

WSR 09-15-165
EXPEDITED RULES
GROWTH MANAGEMENT
HEARINGS BOARDS

[Filed July 21, 2009, 12:21 p.m.]

Title of Rule and Other Identifying Information: Chapter 242-02 WAC, Practice and procedures, WAC 242-02-052, 242-02-080, 242-02-140, 242-02-210, 242-02-230, 242-02-240, 242-02-250, 242-02-292, 242-02-320, 242-02-330, 242-02-340, 242-02-530, and 242-02-534.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Julie Ainsworth-Taylor, Rules Coordinator, Office of the Growth Management Hearings Boards, P.O. Box 40953, Olympia, WA 98504-0953, e-mail Juliet@cps.gmhb.wa.gov, AND RECEIVED BY no later than 5 p.m. on October 5, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of these amendments is to permanently amend certain sections of chapter 242-02 WAC which relate to an emergency rule-making order published in WSR 09-13-017. These amended sections reflect the consolidation of the administrative functions of the three growth management hearings boards into a single office. Amendments are needed to provide accurate, clarifying information and facilitate efficiency of document filing based on this consolidation.

(1) Add language related to the office of the growth management hearings boards.

(2) Clarifying form and size of documents.

(3) Require electronic mail addresses be included in documents filed with the boards.

(4) Allow for the filing and/or service of papers, including petitions for review, to be made by electronic mail.

Reasons Supporting Proposal: These amendments implement the requirements or reductions in appropriations enacted with the recently adopted budget for upcoming fiscal year. The legislature's biennium appropriate [appropriations] reflects an approximate 16% reduction in the boards' budget, with budget notes specifically contemplating the consolidation of the boards into a single location. The boards' rules of practice and procedures must be amended to reflect this consolidation and create needed efficiency along with clarification for potential parties and the public. Amendments are needed to update procedures related to administrative decisions and meetings (regular and special) of the growth management hearings boards. (Exempt from CR-101 requirement based on RCW 34.05.310 (4)(g)(i), (d); filed as CR-105 based on RCW 34.05.353 (a) and (c)).

Statutory Authority for Adoption: RCW 36.70.270(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 boards (Eastern, Western, and Central Puget Sound), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Ainsworth-Taylor, P.O. Box 40953, Olympia, WA 98504-0953, (425) 441-8250.

July 2009

James J. McNamara
Chair, Rules Committee

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

WAC 242-02-052 Petition for rule making. (1) Right to petition for rule making. Any person may petition the joint boards for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the ~~((Western Washington))~~ joint boards in care of the office of growth management hearings boards.

(2) Form of petition. The form of the petition for adoption, amendment, or repeal of any rule shall generally adhere to the following:

(a) A caption in the following form:

BEFORE THE JOINT GROWTH MANAGEMENT
HEARINGS BOARDS
STATE OF WASHINGTON

No.

In the matter of
the Petition of
(Name of Petitioner)
for Rule Making

PETITION FOR RULE MAKING

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the adoption of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interests of the petitioner and the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(c) The petition shall be dated and signed by the party named in the first paragraph or by the petitioner's attorney or other authorized representative. The original and nine copies shall be filed with the appropriate board at its office.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-080 Form and size of documents. Documents, other than exhibits, shall be ~~((typewritten or printed, properly captioned, signed by the appropriate person submit-~~

ting the same, shall include his/her address and telephone number, and shall be on 8-1/2 x 11 inch paper. Each board uses IBM compatible software. A board may request submission of a disk from a party, if appropriate) provided in the manner indicated in a board's prehearing order.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-140 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 (~~and~~), telephone and fax numbers, and electronic mail address.

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

WAC 242-02-210 Petition for review—Forms—Contents. A petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE . . . GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

Petitioner,

Case No.

v.

PETITION FOR REVIEW

Respondent.

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address (~~and~~), telephone number, and electronic mail address, and those of the attorney or other authorized representative, if any;

(b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act, the date by which the action was required to be taken;

(c) A detailed statement of the issues presented for resolution by the board that specifies the provision of the act or other statute allegedly being violated and, if applicable, the provision of the document that is being appealed;

(d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2);

(e) The estimated length of the hearing;

(f) The relief sought, including the specific nature and extent;

(g) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable provisions of the document being appealed, if any, shall be attached to the petition for review. Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

WAC 242-02-230 Petition for review—Service and filing. (1) At least one copy of the petition for review shall be filed with the board by electronic mail, as provided in WAC 242-02-240, unless a petitioner does not have the technological capacity to do so. The original and four copies of the petition for review shall be filed with a board personally, or by first class, certified, or registered mail. Filings may also be made with a board by (~~electronic mail or~~) telefacsimile transmission as provided in WAC 242-02-240. A copy of the petition for review shall be personally served upon all other named parties or deposited in the mail and postmarked on or before the date filed with the board. When a county is a party, the county auditor shall be served in noncharter counties and the agent designated by the legislative authority in charter counties. The mayor, city manager, or city clerk shall be served when a city is a party. When the state of Washington is a party, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. Proof of service may be filed with the board pursuant to WAC 242-02-340.

(2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

WAC 242-02-240 Date of filing—Facsimile and electronic mail. (1) The date of filing shall be the date of actual receipt by a board at (~~its~~) the office of the growth management hearings boards. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with a board by electronic mail or telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) An electronic mail or telefacsimile document will only be stamped "received" by the board between the 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.

(b) The original document and four copies (~~must~~) shall be mailed and postmarked or otherwise transmitted to the board on or before the date of sending the telefacsimile transmission or electronic mail.

(c) Documents over fifteen pages in length may not be filed by telefacsimile without prior approval of the presiding officer.

(3) A telefacsimile or electronic mail copy shall constitute an original solely for the purpose of establishing the date a document was filed.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

WAC 242-02-250 Notice of appearance and answer.

(1) The respondent shall file a notice of appearance with the board and serve a copy on the petitioner and all other parties promptly after having been served with a petition for review. The notice of appearance shall be dated, signed and contain the respondent's address, telephone and fax numbers, and ~~((e-mail))~~ electronic mail address.

(2) The respondent, at its option, may file an answer to the petition for review. The respondent shall file the original and four copies with the board and serve a copy on the petitioner. Answers shall be filed no later than twenty days from the date of service of the petition for review. Answers shall be verified in the same manner as the petition for review.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-292 Direct review by superior court—Agreement of the parties. (1) A direct review agreement of the parties shall contain:

(a) A caption in the following form:

BEFORE THE . . . GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

Petitioner, Case No.
v. Agreement for Direct Review
Respondent by . . . County Superior Court

(b) Numbered paragraphs stating:

(i) Petitioner's name, mailing address ~~((and))~~, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(ii) Respondent's name, mailing address ~~((and))~~, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(iii) Intervenor's name, mailing address ~~((and))~~, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(iv) 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;

(v) Date the petition for review was filed, or if multiple petitions were filed and consolidated, the date the board served notice of consolidation;

(vi) 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.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

WAC 242-02-320 Method of service. Service of papers, specified in WAC 242-02-310(1), shall be made by electronic mail unless the party does not have the technological capacity to do so. Service may also be made personally ~~((or))~~, by first class, registered or certified mail, or by telefacsimile transmission. ~~((The board may be served))~~ If service is by electronic mail ((filings, provided that)) or telefacsimile, an original and four copies ((are)) shall be properly addressed to a board, deposited in the mail, and postmarked no later than the same day. Exhibits shall not be served electronically but shall be deemed timely filed if included in the mailed copies.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-330 Service of papers—When complete. (1) Papers required to be filed with a board shall be deemed filed upon actual receipt during office hours at the board's office.

(2) All facsimile and electronic mail transmissions are sent at the risk of the sender and only pursuant to the procedures specified in WAC 242-02-240.

(3) This section shall not extend any applicable time for appeal to a board nor extend the time for providing notice of appeal to any named party.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

WAC 242-02-340 Proof of service—Certificate. Where proof of service is required by this chapter, by statute, or upon a board's request, filing the original document with the board and serving copies upon all attorneys or other authorized representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

(1) An acknowledgement of service;

(2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon each party or the party's attorney or other authorized representative of record in the proceeding by delivering a copy thereof in person to the named individuals;

(3) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the case by:

(a) Mailing a copy, properly addressed with postage prepaid, to each party or that party's attorney or other authorized representative; or

(b) Transmitting a copy by electronic mail or telefacsimile ~~((device))~~, and on the same day mailing a copy to each party in the case or that party's attorney, or other authorized representative; or

(c) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

WAC 242-02-530 Motions—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. An original and four copies of the motion shall be filed with a board and a copy served on each opposing party or that party's attorney or other authorized representative.

(2) All motions shall be properly captioned and signed by the moving party or that party's attorney or other authorized representative.

(3) The motion shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names (~~and~~), telephone numbers, and electronic mail addresses of all parties served with the motion.

(4) Dispositive motions on a limited record, similar to a motion for summary judgment in superior court or a motion on the merits in the appellate courts, are permitted. Time frames for making and responding to such a motion shall be established by the presiding officer.

(5) Motions to disqualify a hearing examiner acting as the presiding officer, or a board member, for bias, prejudice, interest or other cause, with supporting affidavit(s), may be filed with a board.

(6) 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. If such a motion is timely brought, the presiding officer or the board shall determine whether to decide the notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-534 Response to motions. (1) A party served with a motion shall have ten days from the date of (~~receipt~~) service of the motion to respond to it, unless otherwise directed by the presiding officer. A response to the motion shall be filed with a board and a copy served on the opposing party/parties.

(2) The response shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names (~~and~~), telephone numbers, and electronic mail addresses of all parties served with the response.

WSR 09-16-002

EXPEDITED RULES

MARINE EMPLOYEES' COMMISSION

[Filed July 22, 2009, 2:01 p.m.]

Title of Rule and Other Identifying Information: WAC 316-02-800 Commission records—Public access and 316-02-810 Commission records—Confidentiality.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kathy Marshall, Marine Employees' Commission, P.O. Box 40902, Olympia, WA 98504-0902, AND RECEIVED BY October 5, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to changes in chapter 44-14 WAC, Public Records Act, revisions were necessary in agency rules to reflect those changes.

Reasons Supporting Proposal: In compliance with Executive Order 97-02, these rules were reviewed and required changes made to these rules.

Statutory Authority for Adoption: RCW 34.05.230.

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

Name of Proponent: Marine employees' commission, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy J. Marshall, 711 Capitol Way South, Suite 104, (360) 586-6354; Implementation and Enforcement: John R. Swanson, Chairman, 711 Capitol Way South, Suite 104, (360) 586-6354.

July 22, 2009

Kathy J. Marshall
Administrator

AMENDATORY SECTION (Amending WSR 90-01-115, filed 12/20/89, effective 1/20/90)

WAC 316-02-800 Commission records—Public access. The commission will maintain for public inspection:

(1) An index to all proceedings filed with and processed by the commission;

(2) A docket for each proceeding filed with and processed by the commission showing the actions taken on and the final resolution of each such proceeding;

(3) A schedule of hearing dates assigned in particular cases; and

(4) The files for all proceedings, including all documents filed with the commission in the particular case, except materials held in confidence as provided in (~~WAC 316-02-810~~) subsection (10) of this section.

(5) Public records availability. All public records of the commission, unless exempt from disclosure under chapter

42.17, 42.30, or 42.56 RCW, shall be available for public inspection and copying in the commission office from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and during commission meetings.

(6) Public records officer. The commission's public records shall be in the charge of the public records officer designated by the chair. The public records officer shall be responsible for implementing the commission's rules and regulations regarding release of public records.

(7) Public records requests. Any member of the public may examine public records of the commission by making a request in writing to the public records officer. Requestors are encouraged to use the form provided by the commission which is available by U.S. mail, fax, e-mail, or on the agency web site. The form includes:

(a) Name of the person requesting the record;

(b) Time of day and calendar date of the request;

(c) The public records being requested;

(d) If the matter requested is referenced within the current case index maintained by the public records officer, a reference to the requested record as it is described in such current index; and

(e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the request is requested.

The public records officer shall provide an initial response within five business days. If he or she finds that the requested public records should not be disclosed for a reason permissible under chapter 42.17, 42.30, or 42.56 RCW, the requestor will be notified.

(8) Copying costs. No fees shall be charged for the inspection of public records. Requestors may put a Post-it® Note on to identify the pages the requestor wants copied and staff will make the copies. Public records of the commission may be copied only on the copying machine of the commission by staff. The commission shall charge fifteen cents per page for providing copies of public records; fees will be waived for fewer than twenty pages. This charge is the amount necessary to reimburse the commission for its actual costs related to such copying. There will be no charge for public records copied onto a compact disc.

(9) Exemptions. The public records officer may determine that all or a portion of a public record is exempt under the provisions of chapter 42.17, 42.30, or 42.56 RCW. As outlined in RCW 42.17.260(1) and 42.17.310(2), the public records officer may redact (delete) portions of the public records that are exempt from disclosure.

(10) Confidentiality. The commission, in order to protect the privacy of individual employees and in order to respect the confidential nature of the mediation process and other labor-management relations processes, shall not permit the disclosure to any person of:

(a) Any evidence filed as a showing of interest in support of a representation petition or motion for intervention; or

(b) Any notes and memoranda made by any member of the commission or its staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute; or

(c) Any other documents or materials related to mediation other than scheduling information.

Other specifically exempt records are listed in WAC 316-85-020.

(11) Review of denials of public records requests. Any person objecting to a denial of a request for public records may submit a written request for review to the commission specifically referring to the denial and containing a brief statement that gives reasons for reconsideration of the denial. Upon receiving the written request for review, the chairperson will review the denial and issue a written decision within two business days of receiving the request for review. This written decision regarding the request for review shall be the final action by the agency.

(12) Protection of public records. Records are available for inspection and copying at the location and during office hours listed above and then only in the presence of an authorized staff person of the commission and with the aid and assistance of such staff person.

The following guidelines must be complied with while inspecting public records:

(a) No public record may be removed from the agency's premises.

(b) A designated department employee must be present during the inspection of a public record.

(c) A public record may not be marked or defaced in any manner during inspection.

(d) Public records may not be dismantled which are maintained in a file or jacket, or in chronological or other filing order, or those records which, if lost or destroyed, would constitute excessive interference with the department's essential functions.

(e) Access to file cabinets, shelves, vaults, or other storage areas is restricted to department personnel, unless other arrangements are made with the public records officer or designee.

(f) Staff members will not allow records to be inspected or copied by anyone who is intoxicated, violent, abusive, threatening, or otherwise disruptive. Anyone who displays these characteristics during a records inspection may have the inspection terminated by department staff.

(13) Records index. The staff of the commission shall make available to all persons documents which provide identifying information as to the following records issued, adopted, or promulgated by the commission. The commission will maintain for public inspection:

(a) An index to all proceedings filed with and processed by the commission;

(b) A docket for each proceeding filed with and processed by the commission showing the actions taken on and the final resolution of each such proceeding;

(c) A schedule of hearing dates assigned in particular cases; and

(d) The files for all proceedings, including all documents filed with the commission in the particular case, except materials held in confidence as provided in WAC 316-02-800(10).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 316-02-810 Commission records—Confidentiality.

WSR 09-16-071**EXPEDITED RULES****DEPARTMENT OF AGRICULTURE**

[Filed July 30, 2009, 2:29 p.m.]

Title of Rule and Other Identifying Information: WAC 16-230-410 What are use herbicides in Spokane County?, change to "What are use restricted herbicides in Spokane County?"; WAC 16-232-007 What are restricted use pesticides in certain areas of Walla Walla County?, change to "What are use restricted pesticides in certain areas of Walla Walla County?"; and chapter 16-232 WAC, Restricted use herbicides in certain counties, change to "Use restricted herbicides in certain counties."

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Laurie Mauerman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY October 6, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: When the terminology was changed from "restricted use" to "use restricted" for certain pesticides applied in eastern Washington counties in April 2007, a few of the terminology changes were inadvertently omitted.

Reasons Supporting Proposal: Correct typographical omissions.

Statutory Authority for Adoption: Chapters 17.21, 15.58, and 34.05 RCW.

Statute Being Implemented: Chapters 17.21 and 15.58 RCW.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Ann Wick, 1111 Washington Street S.E., Olympia, WA, (360) 902-2051; and Enforcement: Cliff Weed, 1111 Washington Street S.E., Olympia, WA, (360) 902-2036.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No changes to language except to make typographical omission change. No change in implementation, enforcement or fiscal matters.

July 30, 2009

Bob Arrington

Assistant Director

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-410 What are use restricted herbicides in Spokane County? All formulations of phenoxy hormone-type herbicides, (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba are declared as use restricted herbicides except as listed below:

- (1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;
- (2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

Chapter 16-232 WAC**~~((RESTRICTED))~~ USE RESTRICTED HERBICIDES IN CERTAIN COUNTIES**

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-007 What are ~~((restricted))~~ use restricted pesticides in certain areas of Walla Walla County? The following pesticides are declared to be use restricted pesticides in areas 2B, 4, and 6:

- (1) Use restricted herbicides*:
 - (a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort);
 - (b) Desiccants and defoliant (such as Paraquat, Diquat, Endothal);
 - (c) Glyphosate (such as Roundup, Landmaster);
 - (d) Phenoxy hormone-type herbicides (such as 2,4-D, MCPA);
 - (e) Dicamba (such as Banvel);
 - (f) Bromoxynil except that the cutoff dates of April 5, April 15 and May 15 do not apply.

*This is to be used only as a guide and may not include all brand or trade names under which these chemicals are distributed.

- (2) All aerial applications of Category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations.

WSR 09-16-121**EXPEDITED RULES****STATE BOARD OF HEALTH**

[Filed August 4, 2009, 2:52 p.m.]

Title of Rule and Other Identifying Information: Chapter 246-762 WAC, Scoliosis screening-school districts, repealing chapter due to passage of HB 1322 (chapter 41, Laws of 2009).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Tara Wolff, Washington State Board of Health, P.O. Box 47990, Olympia, WA 98504, AND RECEIVED BY October 5, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule change will repeal chapter 246-762 WAC. Schools will no longer be required to screen students for scoliosis annually in grades five, seven, and nine.

Reasons Supporting Proposal: In 2009, HB 1322 was signed into law. This bill repeals RCW 28A.210.180, 28A.210.190, 28A.210.200, 28A.210.210, 28A.210.220, 28A.210.240, and 28A.210.250. HB 1322 repealed the statutory authority for chapter 246-762 WAC. Screening asymptomatic adolescents for scoliosis in a school setting is not evidence-based and can be a burden for schools and students. RCW 34.05.353 (2)(a) allows for the use of expedited repeal [and] is being using [used] since the statutes on which the rule is based have been repealed and have not been replaced by another statute providing statutory authority for the rule (chapter 246-762 WAC).

Statutory Authority for Adoption: HB 1322 (chapter 41, Laws of 2009).

Statute Being Implemented: HB 1322 (chapter 41, Laws of 2009).

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

Name of Proponent: State legislature and Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Tara Wolff, P.O. Box 47990, Olympia, WA 98504, (360) 236-4101; Implementation and Enforcement: Superintendent [Superintendent] of Public Instruction, 600 Washington Street S.E., Olympia, WA 98501, (360) 725-6000.

August 4, 2009

Craig McLaughlin
Executive Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-762-001	What is the purpose of scoliosis screening in public schools?
WAC 246-762-010	What words and terms are defined for this chapter?
WAC 246-762-020	When are students screened for scoliosis?
WAC 246-762-030	What are the qualifications for persons who do screening?
WAC 246-762-040	What are the medical standards for screening?
WAC 246-762-050	What happens to screening results?

WSR 09-16-146**EXPEDITED RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Filed August 5, 2009, 11:59 a.m.]

Title of Rule and Other Identifying Information: WAC 232-12-017 Deleterious exotic wildlife and 232-12-064 Live wildlife.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Lori Preuss, Rules Coordinator, Washington Department of Fish and Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091, AND RECEIVED BY October 5, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to correct the term for the American Zoological Association, to correct references to new rules of the Washington department of agriculture, and to make grammatical and punctuation corrections.

Reasons Supporting Proposal: Correcting inaccurate references and adding appropriate grammar and punctuation will make these rules easier for people to comply with.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Statute Being Implemented: RCW 77.12.047 and 77.04.020.

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, WA, (360) 902-2930; Implementation: Deputy Chief Mike Cenci, 1111 Washington Street S.E., Olympia, WA, (360) 902-2938; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA, (360) 902-2929.

August 5, 2009

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-06-086, filed 3/7/07, effective 4/7/07)

WAC 232-12-017 Deleterious exotic wildlife. (1) The following animals are hereby designated as deleterious exotic wildlife:

(a) Birds:

In the family Anatidae, the mute swan (*Cygnus olor*).

(b) Mammals:

(i) In the family Viverridae, the mongoose (all members of the genus *Herpestes*).

(ii) In the family Suidae, the wild boar (*Sus scrofa* and all wild hybrids).

(iii) In the family Tayassuidae, the collared peccary (javelina) (*Tayassu tajacu*).

(iv) In the family Bovidae, all members and hybrids of the following genera: *Rupicapra* (Chamois); *Hemitragus* (Tahr); *Capra* (goats, ibexes except domestic goat *Capra hircus*); *Ammotragus* (Barbary sheep or Aoudad); *Ovis* (sheep, except domestic sheep *Ovis aries*; *Damaliscus* (Sassabies); *Alcelaphus buselaphus* (Hartebeest); and *Connochaetes* (Wildebeests).

(v) In the family Cervidae, the European red deer (*Cervus elaphus elaphus*), all nonnative subspecies of *Cervus elaphus*, and all hybrids with North American elk; Fallow deer (*Dama dama*), Axis deer (~~((Axis))~~ Axis axis), Rusa deer or Sambar deer (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*), Sika deer (*Cervus Nippon*), Reindeer (all members of the Genus *Rangifer* except *Rangifer tarandus caribou*), and Roedeer (all members of the Genus *Capreolus*).

(2) It is unlawful to import into the state, hold, possess, propagate, offer for sale, sell, transfer, or release live specimens of deleterious exotic wildlife, their gametes and/or embryo, except as provided under subsection (3), (4), (5), (6), or (7) (~~((below))~~ of this section, and as provided in WAC 232-12-01701.

(3) Scientific research or display: The director may authorize, by written approval, a person to import into the state, hold, possess, and propagate live specimens of deleterious exotic wildlife for scientific research or for display by zoos or aquariums who are accredited institutional members of the American Zoological Association (~~((of Zoological Parks and Aquariums (AAZPA)))~~ (AZA), provided:

(a) The specimens are confined to a secure facility(;;);

(b) The specimens will not be transferred to any other location within the state, except to other (~~((AAZPA))~~ AZA-accredited facilities with written director approval or as otherwise authorized in writing by the director(;;);

(c) The specimens will be euthanized and all parts incinerated at the end of the project, except for federally listed endangered or threatened species, which may be retained or transferred where in compliance with federal law(;;);

(d) The person will keep such records on the specimens and make such reports as the director may require(;;); and

(e) The person complies with other requirements of this section.

(4) Retention or disposal of existing specimens lawfully in captivity:

(a) Specimens lawfully in captivity prior to January 18, 1991: A person holding exotic wildlife specimens in captivity (~~((which))~~ that were classified by the fish and wildlife commission as deleterious exotic wildlife on or before January 18, 1991, may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to January 18, 1991, provided such person complies with subsections (4)(c) through (4)(h) hereunder and the other requirements of this section(;;);

(b) Specimens lawfully in captivity prior to June 20, 1992: A person holding the following deleterious exotic wildlife specimens in captivity (~~((which))~~ that were classified by the fish and wildlife commission as deleterious exotic wildlife by operation of emergency rule filed June 19, 1992 (in the family Bovidae, *Sassabies* (all members of the Genus *Damaliscus*), *Hartebeest* (*Alcelaphus buselaphus*), *Wildebeests* (all members of the Genus *Connochaetes*), *Markhor* (*Capra falconeri*), and *Marcopolo sheep* (*Ovis ammon*); and in the family Cervidae, *Fallow deer* (*Dama dama*), *Axis deer* (*Axis axis*), *Sika deer* (*Cervus Nippon*), and *Rusa deer* or *Sambar deer* (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to June 20, 1992, and the lawful progeny thereof, provided such person complies with subsection(~~((s))~~ (4)(c) through (~~((4))~~(h) (~~((hereunder))~~ of this section and the other requirements of this section and except as provided under subsection (7)(;) of this section;

(c) The person reported to the director, in writing, the species, number, and location of the specimens, as required(;;);

(d) The specimens are confined to a secure facility at the location reported(;;);

(e) Live specimens are not propagated, except at (~~((AAZPA))~~ AZA-accredited facilities with the written permission of the director or as otherwise authorized in writing by the director(;;);

(f) Live specimens shall be neutered, physically separated by sex, and/or rendered infertile by means of contraception, except at (~~((AAZPA))~~ AZA-accredited facilities with the written permission of the director(;;);

(g) Live specimens are not released(;;); and

(h) Live specimens are not sold or transferred, except:

(i) Live specimens in lawful possession may be permanently removed from the state of Washington or transported

directly to slaughter where in accordance with other applicable law~~(-);~~;

(ii) Federally listed endangered or threatened species may be transferred to ~~((AAZPA))~~ AZA-accredited facilities where in compliance with federal law~~(-);~~;

(iii) Live specimens may be moved to the new primary residence of the possessor with the written approval of the director, provided that all other requirements are satisfied and the total number of locations where animals are held is not increased~~(-);~~; and

(iv) ~~((AAZPA))~~ AZA facilities may sell and/or transfer live specimens within the state with the written permission of the director.

(5) Retention or disposal of existing specimens lawfully in captivity prior to February 13, 1993: A person holding exotic wildlife specimens in captivity ~~((which))~~ that are newly classified by the fish and wildlife commission as deleterious exotic wildlife by operation of this rule (Reindeer (all members of the Genus Rangifer, except Rangifer tarandus caribou), and Roedeer (all members of the Genus Capreolus)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to February 13, 1993, provided:

(a) The person reports to the director in writing by March 31, 1993, and reports annually thereafter, or as otherwise required by the director, the species, number, and location of such specimens~~(-);~~; and

(b) The person complies with subsection~~((s))~~ (4)(d) through ~~((4))(h)~~ ~~((herein))~~ of this section and the other requirements of this section.

(6) The provisions of this section shall not prohibit the importation, possession, propagation, sale, transfer, or release of live specimens of federally listed threatened or endangered species, their gametes and/or embryo, where in compliance with federal law.

(7) Notwithstanding the provisions of subsection (2) of this section, Fallow deer (Dama dama) and reindeer (all members of the Genus Rangifer, except Rangifer tarandus caribou) may be imported into the state, held, possessed, propagated, offered for sale, sold, and/or transferred, provided:

(a) The person complies with subsection (4)(c) through ~~((4))(g)~~ ~~((hereunder))~~ of this section and the other requirements of this section, except for subsection~~((s))~~ (4)(e), ~~((4))(f)~~, and ~~((4))(h)(-))~~ of this section; and

(b) The person complies with the department of agriculture WAC ~~((16-54-035))~~ 16-54-180 as now or hereafter amended, except:

~~((+))~~ Animals ~~((which))~~ that have resided at any time east of a line drawn through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and the 100th Meridian where it passes through Texas, or that have had contact with or shared common ground with animals which have resided at any time east of such line, shall not be imported into the state of Washington~~(-))~~ unless specifically authorized in writing by the director~~((s))~~ of the department of agriculture and the department of fish and wildlife(-));

(c) No specimens affected with any infectious or communicable disease shall be imported into the state unless in compliance with all applicable laws and regulations and

unless written permission is obtained from the directors of the department of agriculture and the department of fish and wildlife(-));

(d) The specimens are confined to a secure facility~~(-))~~; and

(e) Reindeer may not be imported into, held, or possessed in Ferry, Stevens, or Pend Oreille counties or that portion of Spokane County north of Spokane River.

(8) Escaped animals:

(a) Escaped deleterious exotic wildlife, including Fallow deer (Dama dama)~~(-))~~ and Reindeer (all members of the Genus Rangifer, except Rangifer tarandus caribou) will be considered a public nuisance. The department or any peace officer may seize, capture, or destroy deleterious exotic wildlife that have escaped the possessor's control. The former possessor shall be responsible for costs incurred by the department in recovering, maintaining, or disposing of such animals, as well as any damage to the state's wildlife or habitat.

(b) Escapes of deleterious exotic wildlife must be reported immediately to the department.

(c) The recapture or death of escaped deleterious exotic wildlife must be reported immediately to the department.

(9) Secure facility:

(a) All deleterious exotic wildlife will be held in a secure facility. For the purpose of this rule, a secure facility is an enclosure so constructed as to prevent danger to the environment or wildlife of the state, including escape of deleterious exotic wildlife specimens or ingress of resident wildlife ungulates (hoofed animals). The adequacy of the facility shall be determined by the director or agents of the director.

(b) For deleterious exotic wildlife listed in subsection~~((s))~~ (1)(b)(iv) and ~~((1)(b))~~(v) of this section, the "secure facility" must comply with the fencing requirements in subsection (10) of this section, unless otherwise authorized by the director in writing.

(10) Fencing requirements:

(a) Perimeter fences must be, at a minimum, eight feet above ground level for their entire length. The bottom six feet must be mesh of sufficient size to prevent resident wildlife ungulates (hoofed animals) from entering and deleterious exotic wildlife from escaping. Supplemental wire required to attain a height of eight feet may be smooth, barbed, or woven wire (at least 12-1/2 gauge) with strands spaced not more than six inches apart.

(b) Perimeter fences constructed of high tensile wire must be supported by a post or stay at minimum intervals of eight feet.

(c) Perimeter fences must be at least 12-1/2 gauge woven wire, 14-1/2 gauge high-tensile woven wire, chain link, non-climbable woven fence, or other fence approved by the director.

~~((+))~~ If the wire used is not a full eight feet in height, it must be overlapped one row and securely fastened at every other vertical row or woven together with cable.

(d) Electric fencing materials may be used on perimeter fences only as a supplement to conventional fencing materials.

(e) All gates in the perimeter fences must be self-closing, equipped with two locking devices, and installed only in

locations that have been approved by the director. Double gates may be required at points in the perimeter fences subject to frequent vehicle traffic that is not related to activities involving the holding of deleterious exotic wildlife.

(f) Posts used in the perimeter fences must be:

(i) Wood (pressure treated), five-inch minimum diameter or an equivalent as approved by the director;

(ii) Spaced no more than twenty-four feet apart with stays or supports at eight foot intervals between the posts;

(iii) Extended at least eight feet above ground level; and

(iv) Have corners braced with wood or with an equivalent material as approved by the director.

(g) Fences must be maintained at all times to prevent deleterious exotic wildlife from escaping or resident wildlife ungulates (hoofed animals) from entering the enclosure. If such animals do pass through, under, or over the fence because of any topographic feature or other conditions, the person possessing deleterious exotic wildlife must immediately supplement the fence to prevent continued passage.

(h) For any fence existing prior to February 13, 1993, a person may petition the director in writing for a variance from the above fencing requirements. Any such petition must be filed no later than May 31, 1993, and must identify all aspects in which the existing fence does not meet the fencing requirements contained herein. On approval of the director, such person may maintain such existing fence with normal repair. However, any extension or relocation of existing fence must meet the fencing requirements contained herein.

(11) Marking requirements:

(a) All live specimens of deleterious exotic wildlife, except those listed in subsection ~~((s))~~ (1)(a) and ~~((+))~~(b) of this section, shall be permanently and individually identified by methods approved by the director ~~((:))~~.

(b) Identification assigned to an individual animal may not be transferred to any other animal.

(c) All specimens of deleterious exotic wildlife identified in subsection ~~((s))~~ (1)(b)(iv) and ~~((+))~~(v) of this section must be individually identified by the methods specified below ~~((:))~~:

(i) All live specimens of such deleterious exotic wildlife shall be marked with USDA Official ear tags or with ear tags supplied or approved by the department. Tags shall be applied in sequential order ~~((:))~~; and

(ii) All live specimens of such deleterious exotic wildlife shall be marked with a tattoo with an identifying number that has been recorded with the director. The tattoo must be placed on the left ear of the animal.

(d) All lawful progeny of deleterious exotic wildlife must be tagged and tattooed by December 31 of the year of birth or upon leaving the holding facility, whichever is earlier.

(e) Where allowed, if an animal is sold or transferred within the state, the tag and tattoo must accompany the animal. The new owner or possessor shall not renumber the animal.

(f) Where allowed, live specimens of deleterious exotic wildlife shall be marked prior to importation.

(g) No unmarked deleterious exotic wildlife may be sold or otherwise transferred from the holding facility.

(12) Testing of specimens:

(a) Where allowed, prior to entry into the state of Washington, a person importing any member of the Genus *Cervus*, which is identified in subsection (1)(b)(v) of this section herein, must submit records of genetic tests ~~((:))~~ conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Washington). Such testing shall be at the possessor's expense. Animals ~~((which))~~ that are deemed by department of wildlife biologists upon examination to exhibit either: Behavioral (vocalization), morphological (size, rump patch, color), or biochemical indications of such influence (hemoglobin, superoxide dismutase, transferrin and post-transferrin, or others to be developed) may not be imported.

(b) The director may require a person currently possessing any member of the Genus *Cervus* ~~((which))~~ that are identified in subsection (1)(b)(v) ~~((herein))~~ of this section to submit records of genetic tests ~~((:))~~ conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Washington) ~~((:))~~ for each individual cervid to the department. Such testing shall be at the possessor's expense. The director may require that any animal identified as a red deer or having nonindigenous genetic influence be destroyed, removed from the state, or neutered.

(c) The director may require that all specimens of deleterious exotic wildlife lawfully in captivity be tested for brucellosis (*brucella abortus*), tuberculosis (*mycobacterium bovis* and *mycobacterium tuberculosis*), meningeal worm (*Paralophostrongylus tenuis*), and muscle worm (*Elaphostrongylus cervis*) in accordance with the procedures specified in department of agriculture WAC ~~((16-54-035))~~ 16-54-180 as now or hereafter amended and/or for other disease or parasites determined to pose a risk to wildlife. The results of such tests shall be filed with the director as required.

(13) Reporting:

(a) A person holding deleterious exotic wildlife in captivity shall submit a completed report no later than March 30, 1993, and then no later than January 31 of each year, or as otherwise required by the director, on a form provided by the department.

(b) Persons possessing deleterious exotic wildlife must notify the director within ten days of any change of such persons' address and/or location of the holding facility.

(14) Inspection:

(a) All holding facilities for deleterious exotic wildlife located in the state are subject to inspection for compliance with the provisions of this section.

(b) Such inspections ~~((may take place without warrant or prior notice but))~~ shall be conducted at reasonable times ~~((and locations))~~.

(15) Notification and disposition of diseased animals ~~((:))~~:

(a) Any person who has reason to believe that deleterious exotic wildlife being held pursuant to this rule have or have been exposed to a dangerous or communicable disease or parasite shall notify the department immediately.

(b) Upon having reason to believe that deleterious exotic wildlife held pursuant to this rule have been exposed to or contracted a dangerous or contagious disease or parasite, the director may order inspection of such animals by a licensed, accredited veterinarian or inspection agent. Inspection shall be at the expense of the possessor.

(c) The director shall determine when destruction of animals, quarantine, or disinfection is required at any facility holding deleterious exotic wildlife, pursuant to this rule. If the director determines that destruction, quarantine, or disinfection is required, a written order shall be issued to the possessor describing the procedure to be followed and the time period for carrying out such actions. Such activities shall be at the expense of the possessor.

(16) Quarantine area;

(a) Any facility holding deleterious exotic wildlife must have an approved quarantine facility within its exterior boundary or submit an action plan to the director that guarantees access to an approved quarantine facility within the state of Washington.

(i) An approved quarantine facility is one that meets criteria set by the Washington state department of agriculture.

(ii) The quarantine area must meet the tests of isolation, separate feed and water, escape security, and allowances for the humane holding and care of its occupants for extended periods of time.

(b) Should the imposition of a quarantine become necessary, the possessor must provide an on-site quarantine facility or make arrangements at such possessor's expense to transport the animals to the approved quarantine facility named in the quarantine action plan.

(17) Seizure;

(a) The department of wildlife may seize any unlawfully possessed deleterious exotic wildlife.

(b) The cost of any seizure and/or holding of deleterious exotic wildlife may be charged to the possessor of such animals.

AMENDATORY SECTION (Amending Order 04-98, filed 5/12/04, effective 6/12/04)

WAC 232-12-064 Live wildlife. Taking from the wild, importation, possession, transfer, holding in captivity.

(1) It is unlawful to take live wildlife (except unclassified marine invertebrates and fish), wild birds (except starlings, house sparrows and rock doves by falconers, and rock doves by bird dog trainers), or game fish from the wild without a permit provided for by rule of the commission and issued by the director.

(2) Notwithstanding the provisions of WAC 232-12-027(1), 232-12-067, and subsections (3) and (4) ~~((herein))~~ of this section, it is unlawful to import into the state, hold, possess, propagate, offer for sale, sell, transfer, or release live specimens of wildlife listed in this subsection, or their gametes and/or embryos, except as provided under subsection(s) (7), (8), (9) or (10) ~~((below))~~ of this section:

In the family Cervidae, all of the following species:

Roosevelt and Rocky Mountain elk	Cervus elaphus
Mule deer and Black-tailed deer	Odocoileus hemionus
White-tailed deer	Odocoileus virginianus

Moose
Caribou

Alces alces
Rangifer tarandus caribou

(3) It is unlawful to import into the state or to hold live wildlife which were taken, held, possessed, or transported contrary to federal or state law, local ordinance, or department rule. Live wild animals, wild birds, or game fish shall not be imported without first presenting to the department the health certificate required by the Washington ~~((state))~~ department of agriculture under WAC ~~((16-54-030))~~ 16-54-180. Notwithstanding the provisions of this subsection, raptors used for falconry or propagation may be imported if the health certificate is in the possession of the importer. Proof of lawful importation must be produced for inspection on request of a department employee.

(4) It is unlawful to possess or hold in captivity live wild animals, wild birds, or game fish unless lawfully acquired and possessed. Proof of lawful acquisition and possession must be produced for inspection on request of a department employee. Such proof shall contain:

- ~~((1))~~ (a) Species;
- ~~((2))~~ (b) Age and sex of animal;
- ~~((3))~~ (c) Origin of animal;
- ~~((4))~~ (d) Name of receiving party;
- ~~((5))~~ (e) Source-name and address;
- ~~((6))~~ (f) Invoice/statement date; and
- ~~((7))~~ (g) Documentation of prior transfers.

(5) Live wild animals, wild birds, or game fish held in captivity, or their progeny or parts thereof, may not be sold or otherwise ~~((commercialized on))~~ used commercially except as provided by rule of the commission.

(6) No wildlife shall be released from captivity except as provided in WAC 232-12-271, except that it is lawful to return to the waters from which caught, game fish caught and subsequently kept alive on stringers, in live wells, or in other containers while fishing. The release of fish into any waters of the state, including private, natural, or man-made ponds, requires a fish planting permit.

(7) Scientific research or display: The director may authorize, by written approval, a person to import into the state, hold, possess and propagate live specimens of wildlife listed in subsection (2) of this section, for scientific research or for display by zoos or aquariums who are accredited institutional members of the American Zoological Association ~~((of Zoological Parks and Aquariums (AAZPA)))~~ (AZA), provided:

- (a) The specimens are confined to a secure facility~~((:));~~
- (b) The specimens will not be transferred to any other location within the state, except to other ~~((AAZPA))~~ AZA-accredited facilities, and transported by ~~((AAZPA))~~ AZA-accredited institutional members or their authorized agents with written approval of the director or as otherwise authorized in writing by the director~~((:));~~

(c) The specimens will not be sold or otherwise disposed of within the state without written approval of the director~~((:));~~

(d) The person will keep such records on the specimens and make such reports as the director may require~~((:));~~ and

(e) The person complies with the other requirements of this section.

(8) Retention or disposal of existing specimens lawfully in captivity prior to June 20, 1992: A person holding live Roosevelt and Rocky Mountain elk, Mule Deer and Black-tailed deer, White-tailed deer, and Moose may retain the specimens of such wildlife such person lawfully possessed prior to June 20, 1992, and the lawful progeny thereof, provided such person complies with (a) through (f) of this subsection and the other requirements of this section(8);

(a) The person reported to the director, in writing, the species, number, and location of the specimens as required(8);

(b) The specimens are confined to a secure facility at the location reported(8);

(c) Live specimens are not propagated except at ((AAZPA)) AZA-accredited facilities with the written permission of the director or as otherwise authorized in writing by the director;

(d) Live specimens are not released, except with written permission of the director(8);

(e) Live specimens are not sold or transferred, except:

(i) Live specimens in lawful possession prior to June 20, 1992, and their lawful progeny may be permanently removed from the state of Washington or transported directly to slaughter where in accordance with other applicable law(8);

(ii) Federally listed endangered or threatened species may be transferred to ((AAZPA)) AZA-accredited facilities where in compliance with federal law(8);

(iii) Live specimens may be moved to the new primary residence of the possessor with the written approval of the director, provided all other requirements of this section are satisfied and the total number of locations where animals are held is not increased; and

(iv) ((AAZPA)) AZA-accredited facilities may sell and/or transfer live specimens within the state with the written permission of the director(8);

(f) Live specimens shall be neutered, physically separated by sex, and/or rendered infertile by means of contraception, except at ((AAZPA)) AZA-accredited facilities with the written permission of the director.

(9) Retention or disposal of existing specimens lawfully in captivity prior to February 13, 1993: A person holding live specimens of wildlife newly listed in subsection (2) of this section by operation of this rule ((f)) Caribou (Rangifer tarandus caribou)(9), may retain the specimens of such wildlife the person lawfully possessed prior to February 13, 1993, provided:

(a) The person reports to the director in writing by March 31, 1993, and reports annually thereafter, or as otherwise required by the director, the species, number, and location of such specimens(9); and

(b) The person complies with subsection((s)) (8)(b) through ((8))((f)) of this section and the other requirements of this section.

(10) The provisions of this section shall not prohibit the importation, possession, propagation, sale, transfer, or release of live specimens of federally listed threatened or endangered species, their gametes ((and)) or embryos, where in compliance with federal law.

(11) Escaped wildlife:

(a) Escaped wildlife will be considered a public nuisance. The department or any peace officer may seize, capture, or destroy wildlife that have escaped the possessor's control. The former possessor shall be responsible for costs incurred by the department in recovering, maintaining, or disposing of such animals, as well as any damage to the state's wildlife or habitat.

(b) Escapes of wildlife must be reported immediately to the department,

(c) The recapture or death of escaped wildlife must be reported immediately to the department.

(12) Secure facility:

(a) All captive wildlife will be held in a secure facility. For the purposes of this rule, a secure facility is an enclosure so constructed as to prevent danger to the environment or wildlife of the state, including escape of live wildlife specimens in captivity or ingress of resident wildlife ungulates (hoofed animals).

(b) For wildlife listed in subsection (2) of this section, the secure facility must comply with the fencing requirements in subsection (13) of this section.

(13) Fencing requirements:

(a) Perimeter fences must be, at a minimum, eight feet above ground level for their entire length. The bottom six feet must be mesh of sufficient size to prevent resident wildlife ungulates (hoofed animals) from entering and captive wildlife from escaping. Supplemental wire required to attain a height of eight feet may be smooth, barbed, or woven wire (at least 12-1/2 gauge) with strands spaced not more than six inches apart.

(b) Perimeter fences constructed of high tensile wire must be supported by a post or stay at minimum intervals of eight feet.

(c) Perimeter fences must be at least 12-1/2 gauge woven wire, 14-1/2 gauge high-tensile woven wire, chain link, ~~((non-climbable))~~ nonclimbable woven fence, or other fence approved by the director.

If the wire used is not a full eight feet in height, it must be overlapped one row and securely fastened at every other vertical row or woven together with cable.

(d) Electric fencing materials may be used on perimeter fences only as a supplement to conventional fencing materials.

(e) All gates in the perimeter fences must be self-closing, equipped with two locking devices, and installed only in locations that have been approved by the director. Double gates may be required at points in the perimeter fences subject to frequent vehicle traffic that is not related to activities involving the holding of captive wildlife.

(f) Posts used in the perimeter fences must be:

(i) Wood (pressure treated), five-inch minimum diameter or an equivalent as approved by the director;

(ii) Spaced no more than twenty-four feet apart with stays or supports at eight foot intervals between the posts;

(iii) Extended at least eight feet above ground level; and

(iv) Have corners braced with wood or with an equivalent material as approved by the director.

(g) Fences must be maintained at all times to prevent captive wildlife from escaping or resident wildlife ungulates

(hoofed animals) from entering the enclosure. If such animals do pass through, under, or over the fence because of any topographic feature or other conditions, the person possessing wildlife must immediately supplement the fence to prevent continued passage.

(h) For any fence existing prior to February 13, 1993, a person may petition the director in writing for a variance from the above fencing requirements. Any such petition must be filed no later than May 31, 1993, and must identify all aspects in which the existing fence does not meet the fencing requirements contained herein. On approval of the director, such person may maintain such existing fence with normal repair. However, any extension or relocation of existing fence must meet the fencing requirements contained herein.

(14) Marking requirements:

(a) All live specimens of wildlife identified in subsection (2) of this section must be individually identified by the methods specified below:

(i) All live specimens of such wildlife shall be marked with USDA official ear tags or with ear tags supplied or approved by the department. Tags shall be applied in sequential order~~(-)~~; and

(ii) All live specimens of such wildlife shall be marked with a tattoo with an identifying number that has been recorded with the director. The tattoo must be placed on the left ear of the animal.

(b) Identification assigned to an individual animal may not be transferred to any other animal.

(c) Where allowed, all lawful progeny of wildlife identified in subsection (2) of this section must be tagged and tattooed by December 31 of the year of birth or upon leaving the holding facility, whichever is earlier.

(d) Where allowed, if wildlife identified in subsection (2) of this section is sold or transferred within the state, the tag and tattoo must accompany the animal. The new owner or possessor shall not renumber the animal.

(e) Where allowed, live specimens of wildlife identified in subsection (2) of this section shall be marked prior to importation.

(f) No unmarked wildlife identified in subsection (2) of this section may be sold or otherwise transferred from the holding facility.

(15) Testing of specimens~~(-)~~:

(a) Where allowed, prior to entry into the state of Washington, persons importing any member of the Genus *Cervus*, which is identified in subsection (2) ~~(herein)~~ of this section, must submit records of genetic tests~~(-)~~ conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Washington). Such testing shall be at the possessor's expense. Animals which are deemed by department of fish and wildlife biologists upon examination to exhibit either~~(-)~~ behavioral (vocalization), morphological (size, rump patch, color), or biochemical indications of such influence (hemoglobin, superoxide dismutase, transferrin and post-transferrin, or others to be developed) may not be imported.

(b) A person currently holding any member of the genus *Cervus elaphus* identified in subsection (2) ~~(herein)~~ of this

section must submit records of genetic tests~~(-)~~ conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Washington)~~(-)~~ for each individual cervid to the director within ~~((90))~~ ninety days of passage of this rule. Such testing shall be at the possessor's expense. Any animals identified as red deer or having nonindigenous genetic influence must be destroyed, removed from the state, or neutered within ~~((180))~~ one hundred eighty days of passage of this rule.

(c) The director may require that specimens listed in subsection (2) of this section lawfully in captivity be tested for brucellosis (*brucella abortus*), tuberculosis (*mycobacterium bovis* and *mycobacterium tuberculosis*), meningeal worm (*Paralophostromylus tenuis*), and muscle worm (*Elaphostromylus cervis*) in accordance with the procedures specified in department of agriculture WAC ~~((16-54-035))~~ 16-54-180 as now or hereafter amended, and/or for other diseases or parasites determined to pose a risk to wildlife. The results of such tests shall be filed with the director as required.

(16) Reporting:

(a) A person holding wildlife listed in subsection (2) of this section in captivity shall submit a completed report no later than March 30, 1993, and then no later than January 31 of each year, or as otherwise required by the director, on a form provided by the department.

(b) Persons possessing wildlife listed in subsection (2) of this section must notify the director within ten days of any change of such persons' address and/or location of the holding facility.

(17) Inspection:

(a) All holding facilities for captive wildlife located in the state are subject to inspection for compliance with the provisions of this section.

(b) Such inspections ~~((may take place without warrant or prior notice but))~~ shall be conducted at reasonable times ~~((and locations))~~.

(18) Notification and disposition of diseased animals~~(-)~~:

(a) Any person who has reason to believe that wildlife being held pursuant to this rule have or have been exposed to a dangerous or communicable disease or parasite shall notify the department immediately.

(b) Upon having reason to believe that wildlife held pursuant to this rule have been exposed to or contracted a dangerous or contagious disease or parasite, the director may order inspection of such animals by a licensed, accredited veterinarian, certified fish pathologist, or inspection agent. Inspection shall be at the expense of the possessor.

(c) The director shall determine when destruction of wildlife, quarantine, disinfection, or sterilization of facilities is required at any facility holding wildlife pursuant to this rule. If the director determines that destruction of wildlife, quarantine, disinfection, or sterilization of facilities is required, a written order shall be issued to the possessor describing the procedure to be followed and the time period for carrying out such actions. Such activities shall be at the expense of the possessor.

(19) Quarantine area:

(a) Any facility holding wildlife listed in subsection (2) of this section must have an approved quarantine facility within its exterior boundary or submit an action plan to the director that guarantees access to an approved quarantine facility within the state of Washington.

(i) An approved quarantine facility is one that meets criteria set by the Washington (~~state~~) department of agriculture.

(ii) The quarantine area must meet the tests of isolation, separate feed and water, escape security, and allowances for the humane holding and care of its occupants for extended periods of time.

(b) Should the imposition of a quarantine become necessary, the possessor of any wildlife must provide an on-site quarantine facility or make arrangements at such possessor's expense to transport such wildlife to an approved quarantine facility.

(20) Seizure:

(a) The department of fish and wildlife may seize any unlawfully possessed wildlife.

(b) The cost of any seizure and/or holding of wildlife may be charged to the possessor of such animals.