredited schools of architecture as published by the National Architectural Accrediting Board.~~

~~(2) Practical architectural work experience—Practical work experience performing activities involved in the practice of architecture, as defined in RCW 18.08.320, under the direct supervision of an architect. The board may approve similar practical work experience for full or partial credit and will accept intern development program experience as defined in the IDP training guidelines.~~

~~(3) Intern development program (IDP)—A structured internship training program designed to provide a profession-wide, comprehensive program that contributes to the development of competent architects. IDP consists of training requirements that must be satisfied in order to complete the program. The National Council of Architectural Registration Boards (NCARB) maintains and validates the continuing, comprehensive record of internship training.~~

~~(4) The title "intern architect" may be used while enrolled in the structured intern program recognized by the board, in WAC 308-12-025(2), and working under the direct supervision of a licensed architect.~~

~~(5))~~ (1) "Architect of record" is the architect whose name appears on the building permit.

(2) "ARE" or "examination" means the architect registration examination written and administered by NCARB.

(3) "Building" means "structure" as defined in RCW 18.08.320.

(4) "Direct supervision ~~((The))~~, as in the phrase ~~((:))~~ "under the direct supervision of an architect," as used in connection with architectural work experience for qualification and eligibility for the examination shall refer to any of the following conditions or situations ~~((:))~~:

(a) The supervising architect is an employer who is knowledgeable of the performance and competence of the applicant.

(b) The supervising architect works for the same employer as the applicant, and is either the direct superior of the applicant, or a co-worker knowledgeable and responsible for the efforts of the applicant.

~~((6) Design-build—A means of providing design and construction services in which a single entity is responsible for both services.~~

~~(7) Review—A continuous process of examination, evaluation, and direction throughout the development of the documents, which includes the ability to control the final product.~~

~~(8) Construction-related experience—Work on a construction site in any of the construction-related trades, including, but not limited to, carpentry, laboring, electrical, plumbing, sheet metal and roofing. Work in the construction office, including, but not limited to, estimating or construction administration.~~

~~(9)) (c) The supervising architect is licensed in an NCARB-recognized jurisdiction.~~

~~(5) "Entire examination" as referred to in RCW 18.08.360(3) means all divisions of the ARE.~~

~~(6) "Institution of higher education" as used in RCW 18.08.320 means a college or school recognized by the National Architectural Accreditation Board (NAAB) as having accredited programs in architecture.~~

~~(7) "Intern development program" or "IDP" is a structured internship training program designed to provide a profession-wide, comprehensive program that contributes to the development of competent architects.~~

~~(8) "NCARB" means the National Council of Architectural Registration Boards, of which the Washington board is a member.~~

~~(9) "Practical architectural work experience" means performing activities involved in the practice of architecture, as defined in RCW 18.08.320 and meeting the criteria in RCW 18.08.350.~~

~~(10) Professional development equivalents:~~

~~(a) One professional development hour (PDH) is equal to no less than fifty minutes of instruction.~~

~~(b) For professional development through an institution of higher education:~~

~~(i) One semester hour equals forty-five PDH.~~

~~(ii) One quarter hour equals thirty PDH.~~

~~(11) "Technical submission" means designs, drawings, specifications, studies, and other technical documents prepared in the course of practicing architecture.~~

#### NEW SECTION

**WAC 308-12-225 How do I obtain retired status?** If you are a licensed architect, you may be eligible to obtain retired status if you are at least age sixty-five and have discontinued active practice. If granted, your ongoing licensing renewal fees and professional development requirements are waived.

(1) To obtain retired status, submit a request in writing to the board office. If the board determines you are eligible, the retired status would become effective on the first scheduled license renewal date that occurs on or after you reach age sixty-five. You do not need to renew an expired license to be eligible for this status. The board will not provide refund of renewal fees if the application for retired status is made and granted before the expiration date of the license.

(2) Privileges. In addition to the waiver of the renewal fee, as a retired licensee, you are permitted to:

(a) Retain the board-issued wall certificate of licensure;

(b) Use the title "architect," provided you also use the term "retired," the abbreviation "ret," "emeritus architect," or similar language in written or verbal communications to indicate you are no longer in active practice;

(c) Provide experience verifications and references for persons seeking licensure under chapter 18.08 RCW. If using your professional seal, you must place the word "retired" or "emeritus" after your signature;

(d) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to architectural work you performed before you were granted retired status;

(e) Serve in an architectural capacity as a "good Samaritan," as set forth in RCW 38.52.195 and 38.52.1951, provided said work is otherwise performed in accordance with chapter 18.08 RCW.

(3) Restrictions. As a retired licensee, you are not permitted to:

(a) Perform any architectural activity, as provided for in chapter 18.08 RCW, unless said activity is under the direct supervision of a Washington state licensed architect who has an active license in the records of the board;

(b) Apply your professional stamp, as provided for in RCW 18.08.370, to any drawing, specification, or report, except as provided for in subsection (2)(c) of this section.

(4) Certificate of licensure reinstatement. As a retired licensee, you may resume active architectural practice upon written request to the board and payment of the current renewal fee. At that time, you shall be removed from retired status and placed on active status in the records of the board. All rights and responsibilities of an active license status will be in effect. At the date of expiration of the reinstated certificate of licensure, you may choose to either continue active licensure or may again apply for retired status in accordance with the provisions of this chapter.

(5) Exemptions. Under no circumstances shall you be eligible for a retired license if your certificate of licensure has been revoked, surrendered, or in any way permanently terminated by the board under chapter 18.08 RCW. If you have been suspended from practice and/or are subject to terms of a board order at the time you reach age sixty-five, you shall not be eligible for retired status until such time that the board has removed the restricting conditions.

#### NEW SECTION

**WAC 308-12-235 How do I withdraw from active practice?** You can withdraw from active practice by requesting in writing your license be placed on either inactive or retired status. Your license must be in good standing before you can request it be placed in inactive status. See WAC 308-12-225 for information about obtaining retired status.

Under inactive status, you are not permitted to perform any architectural activity, as provided for in RCW 18.08.320, unless said activity is under the direct supervision of a Washington state licensed architect who has an active license in the records of the board.

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

~~WAC 308-12-240 ((Reinstatement of suspended certificates, eligibility for registration, or denied renewals.))~~  
How do I reactivate my inactive license? ((Where a person's certificate of registration has been suspended, an applicant has been denied certificate renewal, or an applicant has been denied the ability to take the examination for certificate of registration due to nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship, the certificate renewal or examination application will be reinstated when the person provides the board a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency, provided, the person shall pay any applicable reinstatement or renewal fee.)) (1) If you are returning to active status from less than five years of inactive status, send to the department:

(a) A letter of application requesting reactivation;

(b) The current renewal fee;

(c) Evidence of completion of twenty-four PDH within the previous two years. See WAC 308-12-260 for qualifying activities.

(2) If you are returning to active status after five years of inactive status, send to the department:

(a) A letter of application requesting reinstatement;

(b) The current renewal fee plus the late penalty fee;

(c) A review of Washington's laws and rules relating to the practice of architecture;

(d) Evidence of completion of thirty-six PDH within the previous three years. See WAC 308-12-260 for qualifying activities.

NEW SECTION

**WAC 308-12-250 Do I need ongoing professional development to maintain my license?** (1) To maintain active practice, you must accumulate twenty-four professional development hours (PDH) for the upcoming two-year renewal period.

(2) The PDH you accumulate are subject to audit by the board.

(3) Up to twelve PDH over the required hours can be carried forward from the second year of your previous renewal period.

NEW SECTION

**WAC 308-12-260 What activities qualify as professional development?** (1) You are responsible to seek out qualifying activities that can be demonstrated to the board as relevant to professional development.

(a) Activities are not preapproved by the board.

(b) Activities must be relevant to the practice of architecture and may include technical, ethical or managerial content.

(i) At least sixteen PDH must address public health, safety and welfare.

(ii) All activities must have a clear purpose and objective that will maintain, improve or expand skills and knowledge relevant to the practice of architecture.

(2) The board is the final authority with respect to claimed qualifying activities and the respective PDH credit.

(3) The qualifying activity becomes eligible for credit upon completion of the given activity.

(4) Examples of qualifying activities:

Sample Activities (one PDH is equal to no less than fifty minutes of activity)	Maximum Per Renewal Cycle
One hour of preparation and subsequent presentation per subject of a professional development program at seminars, professional/technical meetings, conventions or conferences. This credit does not apply to full-time faculty.	16 PDH
For publication or presentation of an authored technical paper or article.	8 PDH
For publication or presentation of an authored book.	8 PDH
Serving as an elected officer or appointed member for one of the following: <ul style="list-style-type: none"> <li>• A committee in a professional society or organization;</li> <li>• A professional board or commission;</li> <li>• A regulatory board for the practice of architecture.</li> </ul> Up to four PDH shall be earned upon the completion of each year of service per organization.	8 PDH
Professional examination grading or writing: Serving as an exam grader or on a committee writing exam materials for a professional licensure examination.	8 PDH
One hour of attendance at meetings or hearings of the board. This credit does not apply to existing board members or to parties or witnesses in hearings before the board.	8 PDH
One hour of work, outside normal duties of employment that involves participation in other recognized professional activities.	4 PDH
One hour of self-study relevant to the practice of architecture.	8 PDH
One hour of participation in organized courses relevant to the practice of architecture, including those provided by your employer, trade organizations, technical or professional societies, or the board.	No limit
One hour of attendance at professional or technical society meetings with an informational program.	8 PDH

Sample Activities (one PDH is equal to no less than fifty minutes of activity)	Maximum Per Renewal Cycle
Pro bono service that has a clear purpose and objective and maintains, improves, or expands the professional knowledge or skill of the registrant. Four hours of service is equal to one PDH.	8 PDH
One hour of participation in an activity involving substantial and organized peer interaction, excluding time spent during regular employment.	8 PDH

(5) The following activities do not qualify as professional development:

- (a) Activities that were conditions of a board order;
- (b) Attendance or testimony at legislative hearings, at city or county council meetings/hearings, or at civil or criminal trials;
- (c) Time spent fund-raising for scholarships or other society purposes or lobbying for legislation;
- (d) Attendance at gatherings that are primarily social in nature;
- (e) Membership and/or attendance in service club meetings.

NEW SECTION

**WAC 308-12-270 How do I record and report my professional development activities?** (1) You must maintain the records of your professional development activities. The records must include the date of the activity, the provider's name, a description of activity and its location and the number of PDH.

(2) You must keep your records for the cumulative time in the current renewal period plus the three years before the last renewal (five years total).

(3) By renewing your professional architect license, you attest you have completed the required professional development for that renewal period.

NEW SECTION

**WAC 308-12-280 How does the board verify I have completed my professional development?** (1) The board will audit a random sample of licensees yearly. If you are selected for an audit, the board will provide instructions about how to respond.

(2) You may face disciplinary action for failing to complete your professional development requirement or falsifying your records.

(3) If an audit disqualifies credits that you reported to the board and results in you failing to complete the PDH requirements, the board may require the shortage to be made up over a period of time established by the board.

NEW SECTION

**WAC 308-12-290 Are there any exemptions from the professional development requirement?** (1) The board may waive the professional development requirement under the following circumstances. The waiver would only be in effect for the current renewal period. If your professional development is audited, the board will require documentation of:

(a) Physical disability, prolonged illness, or other extenuating circumstances that pose a personal hardship, as determined by the board.

(b) Active military duty for at least one hundred twenty days.

(2) You are exempted from the professional development requirements if you withdraw from active practice and place your license in inactive or retired status.

AMENDATORY SECTION (Amending WSR 07-05-040, filed 2/15/07, effective 3/18/07)

**WAC 308-12-320 ((Renewal of licenses-)) How do I renew my license?** ~~((1) The license renewal date for architects will be the architect's birth date. Licensees who fail to pay the license renewal fee within thirty days of license expiration date will be subject to the late payment penalty fee as set forth in RCW 18.08.430 and WAC 308-12-326.~~

~~(2) The renewal period for architects is two years.~~

~~(3) Assessment of delinquent fees will be based on the number of years delinquent multiplied by one-half of the two-year renewal fee or the fee for one year.~~

~~(4) A registrant who fails to pay a renewal fee for a period of five years or more may be reinstated upon payment of all delinquent renewal fees and a penalty fee. Assessment of delinquent fees will be based on the number of years delinquent multiplied by one-half of the two-year renewal fee or the fee for one year. In addition to the payment of delinquent fees and a penalty fee the registrant shall submit the following:~~

~~(a) A summary of the current law and rules governing architects.~~

~~(b) A professional resume of architectural activities during the delinquent period, in sufficient detail to demonstrate to the board maintenance of minimum skills.~~

~~(c) A detailed explanation of the circumstances surrounding the reason the license was allowed to expire.~~

~~The board may require additional evidence as needed to verify minimum competency and qualifications. The registrant may be required to appear before the board or a representative member thereof where questions of competency remain.~~

~~(5) Registrants who withdraw from the practice of architecture, and exceed five years in an inactive status, shall request reinstatement in writing to the board and shall submit the following:~~

~~(a) A summary of the current law and rules governing architects.~~

~~(b) A professional resume of architectural activities during the delinquent period, in sufficient detail to demonstrate to the board maintenance of minimum skills.~~



(e) ~~A detailed explanation of the circumstances surrounding the reason the license was in an inactive status for more than five years.~~

~~The board may require additional evidence as needed to verify minimum competency and qualifications. The registrant may be required to appear before the board or a representative member thereof where questions of competency remain.)~~ The architect license renewal period is two years. Your expiration date is your birthday. The department will send a courtesy renewal notice. You must notify the board in writing of any address changes.

You are responsible for renewing your license regardless of receiving a renewal notice from the department. If you fail to renew your license, your license is delinquent and you are prohibited from offering and/or providing professional architectural services until your license is reinstated.

(1) If your license has been delinquent less than two years, send to the department:

(a) A letter requesting reinstatement, including certification of having met current professional development requirements; and

(b) The current renewal fee plus the late penalty fee.

(2) If your license has been delinquent over two years but less than five years, send to the department:

(a) A letter requesting reinstatement, including certification of having met current professional development requirements; and

(b) Payment from the previous renewal cycle, the current renewal fee, and the late penalty fee.

(3) If your license has been delinquent five or more years, send to the department:

(a) A letter of application requesting reinstatement;

(b) Payment from all previous renewal cycles, the current renewal fee, and the late penalty fee;

(c) A review of Washington's laws and rules relating to the practice of architecture; and

(d) Evidence of completion of thirty-six PDH within the previous three years. See WAC 308-12-260 for qualifying activities.

(4) If your license has been delinquent five or more years, the board will review all of your reinstatement materials. They may request additional information if necessary.

AMENDATORY SECTION (Amending WSR 99-08-062, filed 4/2/99, effective 5/3/99)

WAC 308-12-326 Architect fees. (1) Suspension of fees. Effective July 1, 2011, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

<u>Title of Fee</u>	<u>Fee</u>
<u>Individuals:</u>	
<u>Examination application</u>	<u>\$50.00</u>
<u>Reciprocity application</u>	<u>250.00</u>
<u>Initial licensure</u>	<u>75.00</u>
<u>License renewal (2 years)</u>	<u>75.00</u>
<u>Late renewal penalty</u>	<u>25.00</u>
<u>Duplicate license</u>	<u>15.00</u>

<u>Title of Fee</u>	<u>Fee</u>
<u>Business entities:</u>	
<u>Certificate of authorization</u>	<u>100.00</u>
<u>Certificate of authorization renewal</u>	<u>50.00</u>

The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, 2013.

(2) The following fees shall be charged by the business and professions division of the department of licensing:

<u>Title of Fee</u>	<u>Fee</u>
Examination application	\$100.00
Reciprocity application	390.00
Initial ( <del>registration</del> ) licensure	99.00
<del>(Oral examination</del>	<del>50.00</del>
<del>Registration</del> ) License renewal (2 years)	99.00
Late renewal penalty	33.00
<del>(Certificate replacement</del>	<del>45.00</del> )
Duplicate license	15.00
<del>(Certification</del>	<del>27.00</del>
<del>Corporations</del> ) <u>Business entities:</u>	
<u>Certificate of authorization</u>	<u>278.00</u>
<u>Certificate of authorization renewal</u>	<u>139.00</u>

**~~(RULES OF PROFESSIONAL PRACTICE)~~**

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

**WAC 308-12-330 ((Rules of) What are the standards of professional practice(=))** (1) **Competence.**

(a) When practicing architecture, ~~((an architect))~~ you must act with reasonable care and competence, and must apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

(b) When designing a project, ~~((an architect))~~ you must take into account all applicable state and municipal building laws and regulations. ~~((An architect))~~ You may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such regulations. ~~((An architect))~~ You must not knowingly design a project in violation of such laws and regulations.

(c) ~~((An architect))~~ You must perform professional services only when ~~((the architect))~~ you, together with those ~~((whom the architect))~~ you may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

(d) ~~((No person))~~ You will not be permitted to practice architecture if, in the board's judgment, ~~((such person's))~~ your professional competence is substantially impaired by physical or mental disabilities.

**(2) Conflict of interest.**

(a) ~~((An architect))~~ You must not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to in writing by all interested parties.

(b) ~~((The architect))~~ You must fully disclose in writing to ~~((the))~~ your client or employer the nature of any business association or direct or indirect financial interest which is substantial enough to influence ~~((the architect's))~~ your judgment in connection with the performance of professional services. If ~~((the))~~ your client or employer objects to such association or financial interest, ~~((the architect will))~~ you must either terminate such association or interest or offer to give up the commission or employment.

(c) ~~((An architect))~~ You must not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

(d) When acting as the interpreter of building contract documents and the judge of contract performance, ~~((an architect))~~ you must render decisions impartially, favoring neither party to the contract.

**(3) Full disclosure.**

(a) ~~((An architect))~~ You must disclose any compensation received for making public statements on architectural questions.

(b) ~~((An architect))~~ You must accurately represent qualifications and scope of responsibility to prospective or existing clients or employers for work for which ~~((the architect is))~~ you are claiming credit.

(c) In the course of work on a project, if ~~((an architect))~~ you become~~((s))~~ aware of a decision made by ~~((the))~~ your employer or client, against ~~((the architect's))~~ your advice, which violates applicable state or municipal building laws and regulations and which will, in ~~((the architect's))~~ your judgment, materially and adversely affect the safety to the public of the finished project~~((, the architect must))~~:

(i) You must report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations, ~~((if))~~ refuse to consent to the decision, and ~~((if))~~ terminate services on the project when ~~((the architect))~~ you reasonably believe~~((s that))~~ decisions will be made against ~~((the architect's))~~ your objection. In the case of a termination in accordance with ~~((c))~~ (i) of this subsection, ~~((the architect))~~ you shall have no liability to ~~((the))~~ your client or employer because of such termination.

~~((iv) An architect))~~ (ii) You must not deliberately make a materially false statement or deliberately fail to disclose a material fact in connection with ~~((the))~~ your application for registration or renewal.

~~((v) An architect))~~ (iii) You must not assist a person in applying for registration when ~~((the architect))~~ you know~~((s))~~ the applicant is unqualified in education, training, experience, or character.

~~((vi) An architect possessing))~~ (iv) If you possess knowledge of a violation of these rules by another architect, you must report such knowledge to the board.

**(4) Compliance with laws.**

(a) ~~((An architect))~~ You must not, in the conduct of architectural practice, knowingly violate any state or federal criminal law.

(b) ~~((An architect))~~ You must not offer or make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which ~~((the architect is))~~ you are interested.

(c) ~~((An architect))~~ You must comply with the registration laws and regulations governing ~~((his or her))~~ your professional practice.

**(5) Professional conduct.**

(a) An office maintained for the purpose of providing architectural services must have an architect resident regularly employed in that office with direct knowledge and supervisory control of such work.

(b) ~~((An architect))~~ You must not offer or provide any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which ~~((the architect is))~~ you are interested.

(c) ~~((An architect))~~ You must not engage in conduct involving fraud or wanton disregard of the rights of others.

**NEW SECTION**

**WAC 308-12-335 When can I call myself an architect if I don't have a Washington license?** You can use the title "architect" without an active Washington license when you are identifying your profession under the following circumstances:

(1) You are a United States government employee or officer engaged in architectural activities solely for said government and you are currently licensed in any U.S. jurisdiction.

(2) You are an instructor at an accredited architectural degree program in architecture engaged solely in teaching activities and you are currently licensed in any U.S. jurisdiction.

(3) You are offering to practice architecture as defined in RCW 18.08.310(2), including participation in design competition.

**NEW SECTION**

**WAC 308-12-340 How do I apply the exemptions contained in RCW 18.08.410?** For the purposes of clarifying the exemptions to licensing contained in RCW 18.08.410, the following brief summaries and definitions apply:

(1) RCW 18.08.410(5) grants exemption for any person to design and prepare construction documents for any residential building, regardless of area, up to but not greater than four dwelling units; or a farm building; or a structure as described in RCW 18.08.410(5).

(2) RCW 18.08.410(6) grants exemption for any person to design a building of any occupancy for up to a total building size of four thousand square feet.

(3) RCW 18.08.410(7) grants exemption for any person to design and prepare construction documents for alteration

of, or repairs to, a project not greater than four thousand square feet and when the contemplated work does not affect life safety or structural systems. The combined square footage of simultaneous projects allowances under this section shall not exceed four thousand square feet.

(4) Life safety is affected if the work contemplated includes, but is not limited to:

- (a) Alteration of any fire rated construction;
- (b) Alteration of any means of egress including barrier free provisions defined by the building codes;
- (c) Alteration of a building such that the number of occupants in the affected space(s) would be increased.

(5) Project size is defined as the cumulative square footage of all spaces that contain altered construction in the design under consideration.

(6) Simultaneous projects are projects which have an open permit in the same building, designed or prepared by nonarchitects, the total of which may not exceed four thousand square feet.

**NEW SECTION**

The following sections of the Washington Administrative Code are recodified as follows:

Old WAC Number	New WAC Number
308-12-111	308-12-016
308-12-115	308-12-005
308-12-180	308-12-345
308-12-190	308-12-350
308-12-230	308-12-355
308-12-320	308-12-215
308-12-326	308-12-205

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 308-12-040	Appeal of examinations.
WAC 308-12-080	Approved schools of architecture.
WAC 308-12-150	Work experience defined.

**WSR 11-05-075**  
**WITHDRAWAL OF PROPOSED RULES**  
**BUILDING CODE COUNCIL**  
 (By the Code Reviser's Office)  
 [Filed February 15, 2011, 9:28 a.m.]

WAC 51-52-0202 and 51-52-0501, proposed by the building code council in WSR 10-16-033 appearing in issue 10-16 of the State Register, which was distributed on August 18, 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 11-05-076**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
 (By the Code Reviser's Office)  
 [Filed February 15, 2011, 9:28 a.m.]

WAC 208-620-375, 208-620-421 and 208-620-422, proposed by the department of financial institutions in WSR 10-16-137 appearing in issue 10-16 of the State Register, which was distributed on August 18, 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 11-05-078**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medicaid Purchasing Administration)  
 [Filed February 15, 2011, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-056.

Title of Rule and Other Identifying Information: New WAC 388-502-0002 Eligible provider types, 388-502-0003 Noneligible provider types, 388-502-0005 Core provider agreement (CPA), 388-502-0012 When the department does not enroll, 388-502-0014 Review and consideration of an applicant's history, 388-502-0016 Continuing requirements, 388-502-0018 Change of ownership, 388-502-0040 Termination of a provider agreement—For convenience, 388-502-0050 Provider dispute of a department decision and 388-502-0060 Reapplying for participation; and amending 388-502-0010 When the department enrolls, 388-502-0020 Healthcare record requirements, 388-502-0030 Termination of a provider agreement—For cause, and 388-502-0230 Provider payment reviews and dispute rights.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on April 5, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 6, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery

Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 5, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by March 22, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services' medicaid purchasing administration (MPA) is proposing to amend WAC 388-502-0010 Payment—Eligible providers defined, 388-502-0020 General requirements for providers, 388-502-0030 Denying, suspending, and terminating a provider's enrollment, and 388-502-0230 Provider review and appeal.

Reasons Supporting Proposal: These rule amendments and additions are intended to update, clarify, and ensure rules which protect the health and safety of DSHS clients and further ensure program integrity. This includes, but is not limited to, eligible provider types, noneligible provider types, core provider agreement, enrollment, review and consideration of an applicant's history, continuing requirements, change of ownership, healthcare record requirements, termination of a provider for cause or convenience, provider dispute of a department decision, reapplying for participation, and provider review and appeal.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.080, 74.09.290.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation: Barbara Lantz, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1640; and Enforcement: Andi Hanson, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and determined that there are no new costs associated with these changes and they do not impose disproportionate costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Andi Hanson, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1615, fax (360) 586-9727, e-mail Andi.Hanson@dshs.wa.gov.

February 7, 2011

Katherine I. Vasquez  
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 11-06 issue of the Register.

**WSR 11-05-086**  
**PROPOSED RULES**  
**GROWTH MANAGEMENT**  
**HEARINGS BOARD**

[Filed February 15, 2011, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-001.

Title of Rule and Other Identifying Information: Repeal of chapter 242-02 WAC, Practice and procedure before the growth management hearings board.

Hearing Location(s): In Eastern Washington, Spokane Public Library, Downtown Branch, 906 West Main Avenue, Spokane, WA 99201, phone (509) 444-5300, on April 8, 2011, at 11:00 a.m.; and in Western Washington, Environmental Hearings Office, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, phone (360) 664-9160, on May 4, 2011, at 10:30 a.m.

Date of Intended Adoption: May 4, 2011.

Submit Written Comments to: Julie Ainsworth-Taylor, 319 7th Avenue S.E., Suite 103, P.O. Box 40953, Olympia, WA 98504-0953, e-mail juliet@cps.gmhb.wa.gov, fax (425) 441-8250, by April 29, 2011.

Assistance for Persons with Disabilities: Contact Paulette Yorke by April 1, 2011 (eastern Washington hearing); by April 27, 2011 (western Washington hearing), e-mail pauletley@wwgmhb.wa.gov or (360) 586-0260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 36.70A.270 (7) authorizes the board to develop and adopt rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals. In 1992, the then existing three growth management hearings boards adopted joint rules. These rules have been minimally amended since that time. Therefore, the board has conducted, in conjunction with interested parties, a comprehensive evaluation of its rules and determined that due to the need for extensive modifications, chapter 242-02 WAC, the board's existing rules will be repealed in their entirety and replaced with new rules, chapter 242-03 WAC.

Reasons Supporting Proposal: Chapter 242-02 WAC is being repealed in its entirety do to extensive modifications revealed during the board's comprehensive review process. Chapter 242-03 WAC replaces chapter 242-02 WAC.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Statute Being Implemented: Chapter 36.70A RCW.

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

Name of Proponent: Growth management hearings board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Ainsworth-Taylor, Olympia, Washington, (425) 441-8250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules only apply to practice and procedure before quasi-judicial boards, the growth management hearings board.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules only apply to practice and

procedure before quasi-judicial boards, the growth management hearings board.

February 15, 2011  
James J. McNamara  
Chair, Rules Committee

### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 242-02-010	Organization.	WAC 242-02-240	Date of filing—Facsimile and electronic mail.
WAC 242-02-015	Regional panels.	WAC 242-02-250	Notice of appearance and answer.
WAC 242-02-020	Function—Local deference.	WAC 242-02-255	Governor certified standing.
WAC 242-02-030	Jurisdiction.	WAC 242-02-260	Amendments to petitions for review and answers.
WAC 242-02-040	Definitions.	WAC 242-02-270	Intervention.
WAC 242-02-050	Rules.	WAC 242-02-280	Amicus.
WAC 242-02-052	Petition for rule making.	WAC 242-02-290	Direct review by superior court—Procedures.
WAC 242-02-054	Petition for rule making—Consideration and disposition.	WAC 242-02-292	Direct review by superior court—Agreement of the parties.
WAC 242-02-060	Computation of time.	WAC 242-02-295	Board filing with superior court—Certificate of agreement.
WAC 242-02-070	Quorum.	WAC 242-02-310	Service of papers.
WAC 242-02-072	Board office.	WAC 242-02-320	Method of service.
WAC 242-02-074	Regular meetings.	WAC 242-02-330	Service of papers—When complete.
WAC 242-02-075	Special meeting.	WAC 242-02-340	Proof of service—Declaration.
WAC 242-02-076	Annual and semiannual board meetings.	WAC 242-02-410	Discovery—Limitation.
WAC 242-02-080	Form and size of documents.	WAC 242-02-420	Subpoena—Issuance.
WAC 242-02-090	Case numbering.	WAC 242-02-510	Notice of hearing—Setting of time and place.
WAC 242-02-110	Appearance and practice before the board—Who may appear.	WAC 242-02-520	Record.
WAC 242-02-115	Authorized representatives.	WAC 242-02-52001	Exhibits.
WAC 242-02-120	Rules of professional conduct.	WAC 242-02-52002	Documentary evidence.
WAC 242-02-130	Ex parte communication.	WAC 242-02-521	Designation of presiding officer.
WAC 242-02-140	Signing of pleadings, motions, and legal memoranda.	WAC 242-02-522	Presiding officer—Powers and duties.
WAC 242-02-150	Teleconference proceeding.	WAC 242-02-530	Motions—Requirements.
WAC 242-02-210	Petition for review—Forms—Contents.	WAC 242-02-532	Motions—Time for filing and hearing.
WAC 242-02-220	Petition for review—Time for filing.	WAC 242-02-533	Motion to disqualify for cause.
WAC 242-02-230	Petition for review—Service and filing.	WAC 242-02-534	Response to motions.
		WAC 242-02-540	New or supplemental evidence.
		WAC 242-02-550	Prehearing conference.
		WAC 242-02-552	Prehearing conference—When held.

WAC 242-02-556	Prehearing conference— Failure to supply information.	WAC 242-02-890	Determination of noncompliance—Compliance schedule.
WAC 242-02-558	Prehearing conference— Agreements.	WAC 242-02-891	Compliance—Notice of hearing.
WAC 242-02-560	Settlement extensions—Continuances.	WAC 242-02-89201	Intent to participate in compliance hearings.
WAC 242-02-570	Briefs.	WAC 242-02-893	Compliance—Hearing.
WAC 242-02-580	Stipulation to the facts.	WAC 242-02-894	Compliance—Hearing pursuant to motion—Rescinding invalidity.
WAC 242-02-582	Waiver of parties' appearance.	WAC 242-02-896	Continued noncompliance—Recommendation to the governor.
WAC 242-02-610	Hearing—Testimony under oath—Interpreters.	WAC 242-02-898	Appeals of a board's final decision.
WAC 242-02-612	Hearing—Interpreters.	WAC 242-02-899	Record on review.
WAC 242-02-620	Hearing—Reporting—Recording—Recording devices.		
WAC 242-02-630	Presumption of validity.		
WAC 242-02-632	Burden of proof.		
WAC 242-02-634	Standard of proof.		
WAC 242-02-640	Hearing—Procedures at hearing.		
WAC 242-02-650	Rules of evidence—Admissibility criteria.		
WAC 242-02-660	Official notice—Matters of law.		
WAC 242-02-670	Official notice—Material facts.		
WAC 242-02-680	Hearings—Board questions.		
WAC 242-02-710	Failure to attend—Default or dismissal—Setting aside.		
WAC 242-02-720	Dismissal of action.		
WAC 242-02-810	Presentation of post hearing matters.		
WAC 242-02-830	Final decision and order—Basis.		
WAC 242-02-831	Final decision and order—Compliance, noncompliance, invalidity.		
WAC 242-02-832	Reconsideration.		
WAC 242-02-833	Invalidity—Hearing pursuant to motion to clarify, modify or rescind.		
WAC 242-02-834	Publication of final decision and orders.		
WAC 242-02-880	Transcripts.		

**WSR 11-05-087**  
**PROPOSED RULES**  
**GROWTH MANAGEMENT**  
**HEARINGS BOARD**

[Filed February 15, 2011, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-001.

Title of Rule and Other Identifying Information: New adoption, chapter 242-03 WAC, Practice and procedure before the growth management hearings board.

Hearing Location(s): In Eastern Washington, Spokane Public Library, Downtown Branch, 906 West Main Avenue, Spokane, WA 99201, phone (509) 444-5300, on April 8, 2011, at 11:00 a.m.; and in Western Washington, Environmental Hearings Office, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, phone (360) 664-9160, on May 4, 2011, at 10:30 a.m.

Date of Intended Adoption: May 4, 2011.

Submit Written Comments to: Julie Ainsworth-Taylor, 319 7th Avenue S.E., Suite 103, P.O. Box 40953, Olympia, WA 98504-0953, e-mail juliet@cps.gmhb.wa.gov, fax (425) 441-8250, by April 29, 2011.

Assistance for Persons with Disabilities: Contact Paulette Yorke by April 1, 2011 (eastern Washington hearing); by April 27, 2011 (western Washington hearing), e-mail pauletty@wwgmhb.wa.gov or (360) 586-0260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 36.70A.270 (7) authorizes the board to develop and adopt rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals. In 1992, the then existing three growth management hearings boards adopted joint rules. These rules have been minimally amended since that time. Therefore, the board has conducted, in conjunction with interested parties, a comprehensive evaluation of its rules and determined that due to the need for extensive mod-

ifications, chapter 242-02 WAC, the board's existing rules will be repealed in their entirety and replaced with new rules, chapter 242-03 WAC.

Reasons Supporting Proposal: Chapter 242-02 WAC is being repealed in its entirety do to extensive modifications revealed during the board's comprehensive review process. Chapter 242-03 WAC replaces chapter 242-02 WAC.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Statute Being Implemented: Chapter 36.70A RCW.

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

Name of Proponent: Growth management hearings board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Ainsworth-Taylor, Olympia, Washington, (425) 441-8250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules only apply to practice and procedure before quasi-judicial boards, the growth management hearings board.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules only apply to practice and procedure before quasi-judicial boards, the growth management hearings board.

February 15, 2011  
James J. McNamara  
Chair, Rules Committee

## Chapter 242-03 WAC

### GMHB RULES OF PRACTICE AND PROCEDURE

#### ADMINISTRATION

##### NEW SECTION

**WAC 242-03-010 Organization.** The growth management hearings board was established pursuant to chapter 36.70A RCW. The board is an independent quasi-judicial agency of the state of Washington with seven members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended by the board pursuant to RCW 36.70A.270(7). They should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

##### NEW SECTION

**WAC 242-03-015 Regional panels.** (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. Regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member Central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member Eastern Washington panel shall be selected to hear matters pertaining

to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member Western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound region. Skamania County, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington region or the Eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such regional members cannot sit on a particular case because of recusal or disqualification, or unless the board administrative officer determines that there is an emergency including, but not limited to, the unavailability of a board member due to illness, absence, vacancy, or significant workload imbalance.

(b) The presiding officer of each case shall reside within the region in which the case arose, unless the board administrative officer determines that there is an emergency.

(c) Except as provided otherwise in (d) of this subsection, each regional panel shall:

(i) Include at least one member admitted to practice law in this state;

(ii) Include at least one member who has been a city or county elected official; and

(iii) Reflect the political composition of the board.

(d) The requirements of (c) of this subsection may be waived by the board administrative officer due to member unavailability, significant workload imbalances, or other reasons.

##### NEW SECTION

**WAC 242-03-020 Function.** The function of the board is to make informed decisions on appeals arising from implementation of the Growth Management Act in a clear, consistent, timely, and impartial manner that recognizes regional diversity.

##### NEW SECTION

**WAC 242-03-025 Jurisdiction.** (1) Regional jurisdiction. Each panel shall hear only those matters pertaining to the cities and counties located within the jurisdictional boundaries of the region as defined in RCW 36.70A.250.

(2) Subject matter jurisdiction. The board shall hear and determine petitions alleging that a state agency, county, or city is not in compliance with the requirements of the act, or chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to plans, development regulations, and amendments adopted under the act or chapter 90.58 RCW; or, petitions from cities or the governor relating to an adopted county-wide planning policy; or, that the twenty-year growth management planning projections adopted by the office of

financial management pursuant to RCW 43.62.035 should be adjusted.

#### NEW SECTION

**WAC 242-03-030 Definitions.** As used in this title, the following terms shall have the following meaning:

(1) "Act" means the Growth Management Act, chapter 36.70A RCW, and subsequent amendments.

(2) "Administrative officer" means the person annually elected by the board pursuant to RCW 36.70A.270(10) to handle day-to-day administrative, budget and personnel matters on behalf of the board and to make case assignments to board members in accordance with the board's rules of procedure.

(3) "Board" means the growth management hearings board or a panel of the board hearing a matter as established in RCW 36.70A.260.

(4) "Compliance participant" means any person with standing to challenge legislation taken in response to a board order, as provided in RCW 36.70A.330(2).

(5) "Consolidation" means the combining of all petitions involving review of the same comprehensive plan or development regulation into a single case for hearing and decision, as provided in RCW 36.70A.290(5).

(6) "Coordination" means provision of parallel case schedules for cases involving related matters in the interest of efficient resolution.

(7) "Ex parte communication" is communication about issues in a pending case between a party and a board member without including or providing notice to all other parties to the matter. Ex parte communication is prohibited.

(8) "Filing" of a document means actual receipt by the board during regular office hours, as specified in WAC 242-03-230 (for a petition for review) or WAC 242-03-240 (for all other documents).

(9) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or

(b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or other legal interest of the parties in the case and which clearly states in such written finding, determination or order that it is a final decision subject to appeal to superior court.

(10) "Office of the growth management hearings board" means the administrative office of the board established pursuant to RCW 36.70A.270(2).

(11) "Panel" means the three board members assigned to hear and decide a particular case pursuant to RCW 36.70A.-260.

(12) "Party" means the petitioner(s) and respondent(s) in a case before the board and, if admitted in the case, intervenor(s), amicus, and compliance participant(s).

(13) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

(14) "Petitioner" means a person who files a petition for review pursuant to RCW 36.70A.290 or who brings a petition for rule making to the board.

(15) "Presiding officer" means any member of the board who is designated to conduct a conference or hearing as directed by the board. The presiding officer shall be designated pursuant to WAC 242-03-525 and have authority as provided by WAC 242-03-530.

(16) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date the city publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations, or subsequent amendments pursuant to RCW 36.70A.290(2), or the date the county publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology.

(17) "Respondent" means the city, county, or state agency whose action is challenged in a petition for review before the board.

(18) "Service" of a document means delivery of the document to the other parties to the appeal, as specified in WAC 242-03-230 (for the petition for review) or WAC 242-03-240 (for all other documents).

#### NEW SECTION

**WAC 242-03-035 Rules.** These rules shall govern the board's adoption or amendment of rules, and all practice and procedure for hearings before the board. Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because the board is required to act pursuant to the time frames set forth in the act.

#### NEW SECTION

**WAC 242-03-040 Petition for rule making.** (1) Any person may petition the board for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the board at its office. The form for a petition for rule making, the criteria to be addressed, and the procedure for submission shall be as specified in RCW 34.05.330(1).

(2) Upon receipt of a petition for the adoption, amendment, or repeal of a rule, the board may, in its discretion, solicit comments, invite discussion, and hold meetings concerning the matter prior to disposition of the petition.

(3) Within sixty days after submission of a petition for rule making, the board shall either:

(a) Deny the petition in writing, stating:

(i) Its reasons for the denial, specifically addressing the concerns raised by the petitioner and, where appropriate;

(ii) The alternative means by which it will address the concerns raised by the petitioner; or

(b) Initiate rule-making procedures in accordance with RCW 34.05.230.

#### NEW SECTION

**WAC 242-03-045 Computation of time.** The time within which any act shall be done, as provided by these



rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, pursuant to RCW 1.16.050, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

#### NEW SECTION

**WAC 242-03-050 Quorum.** (1) Board quorum. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least four members of the board shall constitute a quorum of the board. A quorum being present, any action may be taken upon the vote of the majority of the board members.

(2) Panel quorum. For purposes of making orders or decisions in a case, two members of a panel shall constitute a quorum and may act even though one panel member is absent. One member may hold conferences or hearings. The findings of such member shall not become final until approved by a majority of the panel. A panel member who does not attend a hearing may participate in the decision and shall review a transcript or recording of the hearing before signing the decision.

#### NEW SECTION

**WAC 242-03-060 Board office.** (1) The administration of the board is consolidated in one office - the office of the growth management hearings board:

Growth Management Hearings Board  
319 7th Avenue S.E., Suite 103  
Olympia, WA 98501  
P.O. Box 40953  
Olympia, WA 98504-0953  
360-586-0260  
360-664-8975 Fax  
e-mail: eastern@ew.gmhb.wa.gov  
e-mail: western@wwgmhb.wa.gov  
e-mail: central@cps.gmhb.wa.gov  
web site: www.gmhb.wa.gov

(2) The filing of all petitions, briefs, exhibits, and other documents related to any proceeding before a regional panel shall be made to the office of the growth management hearings board, with specific indication of the appropriate regional panel's name - Eastern, Western, or Central Puget Sound.

#### NEW SECTION

**WAC 242-03-070 Regular meetings.** Regular meetings of the board will be held at the office of the growth management hearings board or a designated location on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date. Meetings may be held telephonically.

#### NEW SECTION

**WAC 242-03-075 Special meeting.** (1) A special meeting of the board may be called at the request of any two of the board members. To call a special meeting, a written notice of the meeting shall be posted on the board's web site and personally e-mailed to:

(a) Each member of the board; and

(b) Each general circulation newspaper, television or radio station which has on file with the board a written request to be notified of special meetings.

(2) The written notice shall state the date and time of the meeting, and shall specify the business to be transacted by the board. The board will not take final action on any matter that is not specified in the written notice.

(3) Notices of special meetings shall be sent by e-mail:

(a) One day (twenty-four hours) before the scheduled meeting; except

(b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except

(c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.

(4) The special meeting shall be chaired by the administrative officer.

(5) A special meeting may be held by telephone conference call.

(6) Members of the public may attend a special meeting by appearing at the board office, or the location of the special meeting, at the date and time set for the meeting.

#### NEW SECTION

**WAC 242-03-080 Annual and semiannual board meetings.** (1) The annual board meeting will be held on the first Thursday and first Friday of October of each year. The annual meeting should be held in person. The location, time, and agenda for the annual board meeting will be posted on the board's web site ([www.gmhb.wa.gov](http://www.gmhb.wa.gov)) in September of each year.

(2) The semiannual board meeting may be held on the last Thursday in April each year. The location, time, and agenda for the semiannual board meeting will be posted on the board's web site ([www.gmhb.wa.gov](http://www.gmhb.wa.gov)) in March of each year.

#### NEW SECTION

**WAC 242-03-090 Form and size of documents.** Documents, other than exhibits, shall be provided in the manner indicated in the board's prehearing order.

#### NEW SECTION

**WAC 242-03-095 Case numbering.** The board shall assign a case number to each petition for review which shall be the official reference number for purposes of identification. The first two digits of the case number shall correspond to the last two digits of the calendar year in which the petition was filed. The third digit shall designate which regional

panel has jurisdiction over the matter. The Eastern Washington panel shall use the digit "1"; the Western Washington panel shall use the digit "2"; and the Central Puget Sound panel shall use the digit "3." The last four digits shall be numbered sequentially in order of receipt. Consolidated cases are generally assigned the number of the last filed petition followed by a "c."

### PRACTICE BEFORE THE BOARD

#### NEW SECTION

**WAC 242-03-100 Appearance and practice before the board—Who may appear.** Practice before the board shall be open to the following persons who have met the standing requirements of chapter 36.70A RCW:

(1) A party or compliance participant to a case before the board may appear personally or by a duly authorized representative. The duly authorized representative need not be an attorney;

(2) Attorneys at law representing a party before the board must be duly qualified and entitled to practice in the courts of the state of Washington or satisfy Washington Court Rule 9 standards.

#### NEW SECTION

**WAC 242-03-115 Authorized representatives.** (1) Notice of appearance. Any person acting in a representative capacity on behalf of a party or participant shall file a notice of appearance with the board and shall serve a copy on all other parties. This requirement shall apply to attorneys as well as to other duly authorized representatives of parties.

(2) Substitution. In the event of a change in representative or attorney, a notice of substitution must be filed with the board and a copy served on all other parties before the change in representative shall become effective.

#### NEW SECTION

**WAC 242-03-120 Rules of professional conduct.** (1) An attorney appearing in proceedings before the board in a representative capacity shall conform to the Rules of Professional Conduct required of attorneys before the courts of Washington.

(2) A person other than an attorney appearing in a representative capacity or on his/her own behalf shall conform to the following standards as set forth in the Washington Court Rules of Professional Conduct, RCP 3.1 to 3.5.

- (a) Advancing good faith claims and contentions;
- (b) Making reasonable efforts to expedite the proceedings;
- (c) Candor and truthfulness toward the board;
- (d) Fairness to opposing parties; and
- (e) Refraining from conduct that is detrimental to the impartiality of the board or the decorum of the proceedings.

(3) If any person does not conform to such rules, the board may decline to permit such person to appear in any current or future proceedings before the board or impose appropriate sanctions.

#### NEW SECTION

**WAC 242-03-130 Ex parte communication.** No one in a board proceeding shall make or attempt to make any ex parte communications with board members regarding any issue in the proceeding that is prohibited by the Administrative Procedure Act, RCW 34.05.455. Communications on purely procedural matters such as scheduling and logistics should be directed to the board's administrative staff. Any person who attempts to make prohibited ex parte communications on behalf of a party may be subject to sanctions pursuant to WAC 242-03-120.

#### NEW SECTION

**WAC 242-03-140 Signing of pleadings, motions, and legal memoranda.** Every pleading, motion and legal memorandum of a party shall be dated and signed by the party, or the party's attorney or other authorized representative and include an address, telephone and fax numbers, and electronic mail address.

#### NEW SECTION

**WAC 242-03-150 Teleconference or video conference proceeding.** (1) At the discretion of the board or a presiding officer, or where the parties agree and where the rights of the parties will not be prejudiced, all or part of any hearing, prehearing, or motion hearing may be conducted by telephone, video conference, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board will require documentary evidence, motions, and briefs to be submitted in accordance with the prehearing order or subsequent scheduling order to insure fair consideration and presentation of the issues. All such material shall also be served on other parties at the time of filing with the board.

### APPEAL PROCEDURE

#### NEW SECTION

**WAC 242-03-200 Initiating an appeal with the board.** An appeal before the board is initiated by satisfying the following requirements:

(1) A petition for review relating to an adopted comprehensive plan, development regulation, or amendment thereto, must be filed with the growth management hearings board within sixty days after publication by the decision-making body of the state agency, county, or city whose action is being appealed and naming that state agency, county, or city as a respondent;

(2) The petition for review shall include a detailed statement of issues presented for resolution by the board;

(3) The petition for review shall include a statement showing that the petitioner has standing to file the petition; and



electronic filing. Filings less than fifteen pages may be made by telefacsimile transmission. The original and four copies must be mailed on the same date as the telefacsimile transmission to be deemed filed.

Filings made by electronic mail and/or telefacsimile transmission shall be deemed filed upon actual receipt during office hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's telefacsimile machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission. All papers will be deemed filed with the board on the date received by electronic mail provided that the original document and four copies are mailed and postmarked on the same date as the telefacsimile transmission or electronic mail filing.

(2) Service: Parties shall serve copies of all filings on all other named parties by mail or personal service, on or before the date filed with the board. Service is accomplished when the document is deposited in the mail and postmarked by the required date or, by agreement among the parties when the document is transmitted electronically.

#### NEW SECTION

**WAC 242-03-245 Declaration of service.** A party filing any pleadings, briefs, exhibits, or documents with the board shall provide a signed declaration of service, on penalty of perjury under the laws of this state, stating that copies have been served on all other parties, listing the parties, and stating the method of service.

#### NEW SECTION

**WAC 242-03-250 Notice of appearance.** The respondent shall file and serve a notice of appearance within seven days after having been served with a petition for review.

#### NEW SECTION

**WAC 242-03-255 Governor certified standing.** If the board receives a request for governor certified standing from a petitioner pursuant to RCW 36.70A.280 (2)(c), the board shall immediately forward the petitioner's request to the governor. The board shall indicate to the governor the end of the sixty-day time period within which the determination of standing must be made. Pendency of a request for governor certified standing does not extend the time for filing a petition for review.

#### NEW SECTION

**WAC 242-03-260 Amendments to petitions for review.** (1) A petition for review may be amended as a matter of right until thirty days after its date of filing. Any such amendments shall be limited to amending the legal bases for challenging the matters raised in the original petition, but may not raise new challenges to the ordinance.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by

the presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the adverse party of unreasonable and unavoidable hardship, or by the presiding officer's finding that granting the same would adversely impact the board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order.

(3) At the prehearing conference the presiding officer will work with the parties to clarify the issues raised in the petition for review. The presiding officer may, upon motion of a party or upon its own motion, require a more complete statement of the issues presented for resolution by the board.

#### NEW SECTION

**WAC 242-03-270 Intervention.** (1) Upon motion, any person may request status as an intervenor in a case. The motion shall state the applicant's interests relating to the subject of the action, how disposition of the action may impair that interest, and whether that interest is adequately represented by existing parties. The motion shall specify the legal issue(s) in the case which the intervenor seeks to address. The applicant should make an effort to contact the parties so that the motion may be filed without objection. The motion to intervene shall be filed at least ten days prior to the deadline for filing the petitioner's prehearing brief, unless good cause is shown.

(2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law and may consider the applicable superior court civil rules (CR) of this state. The granting of intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(3) If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the motion;

(b) Requiring two or more intervenors to combine their presentations of evidence and argument, or requiring intervenor to combine its argument with the party whose position the intervenor supports; and

(c) Limiting the intervenor's role in settlement proceedings.

(4) The presiding officer shall timely grant or deny each motion and specify conditions, if any.

(5) Pleadings and briefs of an intervenor shall be filed and served in accordance with the deadlines applicable to the party whose position the intervenor supports, in accordance with the board's order on intervention.

#### NEW SECTION

**WAC 242-03-280 Amicus.** (1) Any person whose interest may be substantially affected by a proceeding before the board may, by motion, request status as an amicus in the case. A motion and amicus brief shall be filed no later than thirty days before the hearing on the matter, unless good cause is shown.

(2) A motion to file an amicus curiae brief must include a statement of:

(a) Applicant's interest and the person or group applicant represents;

(b) Applicant's familiarity with the issues involved in the matter and with the scope of the argument presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

(3) If leave to file an amicus brief is granted, amicus does not participate in oral argument, except at the request of the board, and is not a party of record in subsequent proceedings.

#### NEW SECTION

**WAC 242-03-290 Direct review by superior court—Procedures.** RCW 36.70A.295 provides for direct review by superior court of a petition for review filed with the board if all parties to the proceeding agree to direct review in superior court and file an agreement in writing with the board within ten days after the petition for review is filed, or if multiple petitions have been filed and consolidated, within ten days after the board serves notice of consolidation.

(1) A direct review agreement of the parties shall contain:

(a) Petitioner's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(b) Respondent's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(c) Intervenor's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(d) A statement indicating agreement to seek direct review by superior court of the petition for review filed with the board, citing case name and number as assigned by the board. The statement shall include agreement to proper venue, and may include other terms;

(e) Date the petition for review was filed, or if multiple petitions were filed and consolidated, the date the board served notice of consolidation;

(f) A statement that all parties have read the agreement for direct review by superior court, and agree to its terms, followed by the signatures of all the parties or the signatures of the attorneys or other designated representatives, if any.

(2) One copy of the filed petition for review, with the case name, number and date stamp shall be filed with the agreement for direct review by superior court.

(3) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court with the documents required by RCW 36.70A.295(2) and shall serve the parties with copies of the certificate.

## ADDITIONAL BOARD POWERS

#### NEW SECTION

**WAC 242-03-300 Discovery—Limitation.** (1) Because the board bases its decision on the record developed by the city, county, or state agency in taking the challenged action, discovery shall not be permitted except in extraordinary circumstances upon an order of the presiding officer.

(2) Insofar as applicable and not in conflict with this chapter, when discovery has been authorized by the presiding officer, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used.

#### NEW SECTION

**WAC 242-03-310 Subpoena—Issuance.** (1) Because the board bases its decision on the record developed by the city, county, or a state agency taking the challenged action, subpoenas shall not be authorized except in extraordinary circumstances. When allowed by the presiding officer, subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and court rules.

(2) Every subpoena shall identify the party causing its issuance. Subpoenas may be issued by the board or by an attorney of record. The person issuing shall sign the subpoena. Parties desiring subpoenas to be signed by the board shall make a showing of relevance and reasonable scope of the testimony or evidence sought and shall prepare the subpoenas for issuance, send them to the board's office for signature, and, upon return, shall make arrangements for service.

#### NEW SECTION

**WAC 242-03-320 Hearing examiner—May be appointed.** (1) The board may appoint hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact, and, if requested by the board, to make recommendations to the board for decisions in cases before the board.

(2) The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the panel hearing the case.

#### NEW SECTION

**WAC 242-03-330 Witnesses and testimony—Limitation.** (1) Because the board bases its decision on the record developed by the city, county, or the state in taking the challenged action, witnesses shall not be permitted to testify in hearings before the board except as allowed by the presiding officer. Requests to allow witness testimony shall be made no later than five working days prior to the hearing.

All testimony shall be given under oath as provided in chapter 5.28 RCW and subject to cross-examination. Where an interpreter is employed, the provisions of WAC 10-08-150 shall apply.

(2) When allowed to address the board by the presiding officer, local officials shall limit their comments to material

contained in the record. Such comments will not be considered testimony, and therefore need not be given under oath.

#### NEW SECTION

**WAC 242-03-340 Board consultation of critical areas expert.** (1) Pursuant to RCW 36.70A.172(2), the board may retain scientific or other expert advice to assist in reviewing a petition that involves critical areas. When the board has determined that such advice is necessary or will be of substantial assistance in reaching its decision, the board shall promptly notify the parties of the proposed scope of the consultation.

(2) Upon receiving the report of the consulted expert, the board shall provide all parties a copy of the report and a statement of the expert's qualifications.

(3) Any party may, within fourteen days, file objections to the qualifications or impartiality of the expert or to the substance of the report.

### PROCEDURES PRIOR TO HEARING

#### NEW SECTION

**WAC 242-03-500 Notice of hearing.** (1) Within ten days of the filing of a petition for review or of the filing of the last filed of consolidated petitions, unless a petition for review has been removed to superior court, pursuant to WAC 242-03-290, the board or presiding officer will issue a notice of hearing setting a preliminary schedule, including the date for the hearing on the merits. The presiding officer will thereafter schedule a place for the hearing.

(2) The notice of hearing shall identify the appeal to be heard, the names of the parties to the appeal and their attorneys or other authorized representatives, if any, and shall include the information specified in RCW 34.05.434.

(3) The notice of hearing will inform the parties of the presiding officer and the panel members designated to hear the matter.

(4) The notice of hearing will include an order setting a date and time for a prehearing conference. If the prehearing conference is to be held by teleconference, the notice shall so state.

(5) The notice of hearing shall contain a tentative schedule for the case prepared by the presiding officer for review and finalization at the prehearing conference.

(6) The notice shall state that if a limited-English-speaking or hearing impaired party needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired.

#### NEW SECTION

**WAC 242-03-510 Index of the record.** (1) Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on the parties of an index listing all material used in taking the action which is the subject of the petition for review. The index shall contain

sufficient identifying information to enable unique documents to be distinguished.

(2) Concurrent with the filing of the index, the respondent shall make all documents in the index reasonably available to the petitioners for inspection and copying without the necessity for a public records request. In addition, the written or tape recorded record of the legislative proceedings where action was taken shall be available to the parties for inspection. Respondents may charge for the cost of copies of documents requested by other parties in accordance with RCW 42.56.120, as amended.

(3) Within seven days after the filing of the index, any other party may file a list of proposed additions to the index. To the extent such documents were submitted to the jurisdiction or a part of the jurisdiction's proceedings prior to the challenged action, they are presumed admissible subject to relevance. If the respondent objects to any proposed addition, the petitioner may bring a motion to supplement the record as provided in WAC 242-03-565.

#### NEW SECTION

**WAC 242-03-520 Exhibits.** Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs and attached thereto. Exhibits shall be documents, portions of documents, or transcriptions of proceedings listed in the index, unless a motion to supplement the record has been granted. A party may submit additional exhibits only upon a showing of good cause.

#### NEW SECTION

**WAC 242-03-525 Designation of presiding officer and panel members.** The board shall designate the presiding officer and panel members for each case at the time it issues the notice of hearing pursuant to WAC 242-03-500. In the event the presiding officer or any panel member subsequently changes, the board shall promptly notify the parties.

#### NEW SECTION

**WAC 242-03-530 Presiding officer—Powers and duties.** It shall be the duty of the presiding officer to conduct conferences or hearings as directed by the board in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of the act or these rules to:

(1) Inspect the petition for review to determine whether, on its face, compliance with the jurisdictional and standing requirements of the act is shown, and if compliance is not shown, to recommend an action or to refer the issue to the board for resolution;

(2) Require that parties not represented by counsel designate a spokesperson(s);

(3) Conduct the prehearing conference, seek clarification or simplification of issues, establish the case schedule, and regulate the course of the case;

(4) Rule on all procedural matters, objections and routine motions;

(5) Rule on all evidentiary matters including supplementation of the record;

(6) Decide motions for intervention, amicus, or compliance participant status;

(7) Consolidate cases for hearing pursuant to RCW 36.70A.290(5) or coordinate cases pursuant to WAC 242-03-030(5) and 242-03-030(6) when such consolidation or coordination will expedite disposition and avoid duplication of evidence and argument;

(8) Review cases for settlement or mediation opportunities and assist the parties in arranging such sessions;

(9) Administer oaths and affirmations if witnesses are permitted to testify, authorize discovery, or issue subpoenas in exceptional circumstances as provided in RCW 34.05.446;

(10) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and rule on issues concerning the content of the record;

(11) Limit the length of a brief or impose format restrictions;

(12) Rule on requests for settlement extensions;

(13) Determine whether oral argument will be allowed on a motion and, if so, schedule the hearing; determine whether a conference or hearing shall be held by teleconference or in person;

(14) Require a party to provide a complete copy of the comprehensive plan, county-wide planning policy, or other core document germane to determination of the case;

(15) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(16) Take any other action necessary and authorized by these rules, the act, or the Administrative Procedure Act, chapter 34.05 RCW.

#### NEW SECTION

**WAC 242-03-535 Prehearing conference—When held.** The prehearing conference will be held thirty days after the filing of the petition for review or as scheduled in the notice of hearing. The prehearing conference is conducted by the presiding officer and is ordinarily held telephonically.

#### NEW SECTION

**WAC 242-03-540 Prehearing conference—Purpose.** The purpose of a prehearing conference is to:

(1) Determine the feasibility of and encourage settlement of the matter or any portion thereof;

(2) Obtain a stipulation of relevant facts including the board's jurisdiction, the petitioner's standing in the matter, and the timeliness of the petition for review;

(3) Obtain agreement as to the issues of law and fact presented and their clarification, simplification, limitation, or resolution, so as to frame the final issues to be decided by the board;

(4) Rule on any pending matters of intervention, consolidation, or the qualification of individual board members or the composition of the panel;

(5) Determine the witnesses, if any, that may be allowed to be called by the parties;

(6) Set the final case schedule for filing motions, deadlines for briefing, and date and time of the hearing on the merits;

(7) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties; and

(8) Obtain all other information which may aid in the prompt disposition of the matter.

#### NEW SECTION

**WAC 242-03-545 Prehearing order.** (1) Within seven days after the prehearing conference, the presiding officer shall issue a prehearing order memorializing rulings of the board at or prior to the prehearing conference, establishing the issues for resolution in the case, and setting the final case schedule for motions, briefing, and the hearing on the merits. The prehearing order may include:

(a) Admissions concerning jurisdiction, standing, or timeliness of the appeal;

(b) Provisions concerning the record, documents to be provided, witnesses allowed, if any, and authenticity and/or admissibility of exhibits;

(c) Limitations on length of briefs and the coordination of arguments from parties with related issues; or

(d) Any other matters that may expedite the resolution of the matter.

(2) Any objection to such order shall be made in writing within seven days after the date the order is dated. The prehearing order shall control ensuing proceedings unless modified for good cause by a subsequent order.

#### NEW SECTION

**WAC 242-03-550 Motions—General requirements.**

(1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought.

(2) The deadline for filing certain motions is established in the prehearing order. No written motion may be filed after the date specified in the order without written permission of the presiding officer which may be granted for good cause shown.

(3) Unless the prehearing order or other order in the case establishes a different deadline, a party served with a motion shall have ten days from the date of service of the motion to respond to it. The presiding officer may allow the moving party to reply to the response.

(4) A party filing a motion on a routine matter is encouraged to inform other parties and to indicate in the motion whether it is filed with the concurrence of other parties.

(5) A motion on procedural matters will generally be decided by the presiding officer without a hearing.

(6) The presiding officer, taking into consideration the complexity and finality of the issues raised in a motion, may, in the officer's discretion, schedule a telephonic hearing for argument of the motion to the board or may defer consideration of the motion until commencement of the hearing on the merits.

NEW SECTION

**WAC 242-03-555 Dispositive motions.** (1) Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted. The board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline.

(2) Dispositive motions and responses shall be filed by the dates established in the prehearing order. The board may refuse to hear a motion that is not timely filed, except where good cause is shown.

(3) The presiding officer, taking into consideration the complexity and finality of the issues raised, may, in the presiding officer's discretion, request a reply brief from the moving party, schedule a telephonic hearing for argument of the motion or may defer the board's consideration of the motion until commencement of the hearing on the merits.

(4) Unless the order on dispositive motions is a final order pursuant to WAC 242-03-030(9), no motion for reconsideration will be allowed.

NEW SECTION

**WAC 242-03-560 Dispositive motion on notice and public participation.** Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. Such motion shall be filed by the deadline for dispositive motions established in the prehearing order. The presiding officer shall determine whether the panel will decide the notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

NEW SECTION

**WAC 242-03-565 Motion to supplement the record.** Generally, the board will review only documents and exhibits taken from the record developed by the city, county, or state in taking the action that is the subject of review by the board and attached to the briefs of a party. A party by motion may request that the board allow the record to be supplemented with additional evidence. A motion to supplement the record shall be filed by the deadline established in the prehearing order, shall attach a copy of the document, and shall state the reasons why such evidence would be necessary or of substantial assistance to the board in reaching its decision, as specified in RCW 36.70A.290(4). Evidence arising subsequent to adoption of the challenged legislation is rarely allowed except when supported by a motion to supplement showing the necessity of such evidence to the board's decision concerning invalidity.

NEW SECTION

**WAC 242-03-570 Motion to disqualify for cause—Challenge to panel.** (1) A motion to disqualify a board member from serving on a panel or to challenge the composition of the panel shall be brought at least seven days before the

board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts. In the event a new panel assignment is made during the course of the proceedings on a matter, any motion for disqualification or challenge to panel composition shall be brought no later than seven days after the board issues its notice of panel assignment.

(2) Any board member designated to serve on a panel is subject to disqualification for bias, prejudice, interest, or any other cause as provided in RCW 34.05.425. The board member whose disqualification is requested shall promptly determine whether to grant the motion, stating facts and reasons for the determination.

(3) If a party brings a motion challenging the composition of the panel for noncompliance with the requirements of RCW 36.70A.260, the presiding officer shall promptly forward the motion to the administrative officer who will prepare a response.

(4) If a motion for disqualification or challenge to composition of the panel is granted, a new panel assignment and/or presiding officer designation will be promptly made. The parties will be informed at the prehearing conference and the resolution of the matter will be included in the prehearing order or other written order of the board issued within twenty days of the filing of the motion.

NEW SECTION

**WAC 242-03-575 Settlement extensions.** (1) If additional time is necessary to achieve settlement of a dispute that is an issue in a petition before the board, the board may extend the one hundred eighty-day time limit for issuing a final decision and order, as provided in RCW 36.70A.300 (2)(b). The presiding officer may authorize one, or more, extensions of up to ninety days each.

(2) A request for a settlement extension must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition.

(3) The presiding officer may grant a request for a settlement extension if:

(a) The request was timely filed; and

(b)(i) All parties named in the caption of the petition, agree to and sign the request; or

(ii) A petitioner and respondent agree to and sign the request and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute.

(4) The presiding officer may require status reports from the parties to determine whether progress is being made on resolving the dispute.

NEW SECTION

**WAC 242-03-580 Continuances.** Other than for settlement purposes pursuant to WAC 242-03-575, continuance of a scheduled hearing will be granted only on the board's initiative or upon timely request of a party setting forth in detail the reason for such a request and a date by which such reason will no longer apply. The board will continue the matter only in extraordinary circumstances and upon a finding of good cause. Continuance and rescheduling of a hearing on the



merits or compliance hearing does not extend the statutory deadline for filing a final decision or for taking action to achieve compliance with the act.

#### NEW SECTION

**WAC 242-03-590 Briefs.** (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief addressing each legal issue it expects the board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbrieffed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order.

(2) Briefs shall be filed according to the schedule in the prehearing order or any subsequent order amending the briefing schedule.

(3) Clarity and brevity are expected to assist the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

#### NEW SECTION

**WAC 242-03-595 Stipulation to the facts.** Parties are encouraged to stipulate to any undisputed facts.

### HEARING PROCEDURE

#### NEW SECTION

**WAC 242-03-600 Hearing—Recording—Recording devices.** (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or common law limits such use.

#### NEW SECTION

**WAC 242-03-610 Hearing—Procedures at hearing.** (1) Purpose. The purpose of any hearing is for the parties to present oral argument based on the record as presented in their briefs and exhibits and for the board to ask questions necessary for a thorough understanding of the issues for decision.

(2) Presiding officer. All hearings shall be conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections, and motions.

(3) Order of presentation. The presiding officer shall determine the proper order of presentation and the time allotted for presentation, including the role of intervenor(s), if any.

(4) Illustrative exhibits. Any proposed illustrative exhibit shall be circulated to the parties at least four days prior to the hearing. Paper copies of any illustrative exhibit, in pleading size, shall be brought to the hearing for the benefit of the board and the parties.

(5) Supplemental evidence submitted at hearing. In exceptional circumstance the board may allow the submission of supplemental evidence at a hearing in response to board questions, upon a showing that the supplemental evidence is necessary or of substantial assistance to the board. If supplemental evidence is thereby introduced, the opposing party shall have the opportunity to respond. The board may require the parties to submit post-hearing briefing or documents detailing the supplemental evidence, and the opposing party's rebuttal to the supplemental evidence.

#### NEW SECTION

**WAC 242-03-620 Evidence at hearing.** (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the presiding officer, the offered evidence is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) If not inconsistent with subsection (1) of this section, the presiding officer may refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference, subject to the following:

(a) That all documentary evidence which is to be relied upon be submitted to the board and to other parties with their briefs;

(b) That documentary evidence not submitted as required in (a) of this subsection and not supported by a timely filed motion to supplement the record pursuant to WAC 242-03-565 not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner, unless it is submitted for impeachment or rebuttal purposes;

(c) That all documents so presented and examined be deemed authentic unless written objection is filed within ten days after receipt. A party will be permitted to challenge such authenticity at a later time only upon a clear showing of good cause.

(d) When only portions of a document or portions of a proceeding are to be relied upon, the offering party shall adequately identify and prepare the pertinent excerpts and shall supply copies of such excerpts for attachment as exhibits to a brief. However, the whole of the original document or recording shall be made available for examination and for use by all parties to the proceeding.

#### NEW SECTION

**WAC 242-03-630 Official notice—Matters of law.** The board or presiding officer may officially notice:

(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions, records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and codes or standards that have been adopted by an agency of another state.

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions.

(5) Federally recognized Indian tribes, Constitutions, ordinances, resolutions and motions enacted by federally recognized Indian tribes.

(6) Growth management hearings board. Orders and decisions of the board and the board's rules of practice and procedure.

#### NEW SECTION

**WAC 242-03-640 Official notice—Material facts.** (1) In the absence of conflicting evidence, the board or presiding officer, upon request made before or during a hearing, may officially notice:

(a) Business customs. General customs and practices followed in the transaction of business.

(b) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including, but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency.

(c) Technical or scientific facts. Technical or scientific facts within the board's specialized knowledge.

(2) Request. Any party may request, orally or in writing, that official notice be taken of a material fact. The board or presiding officer may take official notice of a material fact on its own initiative.

(3) Notice. Parties shall be notified either before or during a hearing of the material fact(s) proposed to be officially noticed, and shall be afforded the opportunity to contest such facts and materials.

(4) Statement of official notice.

(a) In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

(b) If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(c) Where a decision of the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision.

#### NEW SECTION

**WAC 242-03-650 Hearings—Board questions.** Any member of the board may, at any time during the hearing, ask clarifying questions as necessary to understand the evidence or argument.

#### **DISPOSITION OF CASES PRIOR TO HEARING**

#### NEW SECTION

**WAC 242-03-700 Dismissal—How decided.** An order of dismissal, upon stipulation, dispositive motion, or default, is decided by the panel hearing the case. If the order disposes of the entire case, it is a final order for the purposes of appeal.

#### NEW SECTION

**WAC 242-03-710 Default.** (1) When a party to a proceeding has, after proper notice, failed to attend a hearing or any other matter before the board or presiding officer, or failed to file a prehearing brief, a motion for default or dismissal may be brought by any party to the case or raised by the board upon its own motion or by a presiding officer. Any order granting the motion shall include a statement of the grounds for the order and shall be served upon all parties to the case.

(2) If the party in default is the respondent, the board may determine whether petitioner has made a prima facie case that overcomes the statutory presumption of validity such that, in absence of briefing and argument by respondent, the board's order should include a finding of noncompliance, specifying the grounds for the order.

(3) Within seven days after service of an order of dismissal, default or noncompliance under subsection (1) or (2) of this section, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside the order.

#### NEW SECTION

**WAC 242-03-720 Dismissal of action.** (1) Any action shall be dismissed by the board:

(a) Upon petitioner's withdrawal of the petition for review; or

(b) Upon stipulation for dismissal by petitioner(s) and respondent(s).

(2) Any action may be dismissed by the board:

(a) Upon motion of the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or

(b) Upon the board's own motion for failure by the parties to comply with these rules or any order of the board.

## DISPOSITION OF PETITIONS FOR REVIEW AFTER HEARING

### NEW SECTION

**WAC 242-03-800 Presentation of post hearing matters.** Unless requested by or authorized by the board, no post hearing evidence, documents, briefs, or motions will be accepted.

### NEW SECTION

#### **WAC 242-03-810 Final decision and order—Basis.**

(1) When the hearing on the petition for review has been held and the record reviewed by a majority of the panel hearing the matter, a written final decision and order shall be issued that contains appropriate findings and conclusions, and articulates the basis for the final decision and order.

(2) The board will not issue advisory opinions on issues not presented to the board in the petition for review's statement of the issues, as modified by any prehearing order.

(3) Except as provided in RCW 36.70A.300 (2)(b) and WAC 242-03-575, the final decision and order shall be issued by the board within one hundred eighty days of receipt of the petition for review, or if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated. The order shall be served on each party of record.

### NEW SECTION

**WAC 242-03-820 Final decision and order.** (1) In its final decision and order, the board shall either:

(a) Find that the state agency, county or city is in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county or city is not in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2) If the board's final decision and order finds noncompliance:

(a) Conclusions of law in the final decision and order shall specify the nature, scope, and statutory basis for the finding of noncompliance.

(b) The board's final decision and order shall remand the matter to the state agency, county, or city and establish a compliance schedule as specified in RCW 36.70A.300 (3)(b).

(c) The board retains jurisdiction of the matter until the board issues its final order on compliance.

(3) In its final decision and order, the board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand;

(b) Includes in its final decision and order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of the act; and

(c) Specifies the part or parts, if applicable, of the plan or regulation that are determined to be invalid and the reasons for invalidity.

(4) The effect of a determination of invalidity is as set forth in RCW 36.70A.302.

### NEW SECTION

#### **WAC 242-03-830 Postdecision motions—Reconsideration.**

(1) After issuance of a final decision any party may file a motion for reconsideration with the board in accordance with subsection (2) of this section. Such motion must be filed within ten days of service of the final decision. Within ten days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. The board may require other parties to supply an answer.

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration; or

(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing.

(3) In response to a motion for reconsideration, the board may deny the motion, modify its decision, or reopen the hearing. The motion for reconsideration shall be disposed of by the same panel that entered the order, if reasonably available. A motion is deemed denied, if, within twenty days from the date the motion for reconsideration is filed, the board does not either:

(a) Dispose of the motion; or

(b) Serve the parties with a written notice specifying the date by which it will act on the motion.

(4) Upon receipt of a letter from a party identifying typographical errors or clerical mistakes in a final order, the board may, without objection, issue a corrected order. The letter must be filed within the deadline for motions for reconsideration and should indicate that the sender has obtained the concurrence of all other parties. Issuance of a corrected order does not extend the time for filing a petition for judicial review.

(5) A decision in response to the motion for reconsideration shall constitute a final decision and order for purposes of judicial review. A board order on a motion for reconsideration is not subject to a motion for reconsideration.

(6) No motion for reconsideration stays the effectiveness of the board's final decision and order.

### NEW SECTION

#### **WAC 242-03-840 Postdecision motions—Reconsider compliance schedule.**

Where the board's order makes a finding of noncompliance and enters a schedule for the responding jurisdiction to achieve compliance, the respondent may

file a motion for reconsideration requesting modification of the compliance schedule upon a showing of special complexity, specific hardship, or the need to coordinate the compliance action with other planning activities of the jurisdiction. The motion shall be filed and disposed of pursuant to WAC 242-03-830.

#### NEW SECTION

**WAC 242-03-850 Postdecision motions—Clarify, modify or rescind invalidity.** Where the board's final decision and order makes a determination of invalidity, and the city or county subject to the order has not yet enacted legislation in response to the board's order, the city or county may file a motion to clarify, modify or rescind invalidity. The motion and any response may be supported by evidence arising subsequent to adoption of the invalidated legislation. Pursuant to RCW 36.70A.302(6), the board shall expeditiously schedule a hearing on the motion. Not later than thirty days after the hearing on the motion, the board shall issue any supplemental order continuing, clarifying, modifying or rescinding invalidity based on information provided at the hearing.

#### NEW SECTION

**WAC 242-03-860 Stay.** The presiding officer pursuant to RCW 34.05.467 or the board pursuant to RCW 34.05.550(1) may stay the effectiveness of a final order upon motion for stay filed within ten days of service of the final order.

A stay may be granted if the presiding officer or board finds:

- (1) An appeal is pending in court, the outcome of which may render the case moot; and
- (2) Delay in application of the board's order will not substantially harm the interest of other parties to the proceedings; and
- (3) Delay in application of the board's order is not likely to result in actions that substantially interfere with the goals of the GMA; or
- (4) The parties have agreed to halt implementation of the noncompliant ordinance and undertake no irreversible actions regarding the subject matter of the case during the pendency of the stay; or
- (5) Delay in application of the board's order furthers the orderly administration of justice.

The board's order granting a stay will contain appropriate findings and conditions. A board order denying stay is not subject to judicial review.

#### NEW SECTION

**WAC 242-03-870 Publication of final decisions and orders.** Copies of all final decisions and orders are available from the office of the growth management hearings board. The growth management hearings board's web site is [www.gmhb.wa.gov](http://www.gmhb.wa.gov). The board posts final orders, compliance orders, and other decisions on its web site and maintains a digest of its decisions by region.

#### NEW SECTION

**WAC 242-03-880 Transcripts.** The following shall be the policy of the board with regard to transcription of the record of a hearing on the merits or other hearing:

(1) The board, in its discretion, may at any time cause a transcript to be printed. Any person may obtain a copy upon payment of the reasonable costs thereof.

(2) In any case when the board shall not cause the transcript to be printed, it shall be the obligation of the party wishing a transcript, or portions of it, to assume the cost of producing it.

(3) When an appeal is taken from any final decision and order of a board to a reviewing court, the appealing party is responsible for ordering and paying for the transcript of the hearing.

### COMPLIANCE/REMAND

#### NEW SECTION

**WAC 242-03-900 Determination of noncompliance—Compliance schedule and notice of compliance hearing.** (1) In those cases where the board, in a final order, has made a determination of noncompliance pursuant to RCW 36.70A.300 (3)(b), the board shall remand the matter to the affected state agency, county, or city.

(2) The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board shall establish a compliance schedule, including a schedule for briefing and hearing, and may require periodic reports on the progress the jurisdiction is making toward compliance.

(3) The compliance schedule in the board's order shall set a hearing date for the purpose of determining whether compliance has been achieved and shall constitute notice of the compliance hearing. The compliance hearing shall be given the highest priority of business.

#### NEW SECTION

**WAC 242-03-910 Compliance—Expedited hearing.** When a city or county has taken legislative action to comply with all or part of the board's order prior to the expiration of the time set for compliance, the city or county may file a motion requesting an expedited compliance hearing. The presiding officer shall promptly set a new hearing date and issue a notice establishing the time and place of the hearing and a briefing schedule.

#### NEW SECTION

**WAC 242-03-920 Statement of action taken to comply—Compliance index.** On or before the date indicated in the compliance schedule, the city or county subject to an order of noncompliance shall file a brief indicating the legislation adopted or other action taken to comply with the board's order. A copy of the legislation or relevant portion shall be attached to the brief. The city or county shall also

provide a compliance index including the index from the original proceeding and a listing of all additional material used subsequent to the remand in taking the action to comply.

#### NEW SECTION

**WAC 242-03-930 Compliance participant.** (1) A person with standing to challenge legislation taken in response to the board's order may petition the board to be allowed to participate at the compliance hearing. The compliance participant shall file a motion to participate by the date indicated in the compliance schedule, or if no date is indicated, by at least twenty days before the initial prehearing brief would be required under the compliance schedule. The motion should indicate the basis of the person's standing pursuant to RCW 36.70A.330(2) and the person's interest in the matter. Participation in the compliance proceeding shall be limited to matters about which the person testified in the proceedings below related to issues concerning compliance with the board's prior order. The compliance participant shall abide by the briefing schedule set in the compliance schedule.

(2) A person who has participated in the proceedings of a local jurisdiction to enact legislation in response to the board's order and who seeks to raise new issues unrelated to compliance with the board's prior order, must file a new petition for review. New issues are issues not within the nature, scope and statutory basis of conclusions of noncompliance in the board's prior order finding noncompliance.

(3) A compliance participant seeking to be a party to all subsequent proceedings in the matter shall so indicate by a motion to intervene.

#### NEW SECTION

**WAC 242-03-940 Compliance—Hearing.** (1) The procedures at the compliance hearing shall be as set forth by the presiding officer. The matter shall be heard and decided by the same panel that entered the final decision and order, if reasonably available.

(2) The evidence in a compliance hearing shall consist of the exhibits cited in the briefs submitted in the compliance proceeding and attached thereto. Documents provided in the original proceeding, if referenced in briefs in the compliance proceeding, must be attached as exhibits.

(3) The burden is on the petitioner to demonstrate that the action taken by the city or county is not in compliance with the board's order, except that a city or county subject to a determination of invalidity has the burden of demonstrating that the action taken will no longer substantially interfere with fulfillment of the goals of the act.

(4) When the basis for an order of noncompliance is the jurisdiction's failure to take an action by a deadline specified in the act, the only question before the board at the compliance hearing is whether the jurisdiction has taken the required action. Any challenge to the merits of the newly enacted legislation must be asserted in a new petition for review.

(5) Issues not within the nature, scope, and statutory basis of the conclusions of noncompliance in the prior order will not be addressed in the compliance hearing but require the filing of a new petition for review.

(6) After a compliance hearing, the board shall determine whether a state agency, city or county is in compliance with the requirements of the act as remanded in the final decision and order. The board shall issue an order on compliance indicating its findings and conclusions. If the board finds continuing noncompliance, the board shall enter conclusions of law specifying the nature, scope and statutory basis for the finding of continuing noncompliance. The board shall establish a new compliance schedule to address any remaining matters of noncompliance with the issues raised in the prior order. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(7) Upon motion of a party or participant, or on its own motion, if the board finds that the county or city continues to be in noncompliance with the act, the board shall decide, if no determination of invalidity had previously been made, whether one should now be made. The board shall state in its order the part or parts of the legislation invalidated and the facts and law on which the determination of invalidity is based.

#### NEW SECTION

**WAC 242-03-950 Compliance—Rescinding invalidity after new legislation.** If a county or city subject to a determination of invalidity has enacted legislation amending the invalidated plan, regulation or part thereof, the jurisdiction may move for a hearing to modify or rescind invalidity. Pursuant to RCW 36.70A.302(7), the board shall expeditiously schedule a hearing on the motion. Not later than thirty days after the hearing on the motion, the board shall issue an order continuing, modifying, or rescinding the determination of invalidity depending upon whether the jurisdiction's legislative action has removed the basis for invalidity so that it no longer substantially interferes with the goals of the act. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board shall establish a new compliance schedule.

#### NEW SECTION

**WAC 242-03-960 Continued noncompliance—Recommendation to the governor.** If the board finds that the county or city continues to be in noncompliance with the act, the board shall transmit its findings to the governor. The board may recommend that sanctions authorized by the act be imposed. A jurisdiction's efforts to meet a compliance schedule shall be considered by the board in making a recommendation on sanctions to the governor.

#### NEW SECTION

**WAC 242-03-970 Appeals of a board's final decision.** (1) Any party aggrieved by a final decision of the board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of service of the final decision of the board.

(2) In the event that direct appellate review is sought, within thirty days of the filing of a petition for review in the superior court, a party may request a certificate of appealability for direct review by the court of appeals. If the issue on

review is the jurisdiction of the board, the board may file an application for direct review. Application for direct review of a decision of the board is governed by the procedures and criteria of RCW 35.04.518.

#### NEW SECTION

**WAC 242-03-980 Record on appeal.** (1) The board's record on appeal includes all documents served on the parties by the board for that numbered case plus all documents submitted to the board for that numbered case, including any compliance proceedings. For a consolidated case, the record also includes all such documents associated with the cases that were so consolidated. The record also includes the board's recorded hearing(s).

(2) Pursuant to RCW 34.05.566(4), the record may be shortened by stipulation of all parties within twenty days of the filing of the appeal and prior to commencement of certification of the record.

(3) The board will prepare the record for certification after it receives a commitment from the party seeking review to pay the costs of transcribing the recorded hearing(s) and of copying the record. Payment of costs is required prior to certification of the record to the court.

#### NEW SECTION

**WAC 242-03-990 Procedure on remand.** Within forty-five days of receipt of the mandate of the court remanding a decision of the board, the presiding officer will schedule a conference of the parties to determine the procedures required to resolve the matter in accordance with the mandate.

### **WSR 11-05-089**

#### **PROPOSED RULES**

#### **DEPARTMENT OF ECOLOGY**

[Order 08-01—Filed February 15, 2011, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-106.

Title of Rule and Other Identifying Information: A new rule, chapter 173-422A WAC, Motor vehicle emission inspection, is being proposed and would apply to Washington's motor vehicle emission program beginning July 2012. The current rule, chapter 173-422 WAC, applies to Washington's motor vehicle emission program through June 2012.

Hearing Location(s): Federal Way 320th Library, 848 South 320th Street, Federal Way, WA 98003, on Tuesday, March 22, 2011, at 6:00 p.m. You can also listen to the hearing, live over the internet. Comments will not be accepted over the internet. Ecology will provide a link to listen in on the hearing via the internet. This link will be posted by March 15, 2011, at <http://feeds.feedburner.com/PlusWashingtonStateEmissionTesting-testWebsite?format=xml>.

Date of Intended Adoption: June 23, 2011.

Submit Written Comments to: John Raymond, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-

7600, e-mail [john.raymond@ecy.wa.gov](mailto:john.raymond@ecy.wa.gov), fax (360) 407-6802, by March 31, 2011.

Assistance for Persons with Disabilities: Contact the air quality program at (360) 407-6800 by March 15, 2011. 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: Extensive changes to the motor vehicle emission inspection program will result from state law revisions that directed ecology to authorize additional businesses to emission test vehicles starting July 2012. Rather than revise existing rule chapter 173-422 WAC, ecology is purposing a new rule to govern the motor vehicle emission inspection program. The existing rule, chapter 173-422 WAC, will remain in effect through June 2012.

The proposed rule includes the requirements that will apply starting July 1, 2012, to the Washington state motor vehicle emission inspection program. The revised program requirements include:

- Having all testing by authorized testers done on-line using the state contractor's computer system.
- Eliminating the gas cap test and dynamometer testing.
- Passing an on-board diagnostic (OBD) retest requires that the monitor(s) that detected a problem on the initial test be ready.
- Requiring the same test standards for all 1995 model year and older gasoline vehicles.
- Exempting light-duty diesel vehicles from testing.
- Tightening the test standards for heavy-duty diesel vehicles.
- Exempting heavy-duty diesel vehicles with an engine meeting 2007 emission standards or equipped with an exhaust particle filter from testing.
- Extensive rewording and reorganization to make the rule clearer and easier to understand.
- Other provisions necessary to implement the program.

Reasons Supporting Proposal: The proposed rule will facilitate the emission testing and repair by more businesses and reduce the impact of emission testing on the owners of older vehicles. Testing procedures and other requirements that are becoming less relevant will be discontinued. These cost-saving measures are possible because of the ever increasing number of newer vehicles that are tested by obtaining information from the vehicle's OBD system.

Statutory Authority for Adoption: RCW 70.120.120.

Statute Being Implemented: Chapter 70.120 RCW, RCW 70.120A.010(2).

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: John Raymond, Lacey, Washington, (360) 407-6856; Implementation and Enforcement: Stuart Clark, Lacey, Washington, (360) 407-6880.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

## Small Business Economic Impact Statement

Introduction: The Washington state department of ecology (ecology) is proposing chapter 173-422A WAC, Motor vehicle emission inspection.

The objective of the small business economic impact statement (SBEIS) is to identify and evaluate the various requirements and costs the proposed rules might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rules impose a disproportionate impact on the state's small businesses. RCW 19.85.040 describes the specific purpose and required contents of an SBEIS.

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW.

Ecology estimated there are no positive net compliance costs created for existing small businesses under the proposed rule. As compliance by the public is required for the nominal fee by Washington state law, ecology expects the proposed rule will not reduce business or revenues for participating businesses. As such, ecology expects the proposed rule to increase revenue opportunities and create cost savings for small businesses, rather than impose costs.

Therefore, ecology has not prepared a complete SBEIS, but has summarized the net benefit opportunity to businesses, as created by the proposed rule.

Rule Proposal: Two elements were directed by the legislature:

All vehicles model year 2009 and newer will be exempt from emission testing.

Businesses including repair businesses would be allowed to test vehicles in addition to the contractor.

Ecology is also proposing to amend the rule to facilitate the continuation of emission testing. Therefore several test procedures and requirements that are becoming less relevant will be discontinued. The following requirements have been removed in order to reduce the cost of testing with the goal of maximizing testing convenience and facilitate repair and testing by more businesses:

Leak tests of gasoline filler caps.

Dynamometer testing.

The exhaust analyzer requirement for repair businesses listing.

Other rule provisions include:

Requiring all authorized testers to transmit test data online to ecology's contractor.

Requiring listed repair businesses to have an OBD scan tool with full diagnostic capabilities.

Permitting a vehicle unable to be retested be issued a waiver if all the other requirements are met.

Exempting light duty diesel powered vehicles and heavy-duty diesel powered vehicles with an engine that was certified by its manufacturer as meeting the EPA 2007 exhaust emission standards or equipped with an exhaust particle filter acceptable to ecology. This applies mainly to transit systems.

Relaxing the test standards for 1995 and older light-duty gasoline vehicles.

Requiring that for a vehicle to pass an OBD retest, the monitor(s) that detected a malfunction on the initial test must be ready.

Tightening diesel snap-acceleration test standards.

Costs to Those Required to Comply: Ecology does not believe the net costs to those small businesses required to comply are positive. That is, ecology believes small (or any) businesses will only enter the newly available emissions testing market (and therefore be subject to the requirements of the proposed rule) if their private benefits of the revenue stream exceed the compliance and other operating costs. Quite the opposite, ecology believes the proposed rule provides businesses, both small and large, with an additional revenue opportunity. Those small businesses required to comply include existing small repair businesses that would choose to become testers as well. Remaining costs are expected to be borne by nonbusiness members of the public.

Ecology also believes businesses will choose to enter the newly created industry of noncontractor emissions testers if the net benefit to them (the converse of net cost) is positive.

Because ecology does not expect positive net costs of compliance for small businesses, it is not possible to meet the standards of the Regulatory Fairness Act (chapter 19.85 RCW) in estimating the proportionality of the proposed rule's impact on small versus large businesses.

Even so, ecology believes this document is informative in presenting this information. For full information on the underlying data and calculations for the information presented here, please see the associated cost-benefit analysis (Ecology Publication Number 11-02-003).

Allowing Private Businesses to Test Vehicles: Ecology is proposing that all testers must use ecology approved online testing equipment.

Self-testing private fleets are currently purchasing test forms from ecology for \$15.00 each. The test form will no longer be necessary or available from ecology. Ecology intends for the test charges for these fleets will not exceed the current \$15.00.

However, private businesses who choose to become testers will now incur new costs. Private businesses are allowed, by law, to charge whatever test fee they want, unlike the state contractor who must charge no more than \$15.00 per test. For this analysis, it does not matter what price a private business charges because it will simply be a cost transfer from vehicle owner to vehicle tester.

Ecology based its assumptions on the number of vehicles that may be tested at a private inspection business on the current hybrid program in New Jersey. New Jersey's hybrid program is closest to the program Washington is creating. A hybrid program combines centralized and decentralized testing systems. A centralized system has the state or a state contractor do the tests. A decentralized system has testing done by many independently owned private businesses that may do other business at the testing locations. In New Jersey there is no test fee collected at the centralized test stations. The long wait times at these stations prompted the state to subsidize private business testing. In 2007, there were one thousand three hundred twenty-seven private inspection facilities in New Jersey with about twenty percent of vehicle inspections being done at these facilities.

It is impossible to know the extent other businesses will be interested in becoming testers. Ecology assumed since there will be no subsidy in Washington and the declining

number of vehicles needing testing in the future, there will be less interest in private inspection facilities than in New Jersey. Therefore, ecology assumed only ten percent of the tests

will be at a private testing facility. Table 1 below shows the declining number of vehicles expected to be tested by private businesses each year with the associated costs.

Table 1: Number of Vehicles Expected to be Tested by Private Businesses 2012-2019

Testing Year	Percentage of Remaining Vehicles	Number of Vehicles	Cost Per Year <sup>1</sup>	Present Value
2012	100%	50,000	\$750,000	\$750,077
2013	100%	100,000	\$1,500,000	\$1,476,239
2014	88%	88,000	\$1,319,000	\$1,277,079
2015	88%	88,000	\$1,319,000	\$1,256,720
2016	70%	70,000	\$1,052,000	\$986,142
2017	70%	70,000	\$1,052,000	\$970,421
2018	54%	54,000	\$815,000	\$740,407
2019	54%	54,000	\$815,000	\$728,603
Total Present Value				\$8,185,690

Using the average real rate on treasury bills of 1.62 percent, ecology estimates the proposed [rule] will create a total present value of about \$8.6 million for new authorized testers over the 7.5 years.

Requiring Listed Repair Businesses to Have a Diagnostic OBD Scan Tool: Ecology is proposing a change that will require listed repair businesses to have an OBD scan tool with full diagnostic capabilities. The current rule only requires a scan tool; however, the proposed change specifies that the scan tool must have diagnostic capabilities (mode 1 through 9). Ecology believes most businesses already have this type of scan tool. To verify this, ecology conducted a phone survey and contacted fifty-three of its listed businesses to ask if their scan tools already had diagnostic abilities<sup>2</sup>. All fifty-three businesses answered yes. Of the fifty-three businesses surveyed, forty-five are small businesses with an average of eight employees and eight are large businesses with an average of ninety-seven employees.<sup>3</sup> Therefore, ecology believes this change will not create any extra costs for the listed repair businesses or the businesses that wish to be listed.

Tightening Diesel Test Standards: Ecology is proposing to tighten the diesel snap-acceleration test standards for newer and older vehicles. Table 2 shows the change in standards for high-duty diesel vehicles.

Table 2: Proposed Standard Changes for Vehicles Over 8,500 Pounds GVWR

Model Year	Current Opacity Standard	Proposed Opacity Standard
1991 and older	55%	50%
1992-1996	40%	40%
1997 and newer	40%	30%

Ecology was able to run a cutpoint analysis by model year for 2008 and 2009 tests. We were able to calculate how many more vehicles would fail the proposed standards over these two years. Using the age of vehicles from this data, ecology extrapolated how many vehicles per year will be tested under the remaining 7.5 years of the program. Ecology used the failure rate from the cutpoint analysis to estimate how many more vehicles we expect to fail the diesel snap test in future years. Table 3 shows the number of vehicles for 1991 and older models and 1997 and newer models ecology expects to fail. It also shows the cost for the vehicles minimum repair. In addition to paying the minimum repair costs of \$150, time costs are associated for repair and retesting time. Ecology estimates two hours of time for repair and retesting. We use a wage rate of \$31.50 per hour<sup>4</sup> which is the average rate for workers in the five counties.

Table 3: Proposed Changes on Diesel-Snap Acceleration Standards for 1991 and Older Vehicles

Year	Number of Vehicles Tested	Number Failing at 55% Opacity	Number Failing at 50% Opacity	Change	Costs		Present Value
					Repair Costs	Time Costs	
2012	795	54	90	36	\$5,400	\$2,300	\$7,700
2013	1,589	108	180	72	\$10,800	\$4,500	\$15,056
2014	866	59	98	39	\$5,850	\$2,500	\$8,086
2015	866	59	98	39	\$5,850	\$2,500	\$7,957
2016	0	0	0	0	\$0	\$0	\$0
2017	0	0	0	0	\$0	\$0	\$0
2018	0	0	0	0	\$0	\$0	\$0



Year	Number of Vehicles Tested	Number Failing at 55% Opacity	Number Failing at 50% Opacity	Change	Costs		Present Value
					Repair Costs	Time Costs	
2019	0	0	0	0	\$0	\$0	\$0
Total Present Value							\$38,799

Cost Summary: The following Table 4 summarizes the expected costs associated with the proposed rule changes.

Table 4: Cost of Proposed Changes to Chapter 173-422A WAC

Proposed Change	Cost
New Authorized Testers	\$8,185,690
Requiring an OBD Scan Tool	\$0
Diesel Snap-Accelerations Test	\$1,344,739
Total	\$9,530,429

Reduced or Avoided Costs: Stop dynamometer testing and standardize test standards for older gasoline vehicles. Ecology is proposing to eliminate dynamometer testing of light duty gasoline vehicles (LDGV) and standardize the test standards for all 1995 and older gasoline vehicles. Currently,

LDGVs that are not given an OBD test are being tested, if possible, using the acceleration simulation mode (ASM) 2525 test on a dynamometer. Vehicles that cannot be driven on the dynamometer are given a TSI test. While the ASM test is more effective at identifying vehicles that would benefit the most from emission repairs, the declining number of vehicles that would be given the ASM test does not appear to justify a continuing investment in dynamometers.

Based on data from the 2007 and 2008 data reports to EPA there are about 120,000 gasoline vehicles being tested annually that are ages seventeen through twenty-five. In 2012, vehicles made in 1995 will be seventeen years old. Table 5 shows the number of LDGV each year that ecology estimates will benefit from the standardized testing in the remaining 7.5 years of the program. The estimate for 2012 is for the last six months of the year the new rule will be in effect.

Table 5: Estimated Number of 1995 and Older LDGVs Tested Each Year

Year	2012	2013	2014	2015	2016	2017	2018	2019
Vehicles	60,288	110,128	66,501	59,640	32,755	28,098	11,063	8,386

Currently, about ninety-four percent of 1995 and older LDGVs are being tested using the ASM 2525 test with eleven percent failing. The other six percent are being tested using the TSI test with 6.3 percent failing. Ecology is proposing to standardize the TSI standards for all 1995 and older LDGVs to equal the current heavy duty gasoline vehicles (HDGV) standards. Currently, these HDGV ages seventeen through twenty-five are failing the TSI test at 10.6 percent. It is likely that HDGVs will continue to fail the TSI test at least at this higher rate. However, the LDGVs are likely to fail the TSI

test at a lower rate compared to the HDGVs. Based on the current difference in the LDGV fail rates for the ASM 2525 tests and the TSI tests, about 4.5 percent less LDGVs are expected to fail their test. The owners of these vehicles will be able to avoid the minimum \$150 in repair expenses along with the time cost for repairs and retesting. Ecology used a wage rate of \$31.50 an hour and an estimated time savings of two hours. Table 6 shows the number of vehicles that would now pass and the cost savings for their owners.

Table 6: Vehicles and Cost Savings Of Proposed Changes to LDGV

Year	Vehicles Now Passing	Cost Savings Per Year (# of Vehicles x \$150)	Time Savings	Present Value Cost Savings Per Year
2012	2,737	\$410,550	\$172,400	\$582,950
2013	5,000	\$750,000	\$315,000	\$1,048,022
2014	3,019	\$452,850	\$190,200	\$622,711
2015	2,708	\$406,200	\$170,600	\$549,652
2016	1,487	\$223,050	\$93,700	\$297,030
2017	1,276	\$191,400	\$80,400	\$250,815
2018	502	\$75,300	\$31,600	\$97,074
2019	381	\$57,150	\$24,000	\$72,516
Total Present Value	17,109	\$2,566,350	\$1,077,900	\$3,520,750

The cost savings for no longer requiring dynamometer testing and standardizing the standards on 1995 and older gasoline vehicles has a total present value of \$3.5 million.

**Discontinue Gas Cap Checks:** Ecology is proposing to stop gas cap leak tests. After 2012 most LDGVs will receive an OBD test which may detect a leaking gas cap. In 2006 - 2008, on average six thousand vehicles per year failed the gas cap test but passed the OBD test and were still required to purchase a new gas cap. Before the 2000 model year vehicles, the OBD test was often not as effective in detecting

leaking gas caps as testing the caps was. After July 2012, eliminating the gas cap test is expected to result in a minimum increase in evaporative emissions. A gas cap can cost \$5.00 - \$21.00<sup>5</sup> with an average of \$13.00. Therefore, ecology assumes the first two years will each have an average of \$13.00 savings for at least these six thousand vehicles. Ecology also assumes a cost savings of two hours for repairs and retesting at an average wage rate of \$31.50 per hour. Table 7 shows the decline in vehicles and using a 1.62 percent rate the total present value savings of \$2.5 million.

Table 7: Savings for No Longer Requiring Gas Cap Check

Testing Year	Percentage of Remaining Vehicles	Number of Vehicles	Savings on Cap	Time Savings	Present Value
2012	100%	3,000	\$39,000	\$189,000	\$228,000
2013	100%	6,000	\$78,000	\$378,000	\$448,731
2014	83%	5,340	\$69,420	\$336,420	\$393,004
2015	83%	5,340	\$69,420	\$336,420	\$386,738
2016	65%	4,260	\$55,380	\$268,380	\$303,603
2017	65%	4,260	\$55,380	\$268,380	\$298,763
2018	49%	3,300	\$42,900	\$207,900	\$227,747
2019	49%	3,300	\$42,900	\$207,900	\$224,116
<b>Total Present Value</b>					<b>\$2,510,702</b>

**Allowing Private Businesses to Test Vehicles:** Allowing private businesses to test vehicles is a convenience and assumed time savings for vehicle owners. Ecology assumes vehicle owners who decide to get their vehicle tested by a private business, instead of a state contractor, will do so because it will be closer to their home or work or because they can get an emissions test while their vehicle is being serviced for something else. Ecology assumes it currently takes about one hour to drive to the testing station, get tested and drive home.

We also assume vehicle owners who choose to use a private business will cut this time in half to thirty minutes and therefore save thirty minutes of time.

Using the average of the overall wages in the five counties where emission testing is required, ecology estimates a time savings of \$31.50 per hour. Table 8 shows the number of vehicles each year ecology expects to be tested using a private business and the value of the time saved.

Table 8: Savings for Using a Private Business For Emissions Inspections

Testing Year	Percentage of Remaining Vehicles	Number of Vehicles	Savings Per Year (millions) <sup>6</sup>	Present Value (millions)
2012	100%	50,000	\$788,000	\$787,581
2013	100%	100,000	\$1,575,000	\$1,550,051
2014	88%	88,000	\$1,386,000	\$1,342,300
2015	88%	88,000	\$1,386,000	\$1,320,901
2016	70%	70,000	\$1,103,000	\$1,033,967
2017	70%	70,000	\$1,103,000	\$1,017,484
2018	54%	54,000	\$850,000	\$772,403
2019	54%	54,000	\$850,000	\$760,089
<b>Total Present Value</b>				<b>\$8,584,776</b>

Using the 1.62 percent real rate on treasury bills, ecology estimates the proposed rule creates a total present value cost savings of \$8.6 million for vehicle owners over 7.5 years.

**Discontinue Testing of Light-Duty Diesel Vehicles:** Ecology is proposing to stop testing light-duty diesel vehicles. There are so few of these vehicles and the preferred dynamometer test for these vehicles will no longer be available. Also, EPA doesn't recognize the benefit of testing these

vehicles. There are about six thousand light-duty diesel vehicles in the testing areas; ecology assumes about three thousand would have been tested annually<sup>7</sup>. Table 9 shows the decrease in the number of vehicles over time as 2009 and newer models are exempted. The 1.62 percent treasury bills rate is used. Each vehicle will have a savings of the \$15 charged for the test and an hour of cost savings for not having to get the test. The wage rate used is \$31.50 per hour.

Table 9: Savings for Exempting Light-Duty Diesel Vehicles

Testing Year	Percentage of Remaining Vehicles	Number of Vehicles	Cost Savings		Present Value
			Savings for Test	Time Savings	
2012	100%	1,500	\$22,500	\$47,300	\$69,800
2013	100%	3,000	\$45,000	\$94,500	\$137,276
2014	89%	2,670	\$40,050	\$84,100	\$120,223
2015	89%	2,670	\$40,050	\$84,100	\$118,307
2016	71%	2,130	\$31,950	\$67,100	\$92,883
2017	71%	2,130	\$31,950	\$67,100	\$91,403
2018	55%	1,650	\$24,750	\$52,000	\$69,695
2019	55%	1,650	\$24,750	\$52,000	\$68,584
Total Present Value					\$768,171

Ecology estimates this proposed change will create a savings of \$768,000.

Exempt 2007-2008 model year high-duty diesel vehicles.

Ecology is proposing to exempt high-duty diesel vehicles with an engine that was certified by its manufacturer as meeting the EPA 2007 exhaust emission standards. This exemption will only benefit 2007 and 2008 diesel vehicles because the 2009 and newer models will already be exempt

by law. Based on a snapshot of the current number of diesel vehicles in the five counties<sup>8</sup>, ecology was able to extrapolate how many diesel vehicles there will be in each year from 2012-2019. Table 10 shows the number of 2007 and 2008 vehicles each year that will be exempt. Table 10 also shows the cost savings based on avoiding the \$15 charge for a test and the time saved by not having to get the vehicles tested. Ecology assumes it will save one hour of time at a labor cost of \$31.50 an hour.

Table 10: Savings for Exempted 2007-2008 Diesel Vehicles

Testing Year	Number of Vehicles	Cost Savings		Present Value
		Savings for Test	Time Savings	
2012	4,100	\$61,500	\$128,900	\$190,400
2013	8,200	\$123,000	\$257,800	\$374,729
2014	5,800	\$87,000	\$184,200	\$262,622
2015	5,800	\$87,000	\$184,200	\$258,435
2016	6,400	\$96,000	\$200,500	\$278,040
2017	6,400	\$96,000	\$200,500	\$273,608
2018	6,100	\$91,500	\$192,900	\$258,258
2019	6,100	\$91,500	\$192,900	\$254,141
Total Present Value				\$2,150,235

Ecology estimates this proposed change will save \$2.2 million.

Removing the requirement for listed repair businesses to have an exhaust analyzer.

Ecology is proposing to remove the requirement for listed repair businesses to have an exhaust analyzer. Ecology believes that because of the declining number of vehicles failing an exhaust emission test, repair businesses should no longer be required to have an exhaust analyzer. Ecology surveyed repair businesses to estimate the cost savings for not requiring an exhaust analyzer. Ecology contacted fifty small businesses and ten large businesses. We got an overall response rate of seventy-seven percent with responses from forty-one small businesses and five large businesses. Three of the small businesses reported they couldn't answer any of the questions and those responses were thrown out, leaving thirty-eight small businesses with data. The small businesses

averaged eight employees and the large businesses average one hundred thirty-five.

An exhaust analyzer can cost thousands of dollars and most repair businesses invested in these analyzers many years ago. On average, small business reported that their previous exhaust analyzer or their expectation of how long their current analyzer will last is twelve years; large businesses estimated fourteen years. A few businesses even said they expected to use their analyzer forever since they are currently using it so infrequently and would not want to buy a new one. Therefore, ecology estimated the cost savings for avoiding maintenance and calibration gas costs. Small businesses report a combined average of \$320 per year and large businesses estimated \$375 per year. There are currently about six hundred twenty small repair businesses and sixty large businesses. Table 11 shows the cost savings for eliminating the requirement to have an exhaust analyzer.

Table 11: Savings for No Longer Requiring Listed Repair Businesses to Have Exhaust Analyzers

	Small	Large
Number of Businesses	620	60
Annual Cost of Maintenance and Calibration Gas	\$320	\$375
Total Annual Cost Savings	\$198,400	\$22,500
Total Present Value (PV) Cost Savings	\$1,402,208	\$159,021
Total Small and Large PV Cost Savings	\$1,561,229	

Ecology estimates the cost savings for eliminating the requirement for listed repair businesses to have an exhaust analyzer has a present value savings of \$1.6 million over the 7.5 remaining years of the program. Please note this savings does not include the cost of actually buying an analyzer, only its yearly maintenance costs. Not only is this proposal a benefit for currently listed repair businesses, but eliminating this requirement makes it easier for a new repair business to become listed by ecology. This should provide more options for the owners of vehicles that fail an emission test and need repairs.

Total Cost Savings: As the authorizing statute allows businesses in the newly created industry to pass charges on to consumers, and the consumer action of testing is required under the law and rule, ecology believes the proposed rule will not reduce business or revenues for participating businesses. As such, ecology expects the proposed rule to increase revenue opportunities and create cost savings for small businesses, rather than impose costs.

Therefore, ecology has not prepared a complete SBEIS, but has summarized the net benefit opportunity to businesses, as created by the proposed rule.

Table 12: Total Cost Savings

Proposed Change	Cost Savings
Eliminating Dynamometers and Standardizing 1995 and Older Test Standards	\$3,520,750
No Gas Cap Check	\$2,510,702
Convenience of Using a Private Testing Business	\$8,584,776
Exempting Light-Duty Diesel Vehicles	\$768,171
Exempting 2007-2008 High-Duty Diesel Vehicles	\$2,150,235
Eliminating Exhaust Analyzers	\$1,561,229
Total Cost Savings	\$19,095,863

<sup>1</sup>Cost per year = (number of vehicles) x (\$15.00 collected by the contractor).

<sup>2</sup>Businesses were contacted on October 7 and 14, 2009.

<sup>3</sup>This is the best information currently available to ecology. As always, we welcome new information that will further improve our analyses.

<sup>4</sup>2009 Occupational employment and wage estimates - Washington state metropolitan and balance of state areas. Washington state

employment security department, [http://www.workforceexplorer.com/admin/uploadedPublications/9766\\_Web\\_Databook2009.pdf](http://www.workforceexplorer.com/admin/uploadedPublications/9766_Web_Databook2009.pdf).

<sup>5</sup>Autozone.com.

<sup>6</sup>Cost per year = (Number of vehicles) x (\$31.50/hour) x (.5 hours).

<sup>7</sup>In 2012 only vehicles tested after July when the new rule goes into effect will be exempt; therefore ecology estimates half the total number of vehicles for 2012.

<sup>8</sup>Washington state department of licensing January 5, 2010.

A copy of the statement may be obtained by contacting Kasia Patora, Department of Ecology, Rules and Accountability Section, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail [kasia.patora@ecy.wa.gov](mailto:kasia.patora@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kasia Patora, Department of Ecology, Rules and Accountability Section, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail [kasia.patora@ecy.wa.gov](mailto:kasia.patora@ecy.wa.gov).

February 15, 2011

Polly Zehm

Deputy Director

**Chapter 173-422A WAC**

**MOTOR VEHICLE EMISSION INSPECTION**

NEW SECTION

**WAC 173-422A-010 Purpose.** These rules implement the motor vehicle emission test program required by state law (chapter 70.120 RCW Motor vehicle emission control). They are intended to encourage appropriate emission repairs of vehicles to reduce air pollution.

NEW SECTION

**WAC 173-422A-020 Definitions.** Unless the context clearly indicates otherwise, the following definitions will apply:

**"Appropriate repair"** means the diagnosis or repair of the cause(s) of an emission test failure.

**"Authorized tester"** means a vehicle owner or business authorized by ecology to conduct testing other than ecology's contractor.

**"Ecology"** means the department of ecology.

**"OBD"** means the standardized on-board diagnostic system required to be installed on all 1996 and newer model year gasoline cars and light trucks sold in the United States. This system monitors the operation of the vehicle's emission control systems to detect possible problems. If problems are found a check engine light alerts the driver and trouble codes are stored to help an automotive repair technician diagnose the problem.

**"On-line"** means to electronically communicate during the emission test as directed by ecology.

**"Waiver"** is an exemption from further testing for twelve months when all the following conditions apply:

- (a) The vehicle failed an emission test;
- (b) The vehicle failed a retest or is unable to be retested;

(c) All primary emission control components (or appropriate replacements) are installed and operative;

(d) An ecology authorized emission specialist has performed at least one hundred fifty dollars of appropriate repairs;

(e) The appropriate repairs were performed between the initial and last test; and

(f) Ecology or its designee has received original receipts listing and providing the cost of each appropriate diagnosis or repair of the cause(s) of an emission test failure.

**NEW SECTION**

**WAC 173-422A-030 Vehicle emission test requirements and testing schedule for private and United States government vehicles.** The department of licensing, county auditors and their subagents shall issue or renew a vehicle license or change the registered owner only if the vehicle meets emission test requirements. Privately owned and United States government vehicles must obtain a passing test or waiver within the twelve months before the department of licensing renewal date for the vehicle. See the following table for the testing schedule.

Testing Schedule for Private and United States Government Vehicles	
Year License Expires	Model Years
2012	1988, 1990, 1992, 1994, 1997, 1999, 2001, 2003, 2005, 2007
2013	1989, 1991, 1993, 1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008
2014	1990, 1992, 1994, 1997, 1999, 2001, 2003, 2005, 2007
2015	1991, 1993, 1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008
2016	1992, 1994, 1997, 1999, 2001, 2003, 2005, 2007
2017	1993, 1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008
2018	1994, 1997, 1999, 2001, 2003, 2005, 2007
2019	1995, 1996, 1998, 2000, 2002, 2004, 2006, 2008

**NEW SECTION**

**WAC 173-422A-040 Emission test schedule for state and local government vehicles.** State and local government vehicles must be tested according to the following table.

Testing Schedule for State and Local Government Vehicles	
Year	Model Years
2012	1987 through 2007
2013	1988 through 2008
2014	1989 through 2008

Testing Schedule for State and Local Government Vehicles	
Year	Model Years
2015	1990 through 2008
2016	1991 through 2008
2017	1992 through 2008
2018	1993 through 2008
2019	1994 through 2008

**NEW SECTION**

**WAC 173-422A-050 Emission test areas.** Vehicles registered within the following United States Postal Service zip codes (as of September 1, 1994) require emission tests. Zip code changes by the United States Postal Service after September 1, 1994, do not change emission test area designations.

**Puget Sound Region**

98001-98009	98201-98208
98011	98258
98012	98270
98015	98271
98020	98275
98021	98290
98023	98291
98025-98028	98327
98031-98043	98332
98046	98335
98047	98338
98052-98059	98344
98062-98064	98352
98071-98073	98354
98083	98371-98374
98092	98387
90893	98388
98101-98109	98390
98111-98199	98401-98499

**Spokane Region**

99001	99021
99005	99025
99014	99027
99016	99037
99019	99201-99209

**Vancouver Region**

98604 except north of N.E. 279th Street
98606
98607
98629 except east of N.E. 50th Avenue

**Vancouver Region**

- 98642
- 98660-98668
- 98671 except Skamania County
- 98682-98686

NEW SECTION

**WAC 173-422A-060 Exemptions.** The following vehicles are exempt from emission testing:

- (1) Newer vehicles. Vehicles less than five years old and 2009 or newer model year vehicles.
- (2) Older vehicles. Vehicles more than twenty-five years old.
- (3) Motorcycles and mopeds as defined in chapter 46.04 RCW.
- (4) Prorated vehicles as defined in chapter 46.85 RCW.
- (5) Vehicles garaged and operated outside a test area.
- (6) Farm vehicles as defined in chapter 46.04 RCW.
- (7) Vehicles not intended for highway use.
- (8) Vehicles registered as powered by electricity, propane, compressed natural gas, or liquid petroleum gas.
- (9) Honda Insight and Toyota Prius model vehicles.
- (10) Diesel powered vehicles weighing less than 6001 pounds or with an engine that was certified by its manufacturer as meeting the EPA 2007 exhaust emission standards or equipped with an exhaust particle filter acceptable to ecology.
- (11) Vehicles being sold or being offered for sale by a Washington licensed motor vehicle dealer.
- (12) An emission test is not required to transfer the registered ownership between parents, siblings, grandparents, grandchildren, spouses, legal domestic partners, or present co-owners or to a public agency and for all changes of the legal owner.

NEW SECTION

**WAC 173-422A-100 Gasoline vehicle emission test standards.** Gasoline motor vehicles are tested to determine if they meet one of the following requirements:

- (1) Two-speed idle exhaust emission test standards:

Model Year	Carbon Monoxide (CO) (%)	Hydrocarbons (HC) (ppm)
1995 and older	3.0	400
1996-2008 (8500 or less GVWR)	1.2	220
1996-2008 (greater than 8500 GVWR)	3.0	400

(2) Instead of a two-speed idle exhaust emission test, ecology may require a 1996 or newer model vehicle be tested using the vehicle's on-board diagnostic (OBD) system. To pass the OBD test:

- (a) The check engine light must not be commanded on while the engine is operating.

(b) The emission related monitors must have completed their checks and be ready to report potential problems, except:

- (i) A 2001 or newer model year vehicle may have one monitor not ready to report.

- (ii) A 2000 or older model year vehicle may have up to two monitors not ready to report.

(c) For the vehicle to pass a retest, the monitor(s) that commanded the check engine light on during the initial test must be ready to report.

NEW SECTION

**WAC 173-422A-110 Gasoline vehicle emission testing procedures.** (1) All persons testing gasoline vehicles shall, as directed by ecology, either:

(a) Connect the OBD testing equipment to determine what diagnostic codes may be commanding the check engine light on and whether each emission related monitor is ready to report; or

(b) Follow the two-speed idle exhaust emission testing procedures described in Appendix B-Test Procedures of Subpart S-Inspection/Maintenance Program Requirements of Part 51 of chapter 1, Title 40 of the Code of Federal Regulations adopted November 1, 1992.

(2) Ecology may require variations to the testing procedures to accommodate the design of certain vehicles.

NEW SECTION

**WAC 173-422A-120 Gasoline vehicle emission testing equipment specifications.** (1) Exhaust gas analyzers must meet the specifications in (I) Steady-State Exhaust Analysis System of Appendix D-Steady-State Short Test Equipment of Subpart S-Inspection/Maintenance Program Requirements of Part 51 of chapter 1, Title 40 of the Code of Federal Regulations adopted November 1, 1992.

(2) OBD testing equipment must be capable of:

(a) Communicating with all OBD systems used on 1996 through 2008 model year gasoline vehicles approved to be sold in the United States;

(b) Recording the readiness status of each emission-related OBD monitor; and

(c) Recording the diagnostic trouble code(s) that could command the check engine light on.

(3) The testing equipment must be able to perform the test on-line unless ecology grants prior approval.

NEW SECTION

**WAC 173-422A-200 Exhaust emission test standards for diesel vehicles.**

Model Year	Opacity (%)
1991 and older	50
1992-1996	40
1997-2008	30

NEW SECTION

**WAC 173-422A-210 Test procedure for diesel vehicles.** (1) Before beginning the test, the tester shall verify all of the following:

- (a) The engine is within its normal operating temperature range;
- (b) All vehicle accessories including air conditioning are off;
- (c) The parking brake and an engine brake or retarder is off; and
- (d) The transmission is in neutral (and clutch released if manual transmission).

(2) During the snap-acceleration test the tester shall do all of the following:

(a) Perform at least three preliminary snap-accelerations until the engine achieves consistent operation.

(i) A snap-acceleration consists of moving the accelerator pedal from normal idle as rapidly as possible to the full power position, then fully releasing the throttle so the engine returns to idle. Allow the engine to remain at idle for at least ten seconds between snap-accelerations.

(ii) Insert the opacity meter into an exhaust pipe.

(b) Perform additional snap-accelerations while measuring the smoke opacity.

(i) The tester must either begin a subsequent snap-acceleration within forty-five seconds or restart the test without removing the opacity meter.

(ii) The tester need not repeat the three preliminary snap-accelerations.

(c) Perform snap-accelerations (up to nine times if necessary) to obtain three consecutive peak opacity readings that meet ecology's standards. If this does not occur, the vehicle fails the test. Record the three final opacity readings.

(d) If the vehicle passes the first series of snap-accelerations, repeat these procedures for each additional exhaust pipe.

(3) Ecology may require variations to the testing procedures to accommodate the design of certain vehicles.

NEW SECTION

**WAC 173-422A-220 Diesel vehicle testing equipment specifications.** (1) An opacity meter that:

- (a) Automatically recalibrates before each test.
- (b) Provides for continuous measurement of exhaust opacity unaffected by rain or wind.

(2) The testing equipment must be able to perform the test on-line unless ecology grants prior approval.

NEW SECTION

**WAC 173-422A-300 Testing equipment maintenance and calibration.** (1) The tester must:

(a) Calibrate and maintain all test equipment according to the manufacturer's specifications and recommendations.

(b) Maintain logs approved by ecology of maintenance, repair, and calibration of testing equipment.

(c) Use, for exhaust gas analyzer calibration, the procedures in the following document: (1) Steady-State Test Equipment of Appendix A-Calibrations, Adjustments and

Quality Control of Subpart S-Inspection/Maintenance Program Requirements of Part 51 of chapter 1, Title 40 of the Code of Federal Regulations adopted November 1, 1992.

(2) Ecology may require additional maintenance and calibration procedures if they are needed to ensure the accuracy of the testing equipment.

NEW SECTION

**WAC 173-422A-310 Quality assurance.** Ecology (or its designee) may:

(1) Monitor (remotely or on location) ecology's contractor and authorized testers' operations.

(2) Access the testing/reporting equipment and records.

(3) Stop or limit emission testing due to this monitoring.

NEW SECTION

**WAC 173-422A-320 Test fees.** (1) An ecology contractor shall charge fifteen or less dollars for a test. The first retest will be free for up to twelve months after a vehicle fails the initial test.

(2) Authorized testers may set their own fees.

NEW SECTION

**WAC 173-422A-340 Authorized testers.** (1) Authorized testers must meet the following conditions:

(a) Use ecology approved testing equipment. The test must be done on-line unless ecology grants prior approval.

(b) Follow the testing procedure described in section 110 for gasoline vehicles and section 210 for diesel vehicles.

(c) As directed by ecology, provide information to vehicle owners and obtain their approval for emission-related repairs.

(d) Properly maintain testing equipment.

(e) Maintain logs approved by ecology of maintenance, repair, and calibration of testing equipment.

(f) Allow ecology to conduct performance audits and compliance inspections.

(g) Take corrective actions required by ecology.

(2) Violations of this rule by an authorized tester will result in their authorization being permanently or temporarily revoked unless it is the first lesser rule violation such as an administrative or recordkeeping error.

(a) For the first lesser rule violation, the authorized tester will receive a written warning that further rule violations of this type will result in their authorization being temporarily revoked for thirty to ninety days.

(b) For the first major, deliberate rule violation, such as fraudulent testing or reporting, their authorization will be temporarily revoked for six months.

(c) A second major violation will result in their authorization being permanently revoked.

(d) Reauthorization of a temporarily revoked authorization requires a new application for authorization.

(3) Notifications of violations will be documented in writing.

(4) An authorized tester whose authorization has been revoked may appeal this decision to the pollution control hearings board as provided for in RCW 43.21B.310.

NEW SECTION

**WAC 173-422A-400 Emission specialist authorization.** (1) To become an authorized emission specialist an individual shall:

(a) Successfully complete an ecology-approved course on emission repair every two years.

(b) Agree in writing to meet all requirements of this rule and all Washington state and federal laws and regulations regarding emission control systems.

(2) To maintain authorization, an authorized emission specialist shall:

(a) Complete required training within ninety days of notification by ecology. Ecology may grant written extensions;

(b) Sign and include their specialist identification number on all receipts for appropriate diagnoses and repairs of vehicles that have failed an emission test. These receipts must:

(i) Be numbered and printed with the business's name and address;

(ii) Include the customer's name, telephone number, and address;

(iii) Include the vehicle's make, model, license number and vehicle identification number (VIN);

(iv) Itemize all appropriate diagnoses and repairs performed by the specialist;

(v) Include any missing or inoperative primary emission control components; and

(vi) Include any further recommended appropriate repairs and diagnoses.

(3) To maintain authorization, an authorized emission specialist may not:

(a) Tamper with emission control systems (a violation of chapter 173-421 WAC), including adjusting an engine outside of the manufacturer's specifications; or

(b) Obtain or attempt to obtain a passing test, waiver, or an exemption from the test requirements by providing false information or by any other fraudulent means that violate this rule; or

(c) Assist any individual in committing a violation of this rule or chapter 173-421 WAC.

(4) Violations of this rule by an authorized emission specialist will result in their authorization being permanently or temporarily revoked unless it is the first lesser rule violation such as an administrative or recordkeeping error.

(a) For the first lesser rule violation, the authorized emission specialist will receive a written warning that further rule violations of this type will result in their authorization being temporarily revoked for thirty to ninety days.

(b) For the first major, deliberate rule violation, such as fraudulent testing or reporting, their authorization will be temporarily revoked for six months.

(c) A second major violation will result in their authorization being permanently revoked.

(d) Reauthorization of a temporarily revoked authorization requires a new application for authorization.

(5) Notifications of violations will be documented in writing.

(6) An authorized emission specialist whose authorization is revoked may appeal to the pollution control hearings board as provided for in RCW 43.21B.310.

NEW SECTION

**WAC 173-422A-410 Requirements for listing businesses with authorized emission specialists.** (1) Ecology will maintain a list of businesses where a vehicle owner can have an authorized emission specialist diagnose and repair the causes of an emission test failure.

(2) Ecology will include the business's name, address and telephone number on the list when the business agrees in writing to require all of the following:

(a) The authorized emission specialist use an ecology-approved OBD scan tool to diagnose an emission test failure of a 1996 or newer gasoline vehicle equipped with an OBD system. For an OBD scan tool to be approved by ecology it will need:

(i) To provide mode 1 through mode 9 diagnostic data requests.

(ii) Support all communication protocols used by the vehicle manufacturers for 1996 through 2008 model year gasoline vehicles sold in the United States.

(b) That the diagnosis of the cause(s) of an emission tests failure and the repairs or adjustments to correct the cause(s) of an emission test failure are performed by an authorized emission specialist.

(c) That the authorized emission specialist:

(i) Sign the customer's receipt for emission repairs or adjustments; and

(ii) List on the receipt, the emission diagnosis or repairs done and those that are still needed.

(d) All employees not to tamper or assist anyone in tampering with emission control systems, including adjusting a vehicle outside the manufacturer's specifications.

(e) All employees to obtain or assist anyone in obtaining a fraudulent passing test, waiver, or an exemption from the test requirement.

(f) Notification of ecology when an authorized emission specialist begins or ends employment.

(3) When a business no longer meets the requirements for listing, it must discontinue any representation of listing immediately.

(4) Violations of this rule by a listed business will result in their listing being permanently or temporarily revoked unless it is the first lesser rule violation such as an administrative or recordkeeping error.

(a) For the first lesser rule violation, the listed business will receive a written warning that further rule violations of this type will result in their listing being temporarily revoked for thirty to ninety days.

(b) For the first major, deliberate rule violation, such as fraudulent testing or reporting, their listing will be temporarily revoked for six months.

(c) A second major violation will result in their listing being permanently revoked.

(d) Relisting of a temporarily revoked listing requires a new application for listing.



(5) Notifications of violations will be documented in writing.

(6) A business whose listing has been revoked may be appealed to the pollution control hearings board as provided for in RCW 43.21B.310.

#### NEW SECTION

**WAC 173-422A-500 Civil penalty.** Except for a lesser violation of this rule, such as an administrative or record-keeping error, ecology may impose a civil penalty not to exceed two hundred fifty dollars on anyone who violates any requirement of this rule. This penalty may be appealed to the pollution control hearings board as provided for in RCW 43.21B.310.

**WSR 11-05-090  
PROPOSED RULES  
OFFICE OF  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2010-10—Filed February 16, 2011,  
7:36 a.m.]

Supplemental Notice to WSR 10-24-096.

Preproposal statement of inquiry was filed as WSR 10-17-112.

Title of Rule and Other Identifying Information: Crop adjusters.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-02555 [98504-0255], on March 22, 2011, at 10:00 a.m.

Date of Intended Adoption: March 23, 2011.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by March 21, 2011.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by March 21, 2011, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 67, Laws of 2010, provides for the separate licensing of crop adjusters and for the commissioner to adopt rules regarding the pre-licensing education, examination, continuing education requirements, and renewal of the license. The proposed rules will set forth these educational, examination, and licensing requirements.

Reasons Supporting Proposal: The United States Department of Agriculture has indicated that if states did not enact statutes and adopt rules requiring crop adjuster licensing and compliance with their requirements that the department would preempt state regulation of crop adjusters. These rules are being proposed to be adopted to require crop adjusters to comply with the education, examination, and continuing education requirements of the Risk Management Agency of the United States Department of Agriculture.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, and sections 4 and 5, chapter 67, Laws of 2010.

Statute Being Implemented: Chapter 67, Laws of 2010.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40528, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: Jeff Baughman, P.O. Box 40257, Olympia, WA 98504-0257, (360) 725-7156.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule essentially establish[es] two classes of crop adjusters: (A) Those that are certified to adjust crop losses insured under a federal program ("federally qualified"); and (B) those qualified only to adjust crop losses not insured under a federal program ("state qualified"). The proposed rule does not impose new testing requirements, but just reiterates the requirement in state statute that crop adjusters must pass a written examination unless otherwise specifically exempted under the law. The proposed rule does allow those who have met the requirements of the federal program (they are "federally qualified") to submit documentation of their federal certification in lieu of taking a state examination.

Therefore, the only additional requirement imposed by the proposed rule is that "federally qualified" crop adjusters must submit documentation to the commissioner to verify that they have passed the federal certification.

From a cost perspective, this proposed rule therefore affects only "federally qualified" crop adjusters and authorized insurers or licensed managing general agents who are having salaried employees act in [on] their behalf as "federally qualified" crop adjusters.

The costs of these filings and the extra copies that will accompany them is projected to be quite small, easily less than \$10 annually for each employee on the list in terms of paper and postage cost and less than \$30 annually per employee on the list even when clerical labor is considered. The projected annual cost of compliance per business is well within the definition of "minor costs" contained in the law.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

February 16, 2011

Mike Kreidler

Insurance Commissioner

#### **CROP ADJUSTERS**

#### NEW SECTION

**WAC 284-17-700 Definitions.** As used in WAC 284-17-705 through 284-17-730, the terms below have the following meaning unless the context clearly requires otherwise:

"Certification program" means any crop adjuster educational and examination program meeting the federal Risk Management Agency requirements.

"Crop adjuster" has the meaning set forth in RCW 48.17.010 (1)(c).

"Risk Management Agency" or "RMA" means the Risk Management Agency of the United States Department of Agriculture.

#### NEW SECTION

**WAC 284-17-705 Crop adjuster prelicensing education and examination requirements.** (1) An applicant for a crop adjuster's license to adjust crop losses insured through a federal crop insurance program must complete all educational and examination requirements of a certification program. With the application, an applicant for a crop adjuster's license must submit to the commissioner true and accurate documentation of their certification program completion. A copy of the documentation demonstrates compliance with the prelicensing education and examination requirements necessary for a crop adjuster license. A crop adjuster licensed under this subsection may adjust crop losses that are and are not insured through a federal crop insurance program.

(2) An applicant for a crop adjuster's license to adjust crop losses that are not insured through a federal crop insurance program:

- (a) Is not required to complete a prelicensing education course;
- (b) Must pass the state's crop adjuster licensing exam; and
- (c) Must not adjust crop insurance losses that are insured through a federal crop insurance program.

#### NEW SECTION

**WAC 284-17-720 Crop adjuster license renewal requirements.** (1) Every licensed crop adjuster adjusting crop insurance losses insured through a federal insurance program must:

- (a) Renew their license on or before the expiration of the license; and
- (b) On or before February 28th of each year, file with the commissioner a true and accurate copy of documents establishing their certification program completion. Failure to timely file a copy of the documentation with the commissioner is a sufficient basis for the commissioner to suspend, revoke, or refuse to renew a crop adjuster license.

(2) Every licensed crop adjuster adjusting crop losses not insured through a federal crop insurance program:

- (a) Must renew their license on or before the expiration of the license; and
  - (b) Are not required to take continuing education.
- (3) Crop adjusters who do not renew their license prior to the expiration date must pay the surcharge under RCW 48.17.170.

#### NEW SECTION

**WAC 284-17-730 Crop adjusters who are salaried employees of an insurance company or of a managing general agent.** (1) All authorized insurance companies and licensed managing general agents must annually, on or before February 28th of each year, file with the commissioner a list

of all salaried employees who act on their behalf as crop adjusters adjusting losses insured through a federal crop insurance program and a true and accurate copy of the documentation establishing completion of the crop adjuster certification program.

(2) Each insurance company and its managing general agents must file with the commissioner any changes to the list within thirty days of a change. If the change includes the addition of a new crop adjuster to the list, the insurance company and managing general agent must also file a copy of the documentation establishing the crop adjuster's completion of the certification program.

#### NEW SECTION

**WAC 284-17-735 Limited conversion to crop adjuster license.** On or before September 30, 2011, an adjuster that is currently licensed by the commissioner as an independent or public adjuster may convert the license to a crop adjuster license to only adjust crop losses not insured through a federal program upon compliance with the following:

- (1) Send written notice to the commissioner requesting the conversion; and
- (2) Provide the commissioner with proof of a minimum of two years crop adjusting experience.

#### **WSR 11-05-091**

#### **PROPOSED RULES**

#### **EASTERN WASHINGTON UNIVERSITY**

[Filed February 16, 2011, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-22-001.

Title of Rule and Other Identifying Information: Chapter 172-132 WAC, Course materials.

Hearing Location(s): Eastern Washington University, Main Campus, Tawanka Commons, Room 215, Cheney, Washington 99004, on March 25, 2011, at 2:30 p.m.

Date of Intended Adoption: April 26, 2011.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail [tlutey@ewu.edu](mailto:tlutey@ewu.edu), fax (509) 359-7036, by March 20, 2011.

Assistance for Persons with Disabilities: Contact Trent Lutey by March 20, 2011, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As required by RCW 28B.10.590, Eastern Washington University proposes these new rules to give students more choices for purchasing educational materials and to encourage faculty and staff to work closely with bookstores and publishers to implement the least costly option without sacrificing educational content and to provide maximum cost savings to students.

Statutory Authority for Adoption: RCW 28B.10.590 and 28B.35.120(12).

Statute Being Implemented: RCW 28B.10.590.

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371; Implementation: Bob Anderson, EWU Bookstore, PUB, Cheney, Washington 99004, (509) 359-2826; and Enforcement: LeeAnn Case, 211 Tawanka Hall, Cheney, WA 99004, (509) 359-6618.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 516-40 [172-132] WAC does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-132 WAC is not considered a significant legislative rule by Eastern Washington University.

February 15, 2011

Trent S. Lutey  
University Policy Administrator

AMENDATORY SECTION (Amending WSR 09-06-062, filed 3/2/09, effective 4/2/09)

**WAC 172-132-030 Cost savings for course materials.**

The Eastern Washington University Bookstore will:

- (1) Provide students the option of purchasing materials that are unbundled whenever possible;
- (2) Disclose to faculty and staff the costs to students of purchasing materials and disclose retail costs for course materials on a per course basis to faculty and staff and make this information publicly available;
- (3) Disclose publicly how new editions vary from previous editions by providing the contact information for the publisher;
  - (a) When a new edition of a textbook is ordered by faculty, the bookstore will notify them of the retail cost change to the students if this information is available. The bookstore will also inquire if students may use the old edition if it is available.
  - (b) The bookstore will provide notice that this is a new edition, and whether or not the student may use the old edition.

(4) Disclose information to students on required course materials including but not limited to title, authors, edition, price, and International Standard Book Number (ISBN) at least four weeks before the start of the class for which the materials are required. The chief academic officer may waive this disclosure requirement on a case-by-case basis, if students may reasonably expect that nearly all information regarding course materials is available four weeks before the start of the class for which the materials are required. The disclosure requirement does not apply if the faculty member using the course materials is hired four weeks or less before the start of class; and.

~~((4))~~ (5) Promote and publicize book buy-back programs;

~~((5) Encourage f))~~ Faculty and staff members will ~~((t))~~ consider the least costly practices in assigning course materials, such as adopting the least expensive edition available,

adopting free, open textbooks when available, and working with college librarians to put together collections of free online web and library resources, when educational content is comparable as determined by the faculty ((and working closely with publishers and local bookstores to create bundles and packages if they deliver cost savings to students)).

**WSR 11-05-094**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

(Board of Pharmacy)

[Filed February 16, 2011, 10:05 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-870-060 What are the board requirements for electronic prescription transmission systems?, amending the rule to include the use of tamper resistant paper and the manual signature of the prescriber.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98501, on April 7, 2011, at 1:00 p.m.

Date of Intended Adoption: April 7, 2011.

Submit Written Comments to: Doreen E. Beebe, Washington State Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, web site [http://www3.doh.wa.gov/policy\\_review/](http://www3.doh.wa.gov/policy_review/), fax (360) 236-2901, by March 31, 2011.

Assistance for Persons with Disabilities: Contact Doreen E. Beebe by April 4, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will amend WAC 246-870-060(6) to require the prescriber to manually sign the hard copy of a prescription printed from an electronic prescription transmission system. The change will make the rule language consistent with the tamper-resistant prescription law (RCW 18.64.500).

Reasons Supporting Proposal: The current rule as written is in conflict with chapter 328, Laws of 2009, HB 2014. The law, effective July 1, 2010, requires that if a hard copy of an electronically generated prescription is given directly to the patient, the prescription must be manually signed and must be on approved tamper-resistant paper.

Statutory Authority for Adoption: RCW 18.64.005.

Statute Being Implemented: RCW 18.64.500.

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

Name of Proponent: Washington state department of health, board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting: Doreen E. Beebe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4834; Implementation and Enforcement: Susan Teil Boyer, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025

and 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

February 16, 2011  
Susan Teil Boyer  
Executive Director

AMENDATORY SECTION (Amending WSR 03-24-070, filed 12/1/03, effective 1/1/04)

**WAC 246-870-060 What are the board requirements for electronic prescription transmission systems?** (1) Systems for the electronic transmission of prescription information must be approved by the board. Board approval of systems will be for a period of three years. The board will maintain a list of approved systems.

(2) Systems in which prescriptions are transmitted from the prescriber's facsimile machine to the pharmacy facsimile machine do not require board approval.

(3) Each system shall have policies and procedures on the electronic transmission of prescription information available that address the following:

(a) Patient access. The system may not restrict the patient's access to the pharmacy of their choice.

(b) Security. The system shall have security and system safeguard designed to prevent and detect unauthorized access, modification, or manipulation of prescription information. Accordingly, the system should include:

(i) Documented formal procedures for selecting and executing security measures;

(ii) Physical safeguards to protect computer systems and other pertinent equipment from intrusion;

(iii) Processes to protect, control and audit access to confidential patient information; and

(iv) Processes to prevent unauthorized access to the data when transmitted over communication networks or when data physically moves from one location to another using media such as magnetic tape, removable drives or CD media.

(c) Systems that utilize intermediaries in the electronic communication or processing of prescriptions such as third party payers shall be responsible to insure that their contracts with these intermediaries require security measures that are equal to or better than those provided by this rule and prohibit the modification of any prescription record after it has been transmitted by the practitioner to the pharmacist.

(d) Confidentiality of patient records. The system shall maintain the confidentiality of patient information in accordance with the requirements of chapters 18.64, 69.50, and 70.02 RCW Health Care Information Act and any applicable federal law.

(e) Authentication. To be valid prescriptions transmitted by an authorized prescriber from computer to fax machine or from computer to computer must use an electronic signature or digital signature.

(4) The system shall provide for the transmission and retention of the information by the sender and the receiver of the prescription as required in WAC 246-870-030.

(5) The system must authenticate the sender's authority and credentials to transmit a prescription.

(a) The system shall provide an audit trail of all prescriptions electronically transmitted that documents for retrieval all actions and persons who have acted on a prescription, including authorized delegation of transmission;

(b) The right of the Washington state board of pharmacy to access electronically submitted prescriptions for purposes of investigations in disciplinary proceedings.

(6) If a hard copy of an electronic prescription (generated from the electronic prescription system, is printed on security paper that insures it is not subject to copying or alteration, an electronic signature may be substituted for a manual signature) is given directly to the patient, the prescription must be printed on approved tamper-resistant paper and must be manually signed by the prescriber as required in RCW 18.64.500.